

FRED V. B. SMITH, Informant, v. HIS HONOUR
NAPOLEON B. THORPE, Assigned Judge Presiding
over the December 1979 Term of the Civil Law
Court, Montserrado County, and ELI J. HAJ,
Respondents.

INFORMATION PROCEEDINGS FROM A RULING OF THE CIRCUIT COURT FOR
THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 25, 1981. Decided: July 30, 1981.

1. A counsel representing a client has exclusive control over procedural matters incident to the litigation, but the client has exclusive control over the subject matter. The client may therefore, acting in good faith, compromise, settle, or adjust his cause of action out of court anytime before judgment without the intervention, knowledge, or consent of his counsel, but the counsel may not effect any compromise without the knowledge, consent and approval of his client.
2. When a person entitled to enforce a judgment receives satisfaction or partial satisfaction thereof, he shall execute and deliver to the judgment debtor an acknowledgment that the judgment has been satisfied or partially satisfied, as the case may be. Such an acknowledgment shall be certified by a notary public and filed in the office of the clerk of the court which rendered the judgment by the judgment debtor. The clerk shall note the satisfaction of the judgment in the book required to be kept in accordance with the provisions of the Civil Procedure Law.
3. A judgment for a sum of money, or directing the payment of a sum of money rendered by a court of record is presumed to be paid and satisfied after the expiration of ten years from the time the person who recovered it was first entitled to enforce it. This presumption shall be conclusive except as against a person who within such ten year period meets the exceptions stated under the Civil Procedure Law.
4. The principle of estoppel cannot be sustained on the basis of mere allegations in the absence of evidence of a waiver or release.
5. Whenever a compromise is effected, there must be some written evidence executed by the judgment creditor in favour of the judgment debtor; and the returns of the sheriff to the bill of costs should also indicate that the judgment has been fully satisfied, or that the judgment creditor has relinquished further claim on the judgment sum, thereby releasing the judgment debtor from further liability.
6. Generally, the satisfaction of a judgment refers to compliance with or fulfilment of the mandate thereof. Ordinarily, it means the payment of the money due thereunder.
7. A satisfaction of judgment is the last act and end of the proceeding, and there can be but one satisfaction of a judgment.
8. A dismissal by agreement of a writ of error from a judgment does not operate

as a satisfaction of the judgment, even though it is made on the suggestion that the matters in difference have been settled. Whenever a compromise is effected, there must be some written evidence.

The informant obtained a default judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against respondents. However, before the court could enforce the judgement, respondent applied to the Chambers Justice for a writ of prohibition. The petition was denied by the Chambers Justice and the ruling upheld on appeal to the full Bench, after which a mandate was sent to the Civil Law Court to enforce the judgement. When the writ of execution was served on respondents, he paid \$10,000.00 plus costs of court.

A little over eight years thereafter, informant made a submission in the Civil Law Court, reminding the court that the mandate of the Supreme Court in the case had not been fully executed and praying the court to have same executed for the balance \$15,000.00. The writ of execution was ordered issued but before it could be served, respondent filed a motion to rescind the ruling ordering the issuance of the execution; and to vacate the execution on the grounds that informant and co-respondent Haj had reached a compromise to the effect that the said co-respondent should only pay \$10,000.00 with costs as full satisfaction of the mandate. From a ruling granting the motion and vacating the execution, informant filed a bill of information before the full Bench.

The Supreme Court, upon review of the records and arguments of counsel, held that there was no evidence of a compromise or waiver of the full satisfaction of the judgment; and since the judgment was not fully satisfied, it was erroneous and contemptuous for the trial judge to have vacated the execution of the judgement. The Court *granted* the information and mandated the trial court to enforce its original mandate.

B. Mulbah Togbah appeared for informant. *James N. Nagbe* appeared for respondents

MR. JUSTICE MORRIS delivered the opinion of the Court.

The informant obtained a default judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against Eli J. Haj Brothers and was awarded \$25,000.00 damages by the jury. Before the court could enforce the judgment, the defendant, now co-respondent, applied to the Chambers Justice for a writ of prohibition on the ground that he was not cited to the trial by the presiding judge as his (the presiding Judge's) predecessor did, even though the said co-Respondent Haj never filed any formal appearance or answer. The Justice denied the application and respondents appealed to the court *en banc*. After hearing arguments *pro et con*, the Court upheld the ruling of the Justice in Chambers and a mandate was sent to the trial court to this effect. The late Judge William O. Kun, then Resident Circuit Judge of the Sixth Judicial Circuit, read the mandate on June 1, 1971. Judge Kun also issued a writ of execution on the co-respondent Haj. Co-respondent Haj paid \$10,000.00 plus costs of court on the 17th day of June, 1971, as indicated by the sheriff's returns. On the 22nd day of November, 1979, Counsellor Joseph Findley on behalf of the informant, made a submission on the minutes of court reminding the court that the mandate of the Supreme Court issued on June 1, 1971 had not been fully executed in that the sheriff had only collected \$10,000.00 as evidenced by his returns of June 17, 1971. Accordingly, he prayed that the court should have the Sheriff fully execute said mandate in the case: "*Messrs. Eli J. Haj et al. v. His Honour John A. Dennis, et al.*, petition for writ of prohibition" by serving the bill of Costs and collecting the balance of \$15,000.00 on the principal of \$25,000.00.

The court ordered the issuance of a writ of execution on November 22, 1979 against the co-respondent Haj, but before the execution could be served on the co-respondent, the Bull Law Firm filed a motion to rescind ruling and vacate the execution on the ground that the informant and co-respondent Haj had reached a compromise to the effect that co-respondent Haj should only pay \$10,000.00 with costs as full satisfaction of the mandate. Therefore they prayed that the court should rescind its order of November 22, A.D. 1979 and vacate the writ of execution issued against co-respondent Haj for the

payment of the balance \$15,000.00. The judge granted this motion because, according to him, the sheriff's returns indicated that \$10,000.00 was paid plus \$2,700.00 for costs in full satisfaction of the judgment. The judge maintained that he did not know why the informant had waited until after the expiration of nine years before attempting to claim the balance \$15,000.00. His Honour Judge Napoleon Thorpe, then presiding, ruled that the court was guided by the returns of the sheriff; and the sheriff's returns having satisfied the court that the bill of costs was paid, the matter was closed, and should remain closed. The informant, plaintiff in the court below, being dissatisfied with the ruling of Judge Napoleon Thorpe, has filed this bill of information praying that the court should mandate the trial court to enforce full payment of the balance \$15,000.00.

In the motion to rescind the ruling and to vacate the writ of execution filed by the co-respondent, defendant in the trial court, the said co-respondent alleged in count 3 of his motion, that according to the records of the court, and the sheriff's returns, including the notation made upon the file of said case, it could be clearly seen that the co-respondent Haj had fully satisfied the judgment. In count four of said motion he averred that co-respondent Haj had paid to the informant \$10,000.00 in full satisfaction of the judgment, as per a compromise reached between informant and co-respondent Haj, in the presence of informant's counsels, Counsellors M. Fahnbulleh Jones and J. Emmanuel Berry, as well as Attorney W. Pokai Hage. The co-respondent attached two affidavits to his motion which were signed by M. Fahnbulleh Jones and W. Pokai K. Hage, as affiants respectively to prove that a compromise was reached between the informant and co-respondent Eli Haj in the trial court to the effect that informant, having received \$10,000.00, waived the balance \$15,000.00.

Informant's counsel denied in his resistance that informant and co-respondent Haj had ever reached a compromise and asserted that informant had never waived the \$15,000.00. He contended that if a compromise was effected absolving co-respondent Haj from the payment of the balance \$15,000.00, the receipt of the \$10,000.00 would have so indicated. To the

contrary, informant contended that he had repeatedly approached co-respondent Haj to pay the balance \$15,000.00 but that he had refused.

We quote the sheriff's returns for the ten thousand dollars paid:

"On the 17th day of June A. D. 1971, an amount of ten thousand dollars as principal paid to the plaintiff together with cost of court.

Dated this 17th day of June, A. D. 1971.

Sgd. Samuel Marsh

DEPUTY SHERIFF, a.i."

As we have stated earlier in this opinion, the judge granted the motion because, according to him, he was guided by the returns of the sheriff, which we have just quoted above. The judge held that the returns of the sheriff having satisfied the court that the bill of costs was paid, the matter was closed and remained closed. Although the returns of the sheriff state that \$10,000.00 as principal was paid to informant together with costs of court, yet, during the arguments we were informed by respondents' counsel that the costs of court was paid to the sheriff and not to informant. We shall now consider the issues raised in the information and the returns.

Respondents admit in counts 1 and 2 of their returns that a mandate was sent to the Sixth Judicial Circuit Court for Montserrado County from the Supreme Court in the month of June, 1971, but they contend that a conference was held with the counsel of both parties in the office of one James Bestman, then Director of Special Security Service, and a mutual friend of both informant and co-respondent Eli Haj, in order to effect a compromise. They also contended that as a result of the conference held at the office of the said James Bestman, together with the counsel of both parties, informant agreed to accept \$10,000.00 in full settlement of the amount of damages awarded in his favor, if co-respondent Eli Haj also paid the costs of court and related expenses. They averred that predicated upon this understanding, co-respondent Eli Haj paid the \$10,000.00, which the informant accepted in full satisfaction of the judgment. They attached two photo copies of affidavits sworn to by Counsellor M. Fahnbulleh Jones and Attorney W.

Pokai K. Hage to support their contention. We quote the affidavits thus:

"REPUBLIC OF LIBERIA) IN THE OFFICE OF THE JUSTICE OF
MONTERRADO CO.) THE PEACE FOR MONTERRADO
COUNTY AND IN MONTERRADO
COUNTY, MONROVIA

Fred V. B. Smith of Bassa Commu-)
munity, Monrovia, Liberia,..Plaintiff)
Versus) ACTION OF
Messrs. Eli J. Haj Bros.) DAMAGES
Monrovia, Liberia.....defendants)

A F F I D A V I T

PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace at my Office in the City of Monrovia, M. Fahnbulleh Jones, Counsellor-At-Law and being duly sworn deposes and says:

1. That he is a counsellor-at-law of the Republic of Liberia and was one of the lawyers retained by Fred V. B. Smith, plaintiff in the above entitled cause of action to prosecute the above entitled cause before the courts of Liberia.
2. That a regular trial was held, a verdict brought in favour of plaintiff, judgment rendered thereon, bill of costs prepared, taxed and approved together with a writ of execution to be served on the above named defendant.
3. That the defendant satisfied the costs of court and I, the said Counsellor M. Fahnbulleh Jones, Counsellor J. Emmanuel Berry together with the plaintiff were invited to the Executive Mansion to the Office of James Bestman, then Director of Special Security Services, and where the said defendant made several entreaties to the plaintiff requesting him to accept \$10,000.00 as full settlement of damages awarded him by the jury which was \$25,000.00. In the presence of, I. M. Fahnbulleh Jones, and in the presence of Counsellor J. Emmanuel Berry and James Bestman, and W. Pokai Hage, the said Fred V. B. Smith accepted the \$10,000.00 for which he issued a receipt

in full settlement of the judgment waiving his rights both in law and equity to recover the balance of \$15,000.00.

4. That it has been almost ten years since this matter was concluded and therefore he as counsel for plaintiff never ever went back to the court to recover the balance of \$15,000.00, since same had been waived by Fred V. B. Smith, plaintiff in the above entitled cause of action.

5. That the facts stated herein are true and correct.

Sworn and Subscribed to before me this
3rd day of December A.D. 1979.

Sgd. Robert Anthony

JUSTICE OF THE PEACE, MONT. CO.

SGD. M. Fahnbulleh Jones

M. Fahnbulleh Jones, Counsellor-at-Law
and one of counsel for Plaintiff/Affiant"

"REPUBLIC OF LIBERIA) IN THE OFFICE OF THE JUSTICE
MONTERRADO CO.) OF THE PEACE FOR AND IN FOR
)MONTERRADO COUNTY,
)MONROVIA

Fred V. B. Smith of Bassa

Community, Monrovia, Liberia,..Plaintiff)

Versus

) ACTION OF

Messrs. Eli J. Haj Brothers

) DAMAGES

Monrovia, Liberia,.....Defendants)

A F F I D A V I T

PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for Montserrado County, at my Office in the City of Monrovia, W. Pokai K, Hage, and being duly sworn deposes and says:

1. That he is a resident of the City of Monrovia and is personally acquainted with Fred V. B. Smith and Eli J. Haj, plaintiff and defendant, respectively, in the above entitled cause of action.
2. That about eight to ten years ago, I was in the office of Mr. James Bestman, then Director of Special Security Services, Executive Mansion and also present were Counsellor M. Fahnbulleh Jones, then Attorney J. Emmanuel Berry, Mr. Fred V. B. Smith and Mr. Eli J.

Haj and Mr. James Bestman.

3. That in my presence and herein, Mr. Eli Haj requested Mr. Fred V. B. Smith to accept \$10,000.00 in full settlement of a judgment for \$25,000.00 as principal, excluding the costs which he Eli Haj agreed to pay based upon the execution served on him hailing from the Sixth Judicial Circuit in the above entitled cause of action.
4. That in my presence and in the presence of James Bestman, Counsellor M. Fahnbulleh Jones and then Attorney J. Emmanuel Berry now Counsellor J. Emmanuel Berry, the said Fred V. B. Smith accepted and received the \$10,000.00 and waived, released and relieved Mr. Eli Haj from the payment of the balance of \$15,000.00. Mr. Eli Haj paid the costs of court including the Sheriff collection fees and the six percent (6%) interest on the principal awarded in the judgment.
5. That the facts stated herein are true and correct.

Sworn and Subscribed to before me
this 3rd day of December A. D. 1979.

Sgd. Robert Anthony
JUSTICE OF THE PEACE
FOR MONTSERRADO COUNTY

W. Pokai K Hage
W. Pokai K. Hage/AFFIANT

\$1.00 Revenue Stamp affixed."

In paragraph four of the affidavit sworn to by Attorney W. Pokai K. Hage, the affiant expressed that Mr. Eli Haj paid the costs of court, including the Sheriff collection fees and the six percent interest on the principal awarded in the judgment. We wonder who then received the (6%) six percent on the \$25,000.00, since the informant only received \$10,000.00 as alleged in both affidavits and the sheriff's returns? Attorney W. Pokai Hage further stated in his affidavit that the informant waived, released and relieved Mr. Eli Haj from the payment of the balance \$15,000.00, but there is no evidence of any written instrument signed by the informant to this effect in the records before us. Counsellor M. Fahnbulleh Jones deposed in paragraph three of his affidavit that, " the said Fred V. B. Smith

accepted the \$10,000.00 for which he issued a receipt in full settlement of the judgment waiving his rights both in law and equity to recover the balance of \$15,000.00. It is amazing to note that despite the sworn statement of Counsellor M. Fahnbulleh Jones, quoted above, counsel for co-respondent Eli Haj made no reference to such receipt in either his motion to rescind ruling and vacate writ of execution or his returns to the information; and we have found no such receipt in the records certified to us. We hold therefore that the informant never executed any instrument absolving co-respondent Eli Haj from the payment of the balance of \$15,000.00, absent of any evidence to the contrary.

We wish to indicate here that the counsel has exclusive control over procedural matters incident to the litigation of his client, but his client has exclusive control over the subject matter. The client may therefore, acting in good faith, compromise, settle, or adjust his cause of action out of court anytime before judgment without the intervention, knowledge, or consent of his counsel, but the counsel may not effect any compromise without the knowledge, consent and approval of his client. 7 AM. JUR. 2d. *Attorneys at law* § 149

Respondents maintained, in count 3 of their returns that the sheriff's returns to the bill of costs clearly showed that the \$10,000.00 was accepted as principal by the informant in full satisfaction of the judgment awarded in his favour. Otherwise, the sheriff's returns would have indicated that the \$10,000.00 was either paid against or as part payment of the principal. The returns of the sheriff indicate that the amount of \$10,000.00 was paid as principal. Whilst the sheriff's returns did not say that the \$10,000.00 was paid against, or as part payment of the principal, it did not also state that the \$10,000.00 was paid in full satisfaction of the judgment, especially so when a writ of execution was issued and approved by His Honour, the late William O. Kun, in which \$25,000.00 was placed as principal with costs. Count 3 of the returns is not conceded.

In count 4 of the returns, the respondents averred that Judge Napoleon Thorpe then presiding over the Sixth Judicial Circuit Court, having reviewed the whole allegation relating to

the \$15,000.00, ruled that said matter be closed in keeping with the records. We do not concur with the ruling of Judge Napoleon Thorpe, because there was no evidence of the alleged waiver, release or receipt referred to in the affidavits and the returns of the sheriff relied upon for this ruling make no reference to the \$15,000.00. It was therefore contemptuous for Judge Napoleon Thorpe to obstruct and impede the execution of the mandate of this Court.

Counsellor M. Fahnbulleh Jones and Attorney W. Pokai K. Hage were not authorized agents of Informant Fred V. B. Smith, clothed with authority to enforce the judgment in his favour. Therefore, the mere affidavit sworn to by them without any supporting document could not have warranted the granting of the motion to rescind the ruling and vacate the writ of execution. The relevant statute on the satisfaction of judgment stipulates that:

"When a person entitled to enforce a judgment receives satisfaction or partial satisfaction thereof, he shall execute and deliver to the judgment debtor an acknowledgment that the judgment has been satisfied or partially satisfied, as the case may be. Such acknowledgment shall be certified by a notary. The judgment debtor may file the certificate in the office of the clerk of the court which rendered the judgment. The clerk shall note the satisfaction of the judgment in the book required to be kept under the provisions of the Civil Procedure Law, Rev. Code 1: 41.4.

Count 4 of the returns therefore crumbles in the face of counts 4, 5 and 6 of the information.

We disagree with respondents' contention that the informant, having waited until after the expiration of nine years, could not now seek to claim the balance \$15,000.00. In the first place, we are convinced, by our calculation, that the period between June 1, 1971 and December 14, 1979 does not add up to more than nine years but, to be exact, is 8 years, six months and thirteen days. The statute on enforcement of a judgment provides thus:

"1. Judgment of sum of money in courts of record.

A judgment for a sum of money, or directing the payment of a sum of money rendered by a court of record is pre-

sumed to be paid and satisfied after the expiration of ten years, from the time the person who recovered it was first entitled to enforce it. This presumption shall be conclusive except as against a person who within such ten year period:

- (a) acknowledges the indebtedness, such acknowledgment to be in writing and signed by him; or
- (b) makes part payment of the amount for which the judgment was rendered, property acquired by an enforcement order, or by levy upon an execution being such a payment unless the person to be charged shows that it did not include property claim by him; or
- (c) Is the heir or personal representative of such person or is a person whom he otherwise represents.

"If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of ten years after the last acknowledgment or payment by him. Civil Procedure Law, Rev. Code 1: 2.14. Counts 5, 7 and 9 of the returns are therefore overruled.

With reference to count 8 of the respondents' returns, we concede the contention of the informant that Judge Thorpe's ruling was erroneous and we therefore sustain informant's count 8, as against respondents' count 8.

The principle of estoppel invoked by respondents in count six of the returns cannot be sustained, because the respondents have not exhibited any evidence of a waiver, or release to absolve co-respondent Haj from the payment of the balance \$15,000.00, since mere allegations are not proof. We concur with informant's argument when he declares in count 7 of the information that it is strange for co-respondent Haj Brothers to agree to pay the sheriff's collection fees of 6% on the total costs of \$27,263.10, which amounts to \$2,128.00 without protest, when the principal amount paid is \$10,000.00. It is hard to believe that the informant will consent to compromise on his principal amount by waiving 3/5 (three-fifths) of the damages awarded him and insisting upon the full payment of the costs of court from which amount he derives no benefit or gain.

In arguing before us the respondents' counsel cited 30A

AM. JUR. 2d. *Judgments*, §1000. This section provides that the real owner of a claim upon which a judgment is rendered may effect a compromise of the judgment without the consent of the nominal plaintiff in the action. We agree that a compromise can be made by the parties when a judgment is rendered in favour of one of the parties, but we hold that whenever such compromise is effected, there must be some written evidence, executed by the judgment creditor in favour of the judgment debtor, and the returns of the sheriff to the bill of costs should also indicate that the judgment has been fully satisfied, or that the judgment creditor has relinquished further claim on the judgment sum, thereby releasing the judgment debtor from further liability. To hold otherwise would be a violation of the provision of the statute just quoted above and the opening of a flood gate. The authorities have this to say on the satisfaction of judgment:

Generally. The satisfaction of a judgment refers to compliance with or fulfilment of the mandate thereof. Ordinarily, it means the payment of the money due thereunder. The general principle is well settled that a satisfaction of judgment is the last act and end of the proceeding, and that there can be but one satisfaction of a judgment. Sometimes it is declared that the jurisdiction of a court continues until satisfaction of the judgment. The fact that a defendant has no funds out of which a judgment may satisfied, does not prevent the rendition of a judgment against him.

A dismissal by agreement of a writ of error from a judgment does not operate as a satisfaction of the judgment, even though it is made on the suggestion that the matters in difference have been settled. 30A AM. JUR. 2d., *Judgments*, §990.

It is our conviction that co-respondent Eli Haj has not complied with the statutory provision; and we also hold that the returns of the sheriff and the affidavits relied upon by the respondents are no proof of the full satisfaction of the judgment to absolve co-respondent Eli Haj from the payment of the balance \$15,000.00. We consider the act of the co-respondent judge highly contemptuous and therefore seriously reprimand him against a future recurrence.

AMERICAN BAR
ASSOCIATION

In consideration of the foregoing facts and the laws cited, it is the opinion of this Court that the information is well taken; and the Clerk of this Court is hereby ordered to send a mandate to the trial court ordering it to resume jurisdiction over the case and fully enforce the mandate of the Court issued in June, 1971 with priority consideration. And it is so ordered.

Information granted.