

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

Martha G. Gweh by & thru her Attorney-In-Fact, Mr. D.)
Morgan Paye of the City of Monrovia, Republic of)
Liberia..... Informant)
Versus) BILL OF INFORMATION
Iman Isamail Sesay and Lady to be identified and all)
Other persons illegally occupying the subject property)
Also of the City of Paynesville, Montserrado County,)
Republic of Liberia Respondents)

GROWING OUT OF THE CASE)

Iman Isamail Sesay and Lady to be identified and all)
Other persons illegally occupying the subject property)
Also of the City of Paynesville, Montserrado County,)
Republic of Liberia Petitioners)
Versus) PETITION FOR THE WRIT
Martha G. Gweh by & thru her Attorney-In-Fact, Mr. D.) CERTIORARI
Morgan Paye of the City of Monrovia, Republic of)
Liberia..... Respondent)

GROWING OUT OF THE CASE)

Iman Isamail Sesay and Lady to be identified and all)
Other persons illegally occupying the subject property)
Also of the City of Paynesville, Montserrado County,)
Republic of Liberia Appellants)
Versus) APPEAL
Martha G. Gweh by & thru her Attorney-In-Fact, Mr. D.)
Morgan Paye of the City of Monrovia, Republic of)
Liberia..... Appellee)

GROWING OUT OF THE CASE)

Martha G. Gweh by & thru her Attorney-In-Fact, Mr. D.)
Morgan Paye of the City of Monrovia, Republic of)
Liberia..... Plaintiff)
Versus) ACTION OF EJECTMENT
Iman Isamail Sesay and Lady to be identified and all)
Other persons illegally occupying the subject property)
Also of the City of Paynesville, Montserrado County,)
Republic of Liberia Defendants)

HEARD: May 2, 2023

DECIDED: August 11, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

Martha G. Gweh, by and through her Attorney-In-Fact, Mr. D. Morgan Paye, informant herein, filed a bill of information with this Court, alleging amongst other things, the obstruction of this

Court's mandate by Iman Isamaïl Sesay et al., and their counsel, Counsellor Alhaji Swaliho A. Sesay, respondents herein, by the physical impediments created and the filing of bogus and unmeritorious objection to the repossession of the informant of the subject property as mandated by this Court.

The genesis of this case is that, the informant, Martha G. Gweh by and through her Attorney-In-Fact, Mr. D. Morgan Paye, filed an action of ejectment against Iman Isamaïl Sesay and [a] Lady to be identified, together with all other persons illegally occupying the subject property, all of the City of Paynesville, Montserrado County, Republic of Liberia, at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, alleging amongst other things that, the respondents are illegally occupying her property, and had begun the construction of houses thereon with gross disregards to her property rights and her rights to possession and occupancy of her property.

The records show that the respondents were served with copies of the writ of summons and complaint; thus, they were brought under the jurisdiction of the court. Trial was regularly had and the presiding Judge of the Civil Law court, sixth Judicial Circuit handed down its final ruling, holding the respondents liable. The Judge further ordered the respondents ousted, evicted and ejected from the informant's property, and that the informant be placed in possession of her property. The records further revealed that the respondents excepted to the court's final ruling and announced an appeal to this Court en banc.

A careful perusal of the records before the Court further revealed that the Supreme Court en banc heard the respondents' appeal and rendered its final Judgment in this case on December 23, 2019, confirming the ruling of the court below in favor of the informant. The court was ordered to resume jurisdiction in the case and enforce its final ruling. The informant alleged that, since this Court's final Judgment on the date mentioned supra, up to and including the date of the filing and determination of this bill of information, the Mandate from this Court has not been fully executed by the court below. We quote below the substantive contents of this Court's Judgment:

“...that the co-appellant, Iman Isamaïl Sesay, who on his own volition, upon hearing of an ejectment action relative to the subject property, on September 14, 2010, proceeded to the Civil Law Court, Sixth Judicial Circuit for Montserrado County, signed for and received a copy of the summons, a copy of the appellee's complaint, and subsequently wrote his correct name as Iman Isamaïl Sesay on the face of the writ of Summons, filed answer to the complaint and a motion to dismiss, same cannot contend that he was never brought under the jurisdiction of the court;

That the co-appellant, being a principal party named in the case, cannot seek to intervene therein;

That the document the appellants sought to introduce as newly discovered evidence is the identical document used by the co-appellant in his motion to intervene; the law provides that in order for a court to grant a motion for newly discovered evidence, it must be established to the satisfaction of the court that the newly discovered evidence sought to be introduced was not within the knowledge of the party and that he could not, with reasonable diligence, have known of the fact at the time of the service of the pleading;

That the allegation of jury tampering, having been disapproved, the trial judge acted properly when he confirmed the liable verdict of the jury; and

That the trial court, having found in favor of the appellee, this Court affirms the lower court's judgment and orders that the appellee be placed in possession of her property using her deed pleaded and with the aid of a court appointed licensed lawyer.

Wherefore and view of the foregoing, the final ruling of the trial court is affirmed and the appeal denied. The Clerk of Court is ordered to inform the judge presiding in the court below to resume jurisdiction and give effect to this judgment. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED."

Despite the above quoted Judgment of the Supreme Court, the informant has not been placed in possession of her property for over three years. The informant alleges that in an effort to ensure that this Court's Mandate is fully and properly executed, the lower court, with the aid of surveyor Tom Nimely sought to place the informant in possession of her property, but were obstructed by Counsellor Alhaji Swaliho A. Sesay by filing a bogus paper, which he termed "objection to the nomination of Surveyor Tom Nimely"; that the court gave credence to the "Objection" filed by Counsellor Sesay and ordered the exercise cancelled. However, the objection was heard and denied by the court, and the exercise was again ordered to be carried out. The informant further alleges that Counsellor Alhaji Swaliho A. Sesay, in furtherance of his obstructionist posture to render the mandate of the Honorable Supreme Court ineffective, again ran to the Honorable Supreme Court Justice in Chambers and filed a Petition for the Writ of Certiorari raising the very same issues raised in his "Objection to the nomination of Surveyor Tom Nimely" at the lower court. The informant avers that the Chamber Justice, not seeing any magnitude in said petition, advised that in order to have the matter resolved expeditiously, the informant should hire another surveyor to carry out the exercise since it would end the impasse and speedup the process. This, the informant said he reluctantly agreed to, and a new surveyor was nominated and qualified to implement the Honorable Supreme Court's Mandate.

Predicated on the Chamber Justice advice, Surveyor Kempson Murray was nominated and qualified, replacing Surveyor Tom Nimely, and all the exercises leading to the implementation of the Supreme Court's Mandate was again carried out by Surveyor Kempson Murray. On the day of placing the informant in possession of her property, the process was again, for the third

time, obstructed by the respondents and those under their authority. And since that time, it has become difficult to have the informant placed in possession of her property. The informant contends that as a result of the continuous obstruction by the respondents and their lawyer to placing the informant in possession of her two (2) lots as mandated by this Court, it has caused the informant well over and above Four Thousand United States Dollars (US\$4,000.00) as the total money paid for the various exercises which has gone in thin air without any benefit to the informant. The informant therefore prays that these monies be refunded by the respondents, because it was due to the actions of the respondents that the monies were expended without any result to the informant.

In its returns, the respondents classified the bill of information as baseless and unfounded, and its contents false and misleading. The respondents alleged that surveyor Tom Nimely, who was supposed to be neutral, made prejudicial statements that the judgment of the court is clear and that there was no need for the respondents to waste their time, they should start removing their things because they will definitely be ousted as he looked at the evidence; that because Surveyor Tom Nimely had prior knowledge of the case and was fully aware of the ground location which was one of the basis for the denial of the Motion for Investigative Survey by the then judge during the hearing in the court below, his services would be prejudicial to the interest of the respondents. The respondents assert that at no point in time did the respondents' counsel ever obstruct the said survey; that while the objection to surveyor Tom Nimely was pending before the court, questioning his neutrality based on statements he made during the reconnaissance and actions carried out by him, the clerk of court, Nah Wollor issued out the Writ of Possession to have the Sheriff, with the aid of the informant's Counsel, Cllr. Anthony D. Manson, place the informant in possession. This was again brought to the attention of the judge, who called a conference; that every time the sheriffs were recalled from the field it was due to the misrepresentation presented by Cllr. Anthony D. Manson to the judge, indicating that there were no survey to be conducted because it will be litigation of the matter which at one point in time, the judge requested to read the judgment, which was clearly written; and based on that, the judge instructed that the possession will only be done with the aid of the surveyor.

The respondents further contended that, the informant's counsel, Cllr. Anthony D. Manson attempted to proceed with the possession of the informant without the conduct of the survey, but rather a possession based on the identified place of the structure and not by the survey which the surveyor, Kempson Murray also refused to do; because according to him and in the presence of the Sheriff, that until the adjacent properties are included in the survey and

to include their demarcations, same will be improper and that he had served notices to all of the concerned property owners, he was not responsible for possession, but rather a survey. At this point, he had written the Liberian National Police to aid the Sheriff with the PSU officers who were to aid the possession and not the survey that led to a serious misunderstanding.

The respondents contend that the Minister of Justice intervened, had a discussion with the then judge to have the Ministry of Justice assist with the conduct of the survey through the Liberia Land Authority with the aid of the Minister of Internal Affairs, who was asked by the office of the President and the then Minister of State to Intervene in the matter and have same resolved. It was at that point that the activities leading to the possession of the informant were halted by Judge Dunbar to allow the intervention of the Ministers of Justice and Internal Affairs in resolving the matter. Since then, there has been no information to the respondents relative to the matter until during the December Term of Court when Judge Ousman Feika, then assigned Judge, cited the Minister of Justice and the Solicitor General on request of the Informant to have the matter resolved or to obtain information relating to their request to resolve the issues between the parties leading to the survey. The respondents say that the entire information is a misrepresentation and a misinformation as the Ministry of Justice and the Ministry of Internal Affairs have been engaging the parties for an amicable solution and not as insinuated by the Informant. The respondents prayed that the entire bill of information should be set aside and dismissed.

The question which this Court has to answer in the determination of this case is that:

1. Whether or not Bill of Information will lie given the facts and circumstances in this case?

We believe YES. The Court observes that it has been more than three years since this Court delivered its Judgment in this case. The said Judgment was delivered on December 23, 2019. Since that time up to and including the date of the filing of this bill of information, the informant has not been repossessed of her property. There should be no reason why this Court's Judgment should not be enforced. From the facts and circumstances outlined in the informant's bill of Information and the respondents' returns thereto, we believe, there have been huddles, hindrances or some obstacles and/or difficulties in the enforcement of this Court's judgment. As a matter of law, anyone who obstructs or impedes the enforcement of this Court's judgment is vulnerable and susceptible to contempt of this Court and the appropriate penalty would apply. It is unfair, unacceptable, and an affront to our justice system if enforcements of decisions of this Court are delayed or obstructed. The truth of the matter is that all parties appearing before this Court may not always agree with the Court's decisions.

But all parties are required by law and morals to respect and obey all the decisions emanating from this Court. The Court is very surprised and astonished that for over three consecutive years, the informant had been struggling to ensure that she is repossessed of her property even though there is a judgment in her favor. The Court sees no justifiable reason for the delay of the enforcement of this judgment. The respondents alleged in its returns that,

“Surveyor Tom Nimely, who was supposed to be neutral, made prejudicial statements that the judgment of the court is clear and that there was no need for the Respondents to waste their time, they should start removing their things because they will definitely be ousted as he looked at the evidence”.

The Court wonders what does this statement tend to mean with respect to the enforcement of this Court’s mandate? How does it prejudice the respondents as their counsel alleged? As a matter of law, the controversy regarding the ownership of the property has been fully decided. There is no more question about who is the owner of the property. The Court has established that the appellee is the owner of the property. So, why should there be an issue about surveyor Tom Nimely, a registered land surveyor, establishing the demarcation of the informant’s property? There is no bases for the allegation made by the respondents’ counsel against Surveyor Tom Nimely. As far as this Court is concerned, there exist nothing contestable between the informant and the respondents to warrant any prejudicial action. The Court has already decided in favor of the informant, and there is nothing contestable between the parties as far as this Court is concerned. We hold that the objection to the nomination of Surveyor Tom Nimely by the respondents’ counsel was a dilatory tactic to obstruct and impede the enforcement of this Court’s mandate. This is unacceptable and will not be tolerated by this Court.

We also note that the informant brought to this Court’s attention the physical violence and obstruction meted against the sheriffs of the Civil Law court, the informant and her counsel, as well as the surveyor who proceeded to have the respondents ousted and evicted from the appellee’s property. This allegation was not refuted or denied by the respondents; instead the respondents’ counsel admitted to commotion on the property and that the Ministries of Justice and Internal Affairs were to intervene to have the matter resolved. We see the justification given by the respondents’ counsel as admission to the obstruction of this Court’s mandate by the respondents and their counsel. No one has the power to stand in the way of justice: either to delay it, suppress it, manipulate it and/or sway it in any form or manner. We wonder why the respondents will have the mind or muster the courage to avert or thwart the enforcement of this Court’s mandate. The Judge presiding in the court below should have taken appropriate actions, by the aid of the relevant security apparatus, to arrest and punish all those that stood in the way of justice. This Country is a Country of laws and not men. Anyone

who obstructs the enforcement of this Court's mandate is guilty of contempt of Court and should be dealt with appropriately. Lawlessness should not be condoned, tolerated and/or disregarded in any civilized society. It should be resisted and punished accordingly.

The respondents' counsel was without any authority to stand in the way of justice. Their action is not only an affront to this Court, but it also undermines the rule of law, and attempts to crush the ends of justice. From the respondents' returns, we observed that respondents' counsel did not properly advise his clients as he should. This is the reason why they had become belligerent; thus obstructing the enforcement of this Court's mandate. The Court believes that Counsellor Alhaji Swaliho A. Sesay did not do much in giving his clients appropriate pieces of advice that would have kept them law-abiding. Lawyers in this jurisdiction are under obligation to represent their clients in courts of law and to advise them appropriately relating to circumstances surrounding their cause. Legal representation goes beyond court room advocacy. All issues surrounding the cause of his client for which the lawyer has taken legal representation, he/she is duty bound to properly guide his/her client within the ambit of the law; this Counsellor Alhaji Swaliho A. Sesay failed to do, but initiated unnecessary objections to the enforcement of this Court's mandate. His action is in violation of *Rule 1 of the Code of Moral and Professional Ethics*. This provision of the Code states:

"It shall be unprofessional for any lawyer to advise, initiate or otherwise participate directly or indirectly in any act that trends to undermine or impugn the authority, dignity, integrity of the courts or judges thereby hindering the effective administration of justice." *Rule 1, Code of Moral and Professional Ethics.*[emphasis supplied]

Because of the action and inaction of the respondents' counsel and the complacency exhibited in the face of the lawless conduct of his clients which led to the obstruction of this Court's mandate, Counsellor Alhaji Swaliho A. Sesay's will not and should not go unpunished. Any lawyer who obstructs and impedes the administration of justice directly and indirectly should be reprimanded appropriately. The Court notes that similar action, which tends to undermine the dignity and credibility of the court and frustrates the ends of justice was exhibited by Counsellor Alhaji Swaliho A. Sesay and other lawyers in the case: *Mr. Najib Kamand vs. Ms. Ding Shu Jun (a.k.a Nancy Chinese Lady)*, Supreme Court opinion delivered during the March Term of Court (May 19, 2023). They were each fined appropriately. The Court frowns on this unbecoming attitude of Counsellor Alhaji Swaliho A. Sesay, and hereby suspends him from the practice of law directly and indirectly for the period of one (1) month as of the date of this opinion.

The office of a bill of information is to bring to the Supreme Court's attention that its mandate is being executed improperly or contrary to the intend and purposes as given. 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). From the facts and circumstances in this case, we hold that the Respondents obstructed and impeded the mandate of the Honorable Supreme Court. Therefore, bill of information will lie.

WHEREFORE AND IN VIEW OF THE FOREGOING, the informant's bill of information is hereby granted. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction over this case and to proceed with the enforcement of the Supreme Court Mandate of December 31, 2019. The Clerk is further ordered to send a mandate to all courts of the Republic informing them of this decision. Costs are ruled against the respondents. AND IT IS HREREBY SO ORDERED.

INFORMATION GRANTED

When this case was called for hearing Counsellors Anthony D. Mason and Othello G. Kruah, Sr. appeared for the Informant. Counsellor Alhaji Swaliho A. Sesay appeared for the Respondent.