

ALFONSO MANGOS, Plaintiff-In-Error, v. HIS
HONOUR STIPENDIARY MAGISTRATE J. N.
DOE, Borough of New Kru Town, and CALVIN
BRYANT, Defendants-In-Error

INFORMATION PROCEEDINGS GROWING OUT OF A PETITION FOR A WRIT OF
ERROR TO PEOPLE'S FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES "B",
MONTSERRADO COUNTY.

Decided: November 10, 1982.

1. It is contemptuous for a magistrate to enforce his judgment after having been served with a writ of error growing out of his ruling.

Informant was defendant in an action of summary proceedings to recover possession of real property. Default judgement was rendered against him from which he petitioned the First Judicial Circuit Court for summary review of the ruling. Judge Martha Massoud, then presiding over Circuit after hearing the petition, denied same and ordered the magistrate to resume jurisdiction and enforce his judgement. Informant, contending that he was not informed of the hearing of the summary proceedings, and, hence, his inability to take an appeal from the final ruling, applied to the Justice in Chambers for a writ of error. The alternative writ was issued and served on the magistrate and the presiding judge of the circuit.

When the magistrate embarked upon the enforcement of his judgment, counsel for informant informed the magistrate of the pendency of the matter in the Supreme Court and even showed him copies of the writ and the petition, to which the magistrate derisively remarked to the hearing of party litigants and persons attending the public hearings in his court that, the Supreme Court could not intimidate him by the issuance and service upon him of the writ of error, and that he will proceed to enforce his order to evict the informant and place Co-respondent Bryant in possession of the premises in question. True to his word, the magistrate, notwithstanding the service of the writ upon him, and

the reminders of the pendency of the error proceedings, proceeded to enforce his judgment by ordering informant evicted from the premises subject of the writ of summary proceedings. Accordingly, informant filed a bill of information before the Justice in Chambers complaining of the conduct of the magistrate.

The Justice in Chambers held that the act of the correspondent magistrate in enforcing his judgment after having been served with the writ of error, commanding him to stay all further proceedings was contemptuous, in that it was purposely intended to frustrate the error proceedings and render ineffectual and impracticable the enforcement of any ruling which may have been rendered by him in Chambers. Accordingly, the Justice *granted* the bill of information, adjudged the magistrate guilty of contempt, and fined him \$150.00.

Ignatius N. Weah appeared for plaintiff-in-error. *J. N. Doe* appeared for himself.

SMITH, J., presiding in Chambers.

An alternative writ of error was issued out of the Chambers of this Court against Her Honour Martha K. Massoud, Assigned Judge presiding over the 1982 August Term of the People's First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, His Honour J. N. Doe, Stipendiary Magisterial Court of New Kru Town, Monrovia, and Calvin Bryant, growing out of a petition for summary proceeding instituted against Co-respondents Magistrate Doe and Calvin Bryant before the said Judge Massoud in the People's First Judicial Circuit Court "B". The summary proceeding was allegedly heard and decided by Her Honour Judge Massoud against the informant herein, who has complained that he was not notified of the hearing of the said summary proceeding. Notwithstanding the service of the writ of error on the co-defendants-in-error on the 22nd day of September, 1982, Co-respondent Magistrate Doe still undertook to enforce his judgment that was allegedly confirmed by Judge Massoud.

In his bill of information, the informant stated, and it was not

denied by the respondent Magistrate in his returns, that when the officers of the magisterial court went to enforce the judgment of the co-respondent magistrate, that is, to evict the informant and place Co-respondent Bryant in possession of the premises, it was brought to the attention of the said ministerial officers that error proceedings were pending before the Chambers of the Supreme Court growing out of the judgment of the magisterial court against the informant; whereupon, the ministerial officers, as argued before us, left without serving the said writ of possession.

The informant further stated in his bill of information, and it was also not denied by the co-respondent magistrate, that informant and his counsel later went to the co-respondent magistrate and reminded him of the pendency of the error proceedings and showed him copies of the writ and the petition, but that the co-respondent magistrate only remarked that the informant and his counsel as well as the Supreme Court could not intimidate him--that his order to have the informant evicted must be carried out. Accordingly, on Saturday, September 25, 1982, the co-respondent magistrate ordered his constables to proceed to evict the informant and, in doing so, informant's belongings were thrown outside and damaged and his family evicted from the premises.

As aforesaid, the co-respondent magistrate filed a two-count returns in which he did not deny any of the allegations contained in the bill of information, but held in his said returns in substance that after the issuance and service of several notices of assignment on the informant in summary proceedings to recover possession of real property, upon motion of the plaintiff, Co-respondent Bryant in these proceedings, he rendered a default judgment and issued a writ of possession against the informant. That the informant instituted summary proceeding against him before Judge Martha Massoud, who after hearing the same confirmed his judgment and ordered it enforced. He also stated in his returns and argued before us that it was after the enforcement of the judgment that the informant petitioned the Chambers of this Court for a writ of error with a view to baffle the issue.

Although the co-respondent magistrate did not profert a copy of the writ of possession to his returns in order for us to observe

the date on which it was issued, served and returned served, the co-respondent magistrate, as a result of a question from the Bench, pulled from his file a writ of possession, and the ministerial officers' returns thereto stating that several attempts were made to serve the writ but to no avail, until the 25th day of September, 1982, when the same was served, informant evicted from the premises, and Co-respondent Bryant placed in possession thereof.

Comparing the marshal's returns to the writ of error with the returns of the Ministerial officer to the writ of possession, we observed that the writ of error was served on September 22, 1982, and service of the writ of possession was made on the 25th day of September, 1982. We are, therefore, convinced that the informant has satisfactorily established the allegations as contained in his bill of information.

It appears to me, and it is my holding, that the act of the co-respondent magistrate to enforce his judgment after having been served with the writ of error growing out of the aforesaid ruling of Co-respondent Judge Massoud, was purposely intended to frustrate the error proceedings and render ineffectual and impracticable, the enforcement of any ruling which may have been rendered by this Court in Chambers.

His Honour Magistrate Doe, respondent in these proceedings, when approached by the informant and his counsel in his courtroom as aforesaid, in an attempt to persuade him not to enforce his judgment, since there was an error proceeding pending before the Chambers of this Court, he derisively remarked to the hearing of party litigants and persons attending the public hearings in his court that, the Supreme Court could not intimidate him by the issuance and service upon him of writ of error, and will therefore proceed to enforce his order to evict the informant and place Co-respondent Bryant in possession of the premises in question. He accordingly sent his constables, who on the 25th of September, 1982, according to the returns made to the writ of possession, evicted the informant from the premises despite the pendency of the error proceedings and despite the service upon him of the alternative writ of error, the issuance and service of which serve as a stay to further proceeding in the matter.

In view of this defiant act of the co-respondent magistrate, to the authority of this Court, the bill of information is granted, and the co-respondent magistrate is adjudged guilty of contempt of the Court, and is hereby warned with a fine of \$150.00 to be paid within forty-eight (48) hours into the Bureau of Internal Revenues, through the office of the marshal of this Court, who is required to exhibit an official Flag receipt to this Court on Monday, November 15, 1982, at the hour of eleven o'clock in the morning when the Chambers of this Court convene. Upon failure on the part of the co-respondent magistrate to pay this fine, his suspension will be effected immediately until the fine is paid. And it is hereby so ordered.

Information granted.