

JOHN T. PRATT, Vice Grebo Governor, et al.,
representing the Grebos and Krus of Fanima, Claratown,
Bushrod Island, Monrovia, Informants, v. FRANK W.
SMITH, Circuit Court Judge, and BOYMAH
KROMA, et al., representing the Vais of Fanima,
Claratown, Bushrod Island, Monrovia, Respondents.

INFORMATION PROCEEDINGS.

Argued June 2, 1977. Decided July 8, 1977.

1. The Supreme Court will refuse in information proceedings to decide who is in rightful possession of real property where such a decision would necessitate the hearing of evidence, since the Court is not authorized to exercise original jurisdiction in such cases.
2. A bill of information, dismissed for lack of jurisdiction over the respondents, may be reinstated so long as no mandate was issued under the first bill.
3. It is error for the judge of a lower court, under a mandate of the Supreme Court ordering cancellation of a deed, to issue a writ of possession to the land in question, and the official eviction of the occupants of that land under authority of such writ is wrongful.
4. On cancellation of a deed to real property, the title reverts to those owning the land before issuance of the deed, who may then institute action to evict trespassers.

In an action by the Republic of Liberia against Dawoda Harmon for cancellation of a deed for fraud for land situated in Fanima Town, the Supreme Court affirmed the decree of the lower court ordering the deed cancelled. The lower court judge, however, in addition to ordering the deed cancelled, also had issued a writ of possession directed to the informants in the proceedings now before the Court which were instituted by members of the Grebo and Kru tribes who claimed the right to possession of part of the land for which the writ of possession was issued and who alleged that they were forcibly evicted therefrom by officers acting under the writ. They prayed enforcement of the mandate of the Supreme Court in the Dawoda Harmon case in strict conformity

with its terms. Respondents answered that the issuance of the writ of possession by the lower court was lawful and proper because informants were illegally occupying the 15 acres of land for which the deed had been cancelled.

The Supreme Court held that the writ of possession was improperly issued by the lower court, but that while the eviction of the informants under that writ was wrongful, the right to the land in question could not be determined by the Court, since it could not exercise original jurisdiction to hear evidence. Any intruders on the land could have been ousted by the true owners through action in the courts. The Court ordered that the original mandate in the cancellation proceedings should be completed and the order of the lower court issuing a writ of possession should be revoked. The *information* was *sustained* in part.

Joseph J. F. Chesson for informants. *M. Fahnbulleh Jones* for respondents.

MR. JUSTICE HORACE delivered the opinion of the Court.

During the March 1975 Term of the Supreme Court, the Court passed on an appeal before it in cancellation proceedings for fraud brought by the Republic of Liberia against Dawoda Harmon for 15 acres of land situated at Fanima Town, Bushrod Island. The judge in the court below had ordered the deed cancelled, and this decision was affirmed in an opinion of this Court handed down on May 6, 1975. *Harmon v. Republic*, 24 LLR 176 (1975). The decision of this Court was that the final decree of the trial court be affirmed, and a mandate was ordered sent down to the court below to the effect of that decision.

During the October 1976 Term of the Supreme Court the owners of the area known as Fanima Town filed in-

formation before this Court to the effect that Dawoda Harmon had attempted to obstruct the enforcement of the mandate of the Supreme Court by sending a radiogram to the President of Liberia stating that this Court had deprived him of his legitimate title to land purchased from the government of Liberia. The matter was referred to the Ministry of Justice to investigate the truthfulness of this allegation of Dawoda Harmon, and the Minister of Justice wrote the President informing him of the correctness of the Supreme Court's position in the matter.

When the matter was heard by us it was decided that Dawoda Harmon, the respondent in the information proceedings had indeed tried to stop the execution of this Court's mandate, thereby delaying and impeding the administration of justice, and his act in this regard was declared contemptuous, for which he was fined. *Republic v. Harmon*, 25 LLR 348 (1976).

On November 25, 1976, Judge Frank W. Smith, Assigned Circuit Judge presiding over the September 1976 Term of the Civil Law Court, Montserrado County, in executing the mandate of this Court, aside from ordering the public land sale deed of Dawoda Harmon cancelled, had a writ of possession issued to informants in the information growing out of the cancellation proceedings. In attempting to execute the writ of possession, it seems that properties of some people were damaged and destroyed.

Because of the way the writ of possession was being executed, John T. Pratt, Vice Grebo Governor, William P. Tye, Community Chairman, Anthony B. Gepleh, Deputy Community Chairman, representing the Grebo and Kru citizens, residents of Fanima, Claratown, Bushrod Island, Monrovia, by and through their counsel filed a bill of information before this Court against Boymah Kroma, Foday Kiadii, Oldman Gray, and others representing the Vais of Fanima, growing out of the proceedings against

Dawoda Harmon. After filing a return to the information, respondents moved to dismiss mainly on the ground that they had not been brought under the jurisdiction of the court by service on them of any citation or other process. This case was heard by us and an opinion handed down on April 29, 1977. The information was dismissed because respondents had not been brought under the jurisdiction of the Court. *Pratt v. Kroma*, 26 LLR 64 (1977).

After paying the costs of court in the information proceedings that were dismissed, the same informants, that is John T. Pratt and co-informants, on May 18, 1977, filed another bill of information against the same respondents, Boymah Kroma and co-respondents, but this time including Judge Frank W. Smith, the Circuit Judge presiding by assignment over the September 1976 Term of the Sixth Judicial Circuit Court.

The main points of the information may be stated as follows:

1. That informants are members of the Grebo and Kru tribes who have for more than 21 years settled on a piece of swampy public land reclaimed by them, near the Messurado River, Fanima Town, next to the Vais in that area.
2. That by virtue of the Supreme Court's decision cancelling the deed of Dawoda Harmon for 15 acres of land in Fanima Town, in the executing of the mandate of the Supreme Court, His Honor Frank W. Smith presiding over the September 1976 Term of the Sixth Judicial Circuit Court erroneously ordered the issuance of a writ of possession to the Vais of Fanima Town was contrary to the opinion, judgment, and mandate of the Supreme Court.
3. That in executing the writ of possession illegally issued out of the Sixth Judicial Circuit Court, the sheriff for Montserrado County with the help of police officers forcibly evicted and ejected members of the

Grebo and other tribal groups, breaking down, damaging, and sacking their premises in the process, to the extent that counsel for informants had to report the depredatory acts of the sheriff and police officers to the Ministry of Justice.

4. That nowhere in the opinion, judgment, and mandate of the Supreme Court was it stated that a writ of possession should be issued, and that although the case in which judgment was rendered related to 15 acres of land, the writ of possession was issued for 25.8 acres of land.

Informants therefore prayed that respondents should be cited to show cause why the mandate of the Supreme Court should not be enforced in strict conformity with the decree of the judge of the lower court, which was affirmed by this Court in *Harmon v. Republic, supra*.

To this bill of information respondents filed an eighteen-count return. The main points of the return may be summarized as follows:

1. That the advance opinion of this Court on the bill of information filed by the same informants against the same respondents put a finality to the issue, and it is a strange innovation in our practice and procedure for one to reinstate in this Court the same proceeding after it has been dismissed either in special proceedings or on appeal.

2. That respondents and their counsel should be held in contempt for introducing this procedure, which tends to bring this Court into disrepute, and that these special proceedings are a challenge to the integrity of this Court especially so since respondents had to bring Dawoda Harmon, who is one of the informants in these proceedings on information to this Court, and he was held in contempt and fined for obstructing the mandate of the Court.

3. They deny that informants reclaimed any portion of the land known as Fanima Town.

4. That one Lami Coleman as agent for Dawoda Harmon had the Grebo people and their Chief together with the respondents sued as defendants in an action of ejectment in the Civil Law Court. How then can informants say they constructed their houses on public land?

5. That the same counsel for respondents filed for, and on behalf of, Dawoda Harmon information proceedings in the trial court against respondents as well as the Grebo and Kru citizens of Fanima Town as co-respondents.

6. That at an investigation held by the Attorney General in 1970 it was shown that the Grebo people never held title to any land in that area.

7. That since the bill of information avers that it was the sheriff for Montserrado County with police officers who evicted informants upon order of the judge, these persons should have been respondents in these proceedings and not the persons named.

8. That they deny ever destroying any property of informants, especially the houses of those named in the bill of information.

9. That the trial judge did not err in ordering the issuance of a writ of possession and eviction of informants because the area on which the said informants had constructed their houses fell within the 15 acres of land for which the public land sale deed had been cancelled.

10. That because (1) the informants are no party to the original suit; (2) they had knowledge of the pendency of the suit of cancellation in the Circuit Court; (3) they had a right to intervene if they felt their interest was being adversely affected; and (4) they have no proof that the area on which their houses are built is public land, they are estopped from raising any issue as to how the writ of possession was executed.

11. That the Supreme Court in its opinion in these

proceedings should direct the lower court to appoint a board of surveyors to carve out the 25.8 acres of land alienated to Hawa Gbai, Bassie, and the inhabitants of Fanima by President H. R. W. Johnson in a native township grant deed in 1888.

These are the salient points raised in the bill of information and return. Informants filed an answering affidavit, mostly traversing the issues raised in the return, but presenting no new matter.

In the first place we must state that we do not feel we can pass on most of the points raised in the bill of information and return because that would necessitate our hearing evidence and thus taking original jurisdiction, which by law we cannot do. Constitution of Liberia, Article IV, Section 2nd. Our concern is with the question of whether or not our mandate has been properly executed in the cancellation proceedings, and if not, why not.

Respondents have raised the issue that the contents of the first bill of information on which we dismissed on May 29, 1977, and the one now before us are almost identical and that the parties are the same. They contend that since this Court dismissed the first bill of information, which is in the nature of a special proceeding, it is not only novel but contemptuous to reinstitute the same suit.

We would agree with respondents if this was not a matter touching the execution of a mandate of this Court. In the decision in *Pratt v. Kroma, supra*, no mandate was ordered sent down, and we only dismissed the information on the ground that respondents had not been brought under the jurisdiction of the Court. Furthermore, there have been instances where information has been brought on special proceedings pending either before the Justice in chambers or the full bench. This very day we are passing on information growing out of certiorari proceedings before the full bench. *Nasser v. Smith*, 26 LLR

115. So we see information cannot be dealt with as other special proceedings, such as those named in the statutes.

Moreover, we feel that we should pass on the information before us because it relates to what informants have alleged is an improper manner in executing our mandate, for not to pass on it would leave the mandate hanging in the air which could lead to perhaps irreparable damage or injury.

Let us now consider the point of whether the mandate in the cancellation proceedings has been properly executed. The final decree that the mandate commanded the lower court to enforce reads as follows:

"The said deed of the respondent Dawoda Harmon issued unto him by the late W. V. S. Tubman, President of the Republic of Liberia, on the aforementioned date, is hereby cancelled and made null and void to all intents and purposes in view of the surrounding facts and circumstances as the evidence in this case revealed. The real test and criteria for the cancellation of public land sale deeds and other deeds together with the principles of law in such cases made and provided, having been taken into consideration by the court in this final decree, and not from any other evidence, whatsoever. And it is therefore so decreed. Given under my hand in open court this 5th day of November, 1973.

"[Sgd.] JOHN A. DENNIS,
Assigned Circuit Judge."

It will be observed that there is nothing in the above quoted final decree of November 5, 1973, about a writ of possession. As a matter of fact the court could not have ordered a writ of possession in cancellation proceedings because it is not a possessory action.

During the argument before us it was brought out by respondents' counsel that the issuance of the writ of possession was based upon a letter from the Supreme Court. Since no such letter was in the record before us, we sent

for the original file of the trial court, but we still could not find any letter. This tactic to involve the Supreme Court in an irregularity in executing its mandate we seriously frown upon.

It was error for the trial judge executing the mandate of this Court to have ordered the issuance of a writ of possession to the respondents in these proceedings. It was also error to have ousted and evicted the persons residing in Fanima Town in the manner it was done if what has been alleged in the bill of information is true.

Our opinion is that when the public land sale deed of Dawoda Harmon for 15 acres of land in Fanima was cancelled because of misrepresentation and fraud, the ownership of the land reverted to *status quo ante*, that is to say, the title and ownership vested in the descendants of Hawa Gbai, Bassie, and the inhabitants of Fanima at the time the 25.8 acres of land were granted them by President W. R. W. Johnson in 1888. All other persons living on the 25.8 acres of land except by permission of the owners are intruders, and it is the right of the owners to evict such trespassers by due process of law.

The argument has been advanced that in equity proceedings a complete remedy should be given in order to avoid a multiplicity of suits. We agree with that principle, but we feel that when the court decreed the cancellation of Dawoda Harmon's deed, it went as far as it could go in cancellation proceedings because, as already stated, that placed title and ownership clearly in the legal owners of the 25.8 acres of land on the strength of the native township grant deed.

Both parties have asked us to have the Court order a survey made of the 25.8 acres of land comprising Fanima Town in order to avoid future conflict. We do not feel we could do this in the proceedings before us. The land belongs to the descendants of Hawa Gbai, Bassie, and the inhabitants of Fanima under the 1888 deed issued to them and it is their right to have the said tract of land surveyed

and trespassers found thereon evicted. Our duty has been performed in confirming the cancellation of the deed. The owners have their duty to perform in conserving their rights.

It is our view that the trial judge erred in ordering the issuance of a writ of possession in cancellation proceedings, and therefore that part of his ruling in executing the mandate of the Supreme Court is hereby revoked.

With respect to that part of the information which alleges that informants are occupying a piece of reclaimed swampy land in the area, we feel that if they have title or other possessory rights, those rights should be exercised legally through the courts but not by information with respect to a suit already concluded to which they were not parties. Let it be made clear that whatever they do must not interfere with the execution of the Supreme Court's mandate.

It is our holding that, in order to put a finality to this matter, the judge presiding over the Civil Law Court for the Sixth Judicial Circuit for Montserrado County at its June 1977 Term should proceed at once to complete the execution of the mandate of the Supreme Court in *Harmon v. Republic*, decided May 6, 1975, and make returns as to how this has been done immediately. The Clerk of this Court is hereby ordered to send a mandate to the court below to the effect of this decision. Costs disallowed. And it is hereby so ordered.

Information sustained in part.