WESSEH GBEH, Petitioner, *v.* EMMANUEL S. KOROMA, et al., Respondents.

PETITION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 10, 11, 1977. Decided February 18, 1977.

1. A writ of mandamus will be denied where the duty sought to be enforced has already been performed.
2. Mandamus will not be accepted as a substitute for an appeal in order to review an exercise of judicial discretion, even though the lower court may have erred in its conclusion.

Petitioner sought a writ of mandamus to enforce a mandate of the Supreme Court granted in a case of ejectment on a previous application for mandamus by the same petitioner. The mandate ordered the lower court to issue a writ of possession and specified the manner in which it was to be executed. After the writ had been executed, petitioner filed a motion in the lower court to set aside the returns for want of effective service and enforcement. The Circuit Court judge denied the motion, whereupon petitioner excepted and announced an appeal to the Supreme Court but also proceeded by a petition for mandamus, which is now before the Court. The Court found that the mandate on the previous petition had been carried out in conformity with its orders, and held also that mandamus was not a proper remedy when an appeal was available. The *petition* was *denied.*

Nete-Sie Brownell for petitioner. *M. Fahnbulleh Jones* for respondents.

MR. JUSTICE HORACE delivered the opinion of the Court.

This is the third time this matter is before us in one form or another. The first time it was an appeal in an

ejectment case sued out in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by Henry G. Russell and Wesseh Gbeh against Gabriel N. Nah. Because of the failure of appellants Russell and Gbeh to perfect their appeal, it was dismissed on a motion to dismiss filed by appellee Nah and the case was sent back to the trial court for enforcement of its judgment. *Russell* v. *Nah*, 21 LLR 515 (1973).

Due to what she considered a wrong and irregular execution of the mandate of the Supreme Court, Wesseh Gbeh applied to the Justice in chambers for a writ of mandamus to compel the sheriff for Montserrado County properly and legally to execute the mandate. The alternative writ of mandamus was ordered issued by the Justice in chambers, but because the matter related to a mandate of the Court *en banc*, he ordered the record sent forward to the full bench for determination.

The Supreme Court held that its mandate in the ejectment case had indeed been irregularly executed by the sheriff and therefore granted the peremptory writ of mandamus and ordered the sheriff to execute its mandate in a proper and legal manner. *Gbeh* v. *Flomo*, 25 LLR 58 (1976).

When the mandate was executed by the deputy sheriff for Montserrado County, petitioner in these proceedings, Wesseh Gbeh, again felt that the deputy sheriff had erred in the execution of the Supreme Court's mandate. Consequently, she filed a "motion to set aside Deputy Sheriff Samuel E. Moore's return to the writ of possession for want of effective and conclusive service and enforcement thereof in conformity with the opinion, judgment and mandate of the Honorable Supreme Court of Liberia, and to appoint another team of surveyors to carry out the mandate of the Supreme Court," setting forth her reasons for said motion. The motion was resisted by respondent and after hearing arguments of opposing counsel, the trial judge, His Honor Emmanuel S. Koroma, presiding over

the June 1976 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, entered a ruling upholding the deputy sheriff's returns to the writ of possession he had executed.

In order to throw some light on the issue, we quote the return of the sheriff:

> "On the 8th day of July 1976, Samuel E. Moore a deputy sheriff for Montserrado County, did serve the within writ of possession. Present to direct him were surveyors Dominic K. Hena and Brown Pyne. According to the map shown the green lines surround Gabriel N. Nah's two lots; the red lines represent Wesseh Gbeh. However, the surveyors say that Wesseh Gbeh's land falls within Gabriel N. Nah's lots and I now make this as my official returns to the office of the Clerk of Court, and place Gabriel Nah in possession in keeping with the map and the surveyor's report.
>
> Dated this 8th day of July, 1976.
> [Sgd.] P. EDWARD NELSON, II,
> *Sheriff, Mo. Co., R.L.*"

The movent in the court below, petitioner in these proceedings, excepted to the ruling of the judge and announced an appeal to the Supreme Court by a remedial process in the nature of mandamus. In passing we must remark that this announcement seems strange coming from a venerable counsellor of this Court. If the announcement had stopped at an appeal to the Supreme Court, the outcome might have been different.

In keeping with his announcement, counsel for Wesseh Gbeh, on September 3, 1976, filed in the chambers of Mr. Justice Horace a petition for a writ of mandamus against the judge presiding over the Civil Law Court, the deputy sheriff who executed the writ of possession, the sheriff who made returns thereto, and Gabriel N. Nah to enforce a mandate of the Supreme Court. We summarize the petition as follows:

1. That pursuant to an opinion, judgment, and mandate of the Supreme Court a writ of possession was duly issued and purportedly served on July 8, 1976.

2. That the deputy sheriff in the service of the writ failed to carry out the mandate, that is, to put the party litigants and disputants in possession of their property after the area in dispute had been delimited by the surveyors according to the metes and bounds of the deeds of disputants in strict conformity with the map or diagram of the area prepared by the arbitrators-surveyors.

3. When the deputy sheriff, with the surveyors and petitioner Wesseh Gbeh and her counsel resorted to the area but contrary to the mandate of the Supreme Court, the deputy sheriff simply said he "put" Gabriel Nah in possession of his property in keeping with the writ of possession without causing the surveyors to mark the respective areas in keeping with the map and diagram which was attached to the writ of possession.

4. That because of the failure of the sheriff to properly carry out the opinion, judgment, and mandate of the Supreme Court by refusing to turn over petitioner's one-half lot shown on the map to her, she filed a motion before the judge presiding over the June 1976 Term of the Civil Law Court to appoint a new team of surveyors to carry out the opinion, judgment, and mandate of the Supreme Court.

5. That the trial judge called attention to the apparent confusion of who was plaintiff and who was defendant in the ejectment suit because the Supreme Court had in its opinion of April 23, 1976, ordered that the plaintiff be put in possession of the property.

6. That Gabriel Nah was never plaintiff in the ejectment suit nor petitioner in the mandamus proceedings and therefore it was error to put him in possession.

7. That the ruling of Judge Koroma attempted to obliterate and declare nonexistent the title rights of petitioner contrary to the opinion, judgment, and mandate of

the Supreme Court rendered on April 23, 1976, and should therefore be overruled by this Court.

The alternative writ was issued on September 23, 1976. Respondents filed their returns stating the principle issues as follows:

"1. That petitioner should have proceeded by information or submission before the Supreme Court en banc if, in her opinion, the judge had not executed the judgment of this Court, and not by mandamus to compel the judge to sustain the motion and appoint another team of surveyors to carry out the mandate of the Supreme Court.

"2. That while it is true that the Supreme Court during its March 1976 Term granted the peremptory writ of mandamus, it specifically stated that the court below should execute its mandate strictly in accordance with the diagram or map submitted by the arbitrators-surveyors and the ruling of the court below as well as to have the original members of the board of arbitration or any three competent public land surveyors proceed to the premises in question with all parties in interest while 'plaintiff' was being put in possession of his property. This procedure was strictly followed because the parties in interest as well as the two original surveyors representing the parties were present, and Dominic Hena who represented Wesseh Gbeh did not object to placing Gabriel Nah in possession of the property in keeping with the diagram or map.

"3. That in the original ejectment case both parties applied to the trial court for a board of arbitrators to decide the issue of ownership. The board was appointed with both parties represented thereon and a chairman appointed by the court. It was these surveyors who prepared the map or diagram which showed that Gabriel Nah's lots surrounded the two half lots of Henry Russell and Wesseh Gbeh and it was upon this map and diagram that the trial judge

based his ruling awarding the disputed property to respondent Gabriel N. Nah.

"4. That it would have been error on the part of the judge in executing the mandate of the Supreme Court to set aside the original surveyors and appoint a new team of surveyors when the original surveyors were not available but actually present when Nah was placed in possession of the property.

"5. That it must have been a typographical error in the opinion of April 23, 1976, to say that the 'plaintiff' be placed in possession of the property when according to the map and the majority report of the arbitrators, Nah, who was defendant, was the successful party and so declared by the trial judge. It was from this judgment declaring Nah the successful party that Russell and Gbeh appealed to the Supreme Court in the ejectment suit.

"6. That the sheriff employed the services of the original surveyors to measure and delineate the property in keeping with the signed map or diagram."

These are the issues raised in the petition for mandamus and the returns. Because the contention related to a mandate of the Supreme Court *en banc,* the Justice in chambers again ordered the matter forwarded to the full bench.

When the first petition for mandamus was filed, the issue was that the sheriff had failed to carry out the orders of the judge presiding over the Civil Law Court in his execution of the mandate of this Court. In the petition, it was shown that the sheriff had simply given a copy of the writ of possession to Wesseh Gbeh and left a copy of said writ of possession with Henry Russell. Neither of the plaintiffs nor their counsel was present when Gabriel Nah was put in possession of the property. Further, the assistance of a surveyor or surveyors was not procured when Nah was put in possession. This, we felt, was wrong because the sheriff is not a professional surveyor to be able to determine the metes and bounds of

property which he, in the line of his duty, may be called upon to handle. During the March 1976 Term of the Supreme Court the peremptory writ of mandamus was granted and the matter returned to the lower court with specific instructions as to how to execute the mandate of this Court. In the opinion of this Court delivered by Mr. Justice Azango on April 23, 1976, it was stated:

> "The Clerk of this Court is hereby ordered to immediately send a mandate to the court below informing it of this judgment, and to resume jurisdiction over the cause of action, proceed to have a writ of possession issued in favor of the *successful party* [emphasis supplied] in this case strictly in accordance with the diagram or map submitted by the arbitrators-surveyors, the original ruling of the court below, and to have the original members of the board of arbitrators or any three competent public land surveyors employed to proceed to the premises in question with all parties in interest present while the plaintiff is being put in possession of his land." *Gbeh* v. *Flomo,* 25 LLR 58, 66 (1976).

Many points of interest have been raised in the petition, the returns and the arguments before this Court. The first is that both parties agree that in the execution of the mandate of the Supreme Court, two of the original members of the surveying team appointed as arbitrators were present—one representing the plaintiff and the other representing the defendant. Also present was petitioner in these proceedings, one of the plaintiffs in the ejectment suit, and her counsel. The original diagram or map signed by all three members of the surveying team was in possession of the deputy sheriff who under a writ of possession was to put the *successful party* in the ejectment suit in possession of the property. It might be of interest to note that although the surveyor representing the plaintiff filed a minority report with respect to the arbitration award, he signed the diagram or map which showed the

entire property in the area as being that of Gabriel N. Nah. We simply mention this in passing. Based upon the diagram or map and with two of the original members of the surveying team present to point out the property, Gabriel N. Nah was put in possession and a return made accordingly. The return has already been quoted in this opinion. There is no record to show objections on the part of the surveyor representing petitioner except the mere allegation of the motion before the lower court that when they were on the spot at the time of putting Nah in possession, petitioner's surveyor measured Gabriel N. Nah's land and stated that it ended at the corner of his house which was shown on the map and the rest of the land was Wesseh Gbeh's. We regret that we cannot go into this phase of the matter as that would require the hearing of evidence which under the Constitution we cannot do.

The next point of interest is that the parties in the ejectment case had common grantors. Co-respondent Gabriel Nah contended that he was the first purchaser and that Gbeh and Russell were later sold the same property by his grantor. Here again we find ourselves unable to go into this phase of the matter, however interesting it might be, because we are by the opinion of February 2, 1973, inhibited from going into the merits of the case for reasons stated in that opinion.

We cannot resist the urge, however, to mention that all does not seem above board on the part of co-respondent Nah from the arguments put forward during the hearing in these proceedings.

A further point of interest is that petitioner's counsel stressed the point that the opinion of April 23, 1976, directed that plaintiff, meaning petitioner, be put in possession of *his* property. A careful look at that part of the opinion dealing with this issue clearly says that the *successful party* should be placed in possession. Moreover, the plaintiff concerned is a woman, Russell having appar-

ently abandoned interest in the matter, and it is stated: "while plaintiff is being put in possession of *his* land." Taking the first part which clearly states that the successful party be put in possession, it is obvious that the word "plaintiff" in the latter part is an error. *Gbeh* v. *Flomo, supra,* at 66.

Respondents have raised the contention that mandamus will not lie to compel the sheriff to do what he had already done in strict conformity with the mandate of this Court. The sheriff's returns support the contention that he went about his duty in keeping with the mandate. He had the original surveyors on the spot. The petitioner and her counsel were there. He had the original diagram or map delineating the property. All this did conform to the opinion and mandate of this Court. As pointed out before, the sheriff did none of these things when he purportedly carried out the first mandate.

To grant another peremptory writ of mandamus in face of the facts hereinabove stated would be encouraging endless litigation in a particular matter. "As in other cases, the writ may be denied when sought for such purposes where the petitioner has another remedy, or where the duty sought to be enforced has already been performed, or if an appeal, if ordered, would be useless." 52 AM. JUR. 2d, *Mandamus,* § 351 (1970).

We wonder why petitioner, after taking exceptions to the judge's ruling on his motion and announcing an appeal, did not proceed by regular appeal. Perhaps in that case we could have reviewed certain aspects of the matter which we cannot do in mandamus proceedings.

This Court has held that mandamus will not, as a general rule, issue to review an exercise of judicial discretion, even though the court may have erred in its conclusion. Further, that mandamus is not a substitute for an appeal or a writ of error where they offer an adequate remedy to the aggrieved party. *King* v. *Randall,* 10 LLR 225 (1949).

Taking all of the facts and circumstances into consideration, we feel compelled to deny the petition and quash the alternative writ. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs disallowed. And it is so ordered.

Petition denied.