

ABRAHAM FOFANA, Petitioner, v. HIS HONOUR  
SAM PAYNE COOPER, Debt Court Judge,  
Montserrado County, and the Superintendent of  
Monrovia Prisons, Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING THE  
ISSUANCE OF THE WRIT OF PROHIBITION.

Heard: May 11, 1981. Decided: July 30, 1981.

1. A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except for those money judgment enforceable by imprisonment for contempt under section 44.71(3) and by imprisonment under section 44.71(2) if execution is not satisfied.
2. A judgment may be enforceable by imprisonment where execution is not satisfied, but only in the following cases: (a) adultery; (b) seduction of wife or child; (c) illegally taking away or harboring a wife or child or ward under twenty-one years of age; (d) enticing an incompetent away from his legally appointed trustee or guardian; or (e) injury to the reputation when the words spoken or written are actionable *per se*.
3. Any of the following money judgements may be enforced by contempt proceedings: (a) against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for a default or dereliction of his duty; or (b) for the support of a wife, child, or other dependent.
4. At the option of the mortgagee, and in lieu of foreclosure proceedings, a suit may be brought upon the indebtedness, evidenced by the mortgage, and the judgment recovered therefrom, if any, satisfied by the sale or execution of the mortgage property, which shall continue, until so sold, subject to the lien of the mortgage. The deficiency, if any after such sale, may be execution levied upon the sale of other property of the debtor.
5. Where a judgment debtor is arrested and imprisoned for money judgment not enforceable by imprisonment under section 44.71(2) and 44.71(3), the remedy available to the aggrieved party, under the circumstances, is prohibition.

An action of debt was instituted in the Debt Court for Montserrado County against appellant. Upon failure to file an answer or to appear for the trial, a default judgment was rendered against him. Appellant made part payment of the judgment amount, but because of his failure to make complete settlement, a writ of execution was served on him, and thereafter he was arrested and imprisoned because of his failure to show property to be seized. As he considered his imprisonment illegal, appellant applied to the Justice in Chambers for a writ of

prohibition. When the writ was denied, the appellant appealed to the full bench of the Supreme Court, contending among other things that a judgment in an action of debt is not enforceable by arrest and imprisonment, and therefore his arrest and imprisonment were illegal and unconstitutional.

Appellee resisted the application contending that prohibition will not lie, in that the trial court had neither exceeded its jurisdiction nor proceeded by the wrong rules, and that nothing was remaining to fully satisfy the judgement.

The Supreme Court held that the arrest and imprisonment of the appellant was illegal; that the procedure authorized by law for the enforcement of the payment of the balance due is execution of the mortgaged property that was pledged as collateral for the loan, or foreclosure proceedings in lieu thereof. Accordingly, the Supreme Court *reversed* the ruling of the Chambers Justice, and granted the writ.

*M. M. Perry* appeared for appellant. *Joseph N. Williamson* appeared for the appellees.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellant was sued by the Liberian Bank For Development And Investment in an action of debt, in the Debt Court for Montserrado County. Appellant was summoned but he failed to file an answer, or appear. Consequently, the trial court rendered a default judgment against him. Appellant made part payment against the principal amount awarded, leaving a balance, and upon failure to make complete settlement, a writ of execution was issued and served on him. When appellant refused to show the property to be seized, he was arrested and imprisoned until the judgment was fully satisfied. Appellant, believing that his imprisonment was illegal, petitioned for a writ of prohibition before His Honour, Mr. Justice S. Raymond Horace, Sr., then Justice presiding in Chambers, and the petition was heard by His Honour, Mr. Justice Roland Barnes, then Justice presiding in Chambers, who denied the petition, and quashed the alternative writ, from which ruling this appeal has been taken for final decision.

Appellant contended in his petition, among other things, that a judgment in an action of debt is not enforceable by arrest and imprisonment; that the arrest and imprisonment of appellant was therefore illegal and unconstitutional. In the returns, appellees contended substantially that: (a) appellant is *estopped* from prohibiting payment against the principal amount awarded; (b) the trial court neither exceeded its jurisdiction nor proceeded by the wrong rules; and (c) that nothing remained to fully satisfy the judgment of the trial court, therefore prohibition will not lie.

The contentions contained in the returns and summarized hereinabove, are impertinent to the vital legal issues raised in the petition. However, there is no denial expressed or implied to the averments in the petition; hence, same are deemed admitted. Civil Procedure Law, Rev. Code 1: 9.8 (3).

Appellant cited in support of his contentions, *Ibid.*, 44.1, which reads as follows:

"A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except for those money judgment enforceable by imprisonment for contempt under section 44.71(3) by imprisonment under section 44.71(2) if execution is not satisfied.

Judgment enforceable by imprisonment, if execution is not satisfied, are in the following cases, namely:

- (a) Adultery;
- (b) Seduction of wife or child; "
- (c) Illegally taking away or harboring a wife or child or ward under twenty-one years of age;
- (d) Enticing an incompetent away from his legally appointed trustee or guardian; or
- (e) Injury to the reputation, when the words spoken or written are actionable *per se*.

3. *Money judgments enforceable by contempt.* Any of the following money judgments may be enforced by contempt proceedings:

- (a) Against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for a default or dereliction of his duty; or
- (b) For the support of a wife, child, or other dependent.

4. *Other judgments.* Any interlocutory or final judgment or order, or any part thereof, not enforceable under section 44.21 or paragraph 1, 2, or 3 of this section may be enforced by one of the following methods:

(a) Directing the act to be done at the cost of the disobedient party by the ministerial officer of the court or by some other person appointed by the court; and the act, when so done, shall have the same effect as if done by the disobedient party; or

(b) On application of the party entitled to performance, appointment of a receiver of property of the disobedient party under section 44.72 to compel compliance with the judgment; or

(c) On judgment of a court of record, if real property is within the country, entering a judgment divesting the title of any party, and vesting it in another person in lieu of directing a conveyance thereof; and such judgment, when probated in the office of the Registrar of Deeds, shall have the effect of a conveyance executed in due form of law; or

(d) Adjudging the disobedient party in contempt and punishing him as provided in section 44.73.

Section 44.73, which is also referred to above, has reference to only the commission of an offence to be established by an affidavit in which case the court may enforce the judgment through contempt proceeding and imprisonment of the accused.

In our opinion, this section is not applicable to cases of debt, which do not fall within the category of the actions enumerated, *supra*.

Appellant has asserted in his answering affidavit, and argued in his brief, with emphasis, that the loan out of which the action of debt grew was covered by property, personal and real, as security. There is no denial of this averment, but appellee contended that he did not predicate the suit upon the mortgage, or no reference was made thereto in the complaint. As we have stated earlier in this opinion, whatever is alleged, whether in point of law or fact, which is not denied by implication or expressly in the responsive pleading, is deemed admitted.

However, subsequently in May 1972, an Act of the

Legislature to give legal effect to and validate the Civil Procedure Law, replacing the entire Title Six of Civil Procedure Law of 1955, was passed and published in hand bill. The Act approved August 12, 1964 is referred to in the new Civil Procedure Law, Rev. Code, as prior legislation on page 243 of the Liberian Code of Laws Revised, already referred to above.

Courts of justice must act according to existing laws; otherwise their acts are considered as an infringement upon the rights of litigants.

During the argument before this court, counsel for appellees conceded that the arrest and imprisonment of appellant was illegal, but he argued that the trial court should have sent for appellant, and ordered him to make settlement of the amount due and upon his failure so to do, the trial court should have ordered his arrest and imprisonment for contempt of court for disobedience.

Earlier in this opinion, we dealt with the circumstances under which a judgment debtor may be imprisoned if he fails to satisfy a judgment; hence, there is no need to reiterate them here.

The learned former Chambers Justice agreed in principle, in his ruling, that according to the Civil Procedure Law, Rev. Code 1: 44.71(3) and 44.71(2), quoted *supra*, the arrest and imprisonment of the appellant was illegal, but he held that appellant should have appeared and contested the debt and if he felt dissatisfied with the final judgment, he had the right to appeal; therefore he denied the petition and quashed the alternative writ.

The contention of the appellant, and what the prohibition seeks to restrain or undo, are the arrest and imprisonment of appellant, but appellant does not deny his indebtedness to the judgment creditor in the court below, now one of the appellees. Therefore, even if appellant had appeared in the trial court, he could not have appealed from the final judgment because appellant only questioned the method of the enforcement of the judgment, which of course, is not appealable.

Appellees had ample opportunity to file a replying affidavit and traverse or refute the statement in the oral argument before this Court, but they have elected not to do either. Therefore, in the absence of any denial or traverse of the factual allegation with respect to the mortgage property as security for the loan,

said statement is considered admitted.

Consequently, the question that presents itself now for our consideration is: what is the procedure authorized by law for the enforcement of the payment of the balance due, according to the judgment of the lower court?

In a similar case, this Court decided that:

“At the option of the mortgagee, and in lieu of the foreclosure proceedings herein authorized, suit may be brought upon the indebtedness evidenced by the mortgage and the judgment recovered therefrom, if any, satisfied by the sale or execution of the mortgaged property, which shall continue, until so sold, subject to the lien of the mortgage. The deficiency, if any, after such sale may be execution levied upon and sale of other property of the debtor.” *Rasamny Brothers v. Emma Butler-Jackson*, 15 LLR 248 (1963).

Therefore, in our opinion, the trial court proceeded irregularly in arresting and imprisoning appellant for the satisfaction of a judgment in the action of debt instead of seizing and exposing to sale the mortgaged property that was pledged as a security for the loan.

In order to re-emphasize our position in this opinion, it is necessary to mention that on the 12th of August 1964, an Act of the Legislature was published in hand bill, known as “An Act to Amend the Civil Procedure Law with Respect to Actions of Debt”, which authorizes the arrest and imprisonment of judgment debtor in actions of debt. If a writ of execution is returned not satisfied, the judgment creditor was required to pay \$1.00 *per diem* for subsistence of the judgment debtor as long as the defendant remains in custody and until the amount involved, as well as costs, was fully paid.

Therefore, in our judgment, the only remedy available to appellant, under the circumstances, was prohibition. *Parker v. Worrell*, 2 LLR 525, 526 (1925).

In the light of the facts, circumstances and the law cited above, the ruling of the Chambers Justice is hereby reversed, the peremptory writ is ordered issued, and the Clerk of this Court is instructed to send a mandate to the court of origin to resume jurisdiction over the case and to enforce the judgment by the sale

of or writ of execution of the mortgaged property that was pledged as security for the loan, which shall continue until sold. The deficiency, if any, after such sale should be satisfied by execution levied upon any sale of other properties of the appellant, until the judgment is fully satisfied.

Costs are ruled against the appellees. And it is so ordered

*Prohibition granted; ruling reversed.*