IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, Sr.................................CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH ....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA HOWARD-WOLOKOLIE......ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, III ....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ....ASSOCIATE JUSTICE

The Executive and Work Committee of the Six Consolidated Leave Employees of the National Port Authority and Beneficiaries of the ALICO Pension Fund No. G, represented by & thru Arthur B. Tarr, General Secretary, and Messrs. Thomas Largua, Moses Baryor, et al., and Aryee Williams Group, all of the City of Monrovia, Liberia..INFORMANTS

VERSUS — BILL OF INFORMATION

George S. Langana, Acting Special Administrator, NPA/ALICO Pension Fund, Snr. Vice President, International Trust Company (ITC), now International Bank (Liberia) Limited, and Hitlar D. Richards, Snr. Partner, H. Richards & Co, all of the City of Monrovia, Liberia.........RESPONDENTS

GROWING OUT OF THE CASE:

The National Port Authority of Liberia (NPA), represented by and thru its Managing Director, Elsie Dossen Badio, of the City of Monrovia, Liberia...INFORMANTS

VERSUS — BILL OF INFORMATION

His Honor Joseph W. Andrews, Assigned Circuit Judge, presiding over the Sixth Judicial Circuit, sitting in its December Terms, A. D. 1998 & 1999, respectively, His Honor Yussif D. Kaba, Assigned Circuit Judge presiding over the Sixth Judicial Circuit for Montserrado County, Civil Law Court, sitting in its June Term, A. D. 1999, Mr. Samuel A. Passewe, Clerk of the Sixth Judicial Circuit for Montserrado County, Civil Law Court, and the Executive & Work Committee of the Six Consolidated Group of Retires and Compulsory Leave Employees of the National Port Authority (NPA), and Beneficiaries of the ALICO Pension Fund No. G, represented by and thru Arthur B. Tarr, Gene-

ral Chairman, James Fowler, General Secretary,)
and Messrs. Thomas Langura, Moses Baryor,)
Robert Z. Jones, and Aryee K. Williams, Sr.,)
Chairman respectively of the Arthur Tarr, Moses)
Baryor, Deunyeneh and Aryee Williams Group, all)
of the City of Monrovia Liberia......RESPONDENTS)
)
<u>GROWING OUT OF THE CASE</u>)
)
The National Port Authority of Liberia (NPA),)
represented by and thru its Managing Director,)
Elsie Dossen Badio, of the city of Monrovia,)
Liberia..MOVANT)
) PETITION FOR DECLARATORY
VERSUS) JUDGMENT
)
The Executive & Work Committee of the Six)
Consolidated Group of Retirees and Compulsory)
Leave Employees of the National Port Authority)
(NPA), and Beneficiaries of the ALICO Pension)
Fund No. G, represented by and thru Arthur B.)
Tarr, General Chairman, James Fowler, General)
Secretary, and Messrs. Thomas Langura, Moses)
Baryor, Robert Z. Jones, and Aryee K. Williams, Sr.)
Chairman, respectively, of the Arthur Tarr, Moses)
Baryor, Deunyeneh and Aryee Williams Group, all)
of the City of Monrovia Liberia.......RESPONDENTS)
)
<u>GROWING OUT OF THE CASE</u>)
)
The Executive and Work Committee of the Six)
Consolidated Leave Employees of the National)
Port Authority and Beneficiaries of the ALICO)
Pension Fund No. G, represented by & thru)
Arthur B. Tarr, General Secretary, and Messrs.)
Thomas Largua, Moses Baryor, et al. and Aryee)
Williams Group, all of the City of Monrovia,)
Liberia...PETITIONERS)
) PETITION FOR
VERSUS) JUDICIAL REVIEW
)
The National Port Authority of Liberia (NPA),)
represented by and thru its Managing Director,)
Elsie Dossen Badio, of the City of Monrovia,)
Liberia..RESPONDENT)

HEARD: March 22, 2016. DECIDED: July 4, 2018.

MR. JUSTICE BANKS delivered the Opinion of the Court.

This is the third time that this case has been brought to the Supreme Court for resolution, it having lingered in the judicial system for twenty-two (22) years. The first time that the dispute was brought before this Court, it embodied three interrelated causes. The first of those causes or proceedings involved an appeal from the judgment entered by the trial court dismissing the appellants' claim. The second time recourse was taken to the Supreme Court was through the medium of a petition for a writ of certiorari. The third time a remedy was sought from this Court was by the avenue of a bill of information which was the outgrowth of reported alleged irregularities committed by the trial court relating to the certiorari that was pending before the Supreme Court. The Supreme Court, recognizing that enormous time and energy could be consumed and even wasted, and believing that a final adjudication could be prolonged, to the detriment of the parties if each action was handled separately, decided that in the interest of justice and to avoid duplication of the proceedings, the three actions, which were pending determination by the Court, be consolidated and disposed of in a single Opinion.

A full understanding and deciphering of the contentions raised by the parties, deemed by the Court to be necessary to the analysis made herein and the conclusion reached require that we delve into the background and history of the dispute, from its genesis to the present. The facts, as culled from the records and other circumstances, reveal that the National port Authority (NPA), appellee/co-respondent herein, subscribed to a pension fund program with an insurance company, ALICO, under which the appellants, some of whom are informants herein, contributed 5% of their monthly salaries, while the appellee, NPA, contributed the equivalent of 7% of the employees' monthly salaries. The benefits under the program were to accrue to the employees upon their retirement from the appellee or to the benefit of their families upon the employees' death prior to their retirement from the appellee NPA. The appellants, informants, claim that the appellee/co-respondent NPA, violated the terms of the contract when it failed to deposit or transfer the salary deductions made from appellants' salaries to the insurer, thereby causing the insurer to terminate the pension fund scheme. The appellants also alleged that notwithstanding the termination of the pensions fund scheme by ALICO, the appellee continued to make deductions from their salaries as if the pension fund scheme was still in effect. They therefore demanded that they be paid the amounts which the appellee had continued to deduct from their salaries after the policy was terminated by ALICO, which amounts they said the appellee continued to hold.

The appellee denied the allegation, contending that in a previous action commenced by the appellants, the appellee, under the order and supervision of the Sixth Judicial Circuit Court, Montserrado County, and through an accounting firm, Hitlar Richards & Company, that was specially appointed by the trial court as a Special Administrator, had paid the full amounts due to the appellants. Our review of the records in the case reveals that the trial court, agreeing with the claim and contention of the appellee, dismissed the appellants' action. It was from this dismissal of the appellants' action that the several prior proceedings mentioned at the onset of this Opinion were pursued, including taking an appeal to the Supreme Court, filing of a petition for a writ of certiorari, and filing a bill of information wherein the appellee accused the petitioners of obstructing the enforcement of the Mandate of the Supreme Court because of its pursuit of the former two steps taken against the trial court's "final judgment".

As noted before, the Supreme Court consolidated all three of the actions, and, as consolidated, the Court ruled upholding and affirming the judgment of the trial court dismissing the appellants' petition, holding that the appellants were barred from pursuing the matter once the matter had previously been litigated in the trial court, a determination made on the merits, and from which determination the appellants had enjoyed benefits.

With regards to the certiorari, the Supreme Court held that the Chambers Justice had erred in determining the merits of the certiorari in the course of disposing of the information without first conducting a hearing of the certiorari out of which the information grew. The Court therefore declared the Chambers Justice's ruling in the information proceedings as null and void, and of no legal effect.

At its second appearance, the National Port Authority (NPA), co-respondent herein, filed a bill of information before this Court *en banc*, contending that having been dropped and/or relieved from the matter following the appointment of the court's special administrator for the purpose of making payment to the informants and following the Supreme Court's affirmance of the trial court's ruling dismissing the informants' petition for declaratory judgment on grounds of *res judicata,* thereby relieving Co-respondent NPA from any and all obligation in relations to the present matter, the trial judge having resume jurisdiction to give effect to the Supreme Court's mandate by concluding the matter of ALICO fund, had proceeded to grant the submission of co-respondents (now informants) by ordering the Management of the National Port Authority to submit to the trial court within thirty days of its ruling a full report of all collections under the ALICO pension fund, all disbursements and the balance, if any.

At that second appearance, the Informant (now co-respondent) substantially contended that the trial court had excluded NPA and ordered the disbursement of the ALICO funds through a committee appointed by said court; that the Mandate of this Court to the trial court to proceed and conclude the matter of the refund of the ALICO funds meant that the Civil Law Court, by and thru Hitlar Richards and Company, should have proceeded to disburse the balance ALICO funds out of the US$1,500,193.00 plus LD 977,188.00 that was disbursed by ALICO and kept in escrow at the ITC Bank, in keeping with the final judgment of His Honor Hall W. Badio, Sr. made on July 27, 1995; that the Mandate required that the employees and former employees of the National Port Authority who had not been paid should be paid and a report be submitted to this Court as to the manner of payment; that the Mandate of this Court did not require the trial court to review the Final Judgment of this Court by reopening the case or creating a new matter which was not before the court below, and that the trial court was without authority to review the second declaratory judgment case involving the amounts of US$7,249,052.00 and LD$640,000.00 that was put to rest on December 4, 1998 by the Opinion and Judgment of this Court during its October Term, A .D. 1998, wherein it confirmed the ruling of Her Honor C. Aimesa Reeves, rendered on December 22, 1997, during the December Term, A. D. 1997, of the trial court. The informant (now co-respondent) therefore prayed this Honorable Court to grant its bill of information for the enforcement of this Court's Mandate.

The co-respondents (now informants) argued before this Court that the trial court was under a duty to order an accounting by informant on ground that the said court, absent such order, would not be in the position to carry out this Court's Mandate of December 4, 1998. They also contended that the language employed by this Court in its order to the trial court clearly directed that a full accounting of the ALICO Fund be made, setting out the status of said fund and a final report forwarded to this Court by the court below. Indeed, co-respondents vehemently argued that the order of the trial court to the informant to submit a full report of all collections under the ALICO pension fund, together with all disbursements and the balance was an enforcement of this Court's Order, in conformity with the views expressed therein, and not a review of this Court Mandate. The respondents argued that the trial judge correctly and legally used his discretion in carrying out the Mandate of this Court, since the precise manner by which the ALICO refund matter was to be proceeded with was not defined by this Court. The respondents therefore prayed this Court to deny informant's bill of information and to confirm the ruling of the trial judge of August 6, 1999.

This Court, speaking through Mr. Justice Sackor, disagreed with the respondents (now informants) and granted the NPA's bill of information by holding thus:

> *"Madam Chief Justice Scott, speaking for this Court in its December 4, 1998 Opinion of this Court said on page five thereof that:*
> *"Finally the Presiding Chamber Justice confirmed the ruling of Judge Badio ruling upon a bill of information of NPA. And further no appeal was taken from the decision of the Chambers Justice on the Petition for a writ of certiorari, hence the facts as stated are deemed correct by this court and the determinations made therein are binding on and effective against all of the parties therein"*
>
> *The above quoted portion of this Court's Opinion of December 4, 1998 in this case clearly and plainly confirmed the termination of NPA agency as well as the discharge of NPA from further liability of the Pension Funds. This Court held in several Opinions that "Trial Judges should follow strictly both in the spirit as well as in the letter all Opinions given by this Court, as one of the most potent means of unifying the practice. Barnes. et al. Versus RL 5 LLR, page 395 syl. 2 (1937); Richards Versus McGill et al. 6 LLR 81 syl. 1 text at 85 (1937).*
>
> *We therefore perceive no difficulty for the enforcement of this Court's Mandate when the language of its Opinion of December 4, 1998 in this case is very plain and clear on page 5 thereof confirming the termination of NPA's agency as well as its discharge from further liability for the Pension Funds. We are taken aback for the granting of a submission by the trial judge on the 6th day of August, A. D. 1999, when he ordered NPA to submit a full report of*

all collections of the ALICO Pension Fund, all disbursements and the balance, if any, to said court within thirty days in an attempt to enforce this Court's Mandate. This Court simply mandated the trial court that the court by and through Hitlar Richards and Company as Special Administrator of the ALICO Finds should proceed to disburse the balance ALICO Funds out of the US$1,500,193.00 plus LD$977,188.00 that was disbursed by ALICO and kept in escrow at the ITC Bank as per the ruling of His Honor Hall W. Badio in 1995, and that those who have not been paid through the court appointed Special Administrator should be paid, and a report of such payment be submitted to this Court as to the manner of payment. The trial court was never mandated to acquire from NPA any further records and reports of the ALICO Pension Funds and the disbursement thereof, on ground at NPA agency was terminated and further discharged from liability of the pension funds. Further, NPA never supervised the disbursement of the ALICO Pension Funds as shown by the records before us in this case. It is evident by the records that the Special Administrator appointed by the trial court on July 27, 1995, supervised the disbursement of the ALICO Funds with the aid of the trial court, and therefore requires to account for the administration and disbursements of such funds before the trial Court and a report be made to this Court as to the manner of payment.

The trial Judge therefore executed the Mandate of this Court in an improper manner when he entertained and granted a Submission ordering NPA whose agency has been terminated and further discharged from liability, to submit a report regarding the matter of ALICO pension funds. The act and conduct of the trial Judge enforcing the Mandate of this Court in an improper manner is highly contemptuous. However, we purge him of contempt but strongly warn Judges of our subordinate courts to adhere strictly to the Opinions and mandates of this Court to their spirit and letter.

The next question is whether information can be granted by this Court considering the facts and circumstances in this case. It is an elementary principle of law, procedure and practice in our jurisdiction that a bill of information is the proper remedy to seek the aid of this Court for the enforcement of its Mandate where it is shown that the trial judge or judicial official improperly executed the Mandate of this Court in an improper manner and inconsistent with its terms. Massaquoi Fahnbulleh, et al. Versus R.D. Urey, syl. 1, text at 436 (1977)."

On October 30, 2014, approximately fourteen (14) years following the above ruling of this Court, the informants again appeared before this Court for the third time raising similar contentions as before in the previous proceedings, that is, that they had not been paid their share of the pension fund disbursed by the court's appointed administrator and therefore the Mandate of this Court had not been fully implemented. Interestingly, however, the informants

contend that given the fact that the lower court had appointed Hitlar Richards & Company to oversee the payments, the ruling of the Supreme Court, which discharged the National Port Authority from further liability, was inadvertent and that as a consequence of said ruling it became impossible to trace the whereabouts of the funding of the unpaid members of the informants. They therefore prayed this Court to recall its Opinion relieving the NPA of all liabilities in relations to the ALICO Pension Fund.

The informants' nine (9) counts bill of information is herein produced below as follows:

INFORMANTS' BILL OF INFORMATION

Informants in the above entitled cause of action most respectfully inform Your Honors in manner and form as follows, to wit:

1. That Informants are part of the former employees of the National Port Authority who obtained a judgment in their favour to be made the ALICO Fund. Your Honors are respectfully requested to take judicial notice of the records which are before you.

2. That Informants say as a result of that judgment, five of the Six Groups were paid leaving out almost all of the members of the sixth group except three, which is evident by the list hereto attached, and marked exhibit "I/1 in bulk" to form a cogent part of Informants' Bill of Information.

3. That when the non-payment of these former employees was brought before Your Honors by way of a bill of information, Your Honors ordered that all those who were not paid should be paid and the Sixth Judicial Circuit should report to Your Honors. Again Your Honors are respectfully requested to take judicial notice of the opinion of this Honorable Court, a copy of which is hereto attached and marked exhibit "I/2 in bulk".

4. That to date, the Informants have not been paid their share of United States One Million Five Hundred Thousand and One Hundred Ninety-Three Dollars (1,500,193.00) plus Liberian Nine Hundred and Seven-Seven Thousand One Hundred and Eighty-Eight Dollars (977,188.00).

5. That during the enforcement of one of Your Honor's Opinions, the then Presiding Judge, Judge Yussif Kaba, sought to obtain a report from the National Port Authority but same was resisted and Your Honors at the time opined that the National Port Authority was discharged from further liability given that the court had appointed Hitlar Richards & Company to oversee the payments.

6. That as a consequence of Your Honors opinion, it has been difficult, if not impossible, to trace the whereabouts of the funding of the unpaid members of the sixth group (alias the PK-Sherman Group). Your Honors are respectfully requested to take judicial notice of the unpaid listing hereto attached and marked Exhibit "I/3 in bulk".

7. That in collaboration with the Legal Department of the International Bank, successor of the International Trust Company, we found that the United States Dollars component that is due the unpaid group was deposited into the account of the National Port Authority, meaning that same was not under the control of the Hitlar Richard & Company. Your Honor is respectfully requested to take judicial notice of a copy each of the communications hereto attached and marked Exhibit "I/4 in bulk"

8. That given the revelation referred to in count (6) above, Informants respectfully request Your Honors to recall Your Honor's Opinion discharging the National Port Authority from further liability until and unless there is full accountability for the payment due the Sixth/PK-SHERMAN Group.

9. That Informants submit that as a result of the complications, they have not been paid and as such information will lie in that Your Honors opinion has not been fully enforced and/or complied with.

WHEREFORE AND IN VIEW OF THE FOREGOING, Informants pray that Your Honors will recall Your Honors' Opinion discharging the National Port Authority (NPA) from further liability to informants to enable the informants receive the amount of United States One Million Five Hundred Thousand and One Hundred Ninety-Three Dollars (1,500,193.00) plus Liberian Dollars Nine Hundred and Seven-Seven Thousand One Hundred and Eighty-Eight Dollars (977,188.00) in collaboration with Hitlar Richards & Company and the International Bank; and grant unto informants any and all further relief as Your Honors may deem just, legal and equitable in the premises.

RESPECTFULLY SUBMITTED
INFORMANTS
BY AND THRU THEIR LEGAL COUNSEL
KEMP & ASSOCIATES LEGAL CONSULTANCY
CHAMBERS, INC.

FREDIE R. TAYLOR, JR.
COUNSELOR-AT-LAW

KATHLEEN T. PYNE-MAKOR
COUNSELLOR-AT-LAW

THEOPHILUS C. GOULD
COUNSELLOR-AT-LAW

On June 23, 2015, the Supreme Court issued out a mandate ordering the respondents to appear before the Court *en banc* on or before July 4, 2015, to show cause why the informants' bill of information should not be granted and to file their formal returns to the informants' bill of information. In compliance with the Court's mandate, the respondents filed two separate returns. Co-respondent National Port Authority filed its returns on June 30, 2015 basically contending that the entire bill of information should be denied on grounds that the action out of which the information grows has been decided and executed;

that the matter having been decided by this Court relieving the NPA from further obligation, same could not legally be re-litigated on the principle of res judicata; that the informants were barred by the statute of limitation with regards to the enforcement of judgment; and that the NPA having been discharged cannot be held to answer for similar claims from which it was discharged.

We quote co-respondent National Port Authority eight counts returns as follows:

RESPONDENT'S RETURNS

AND NOW COMES Respondent NATIONAL PORT AUTHORITY in the above entitled cause of action, denying the legal and factual sufficiency of the informants' bill of information, and prays Your Honors and this Honourable Court to deny and dismiss informants' bill of information along with the prayers, exhibits and affidavit against the respondent, and for the following factual and legal reasons, showeth to wit:

1. That, as to the entire informants' information, respondent says that same should be ignored and denied in that, as according to informants' information, a separate body was established to take control and make payments to would be beneficiaries, which was executed. For informants, at this protracted period, to seek further payments whereas the action from whence this information grows, has been decided and executed, is not only belated, but unenforceable.

2. Further to count one (1) above, respondent says that once this matter has been judicially decided by Your Honors (SUPREME COURT), same becomes *res judicata*, and cannot be brought again by way of information; hence, informants' entire information should be denied and dismissed.

3. Respondent contends and says that parties similarly situated who sit supinely and allow their interest in an action to be proceeded with without their being joined or made a party thereto, suffers waiver and lashes and [are] bound by any judgment thereto. Your Honors are most respectfully requested to take judicial notice of chapter 5, section 5.61, of the Civil Procedure Law.

4. Respondent contends and says that having constituted a separate body upon which the responsibility for payment had been dedicated, respondent henceforth became a non-party and any reservation thus made regarding payments should have been channeled through said body and not resorting to respondent seeking further payment after more than fifteen (15) years have elapsed, and who has been discharged by Your Honors.

5. That as to the entire informants' information, respondent says that the enforcement of the court's ruling was never a condition precedent to respondent's discharge. Respondent was discharged upon the constitution of Hitlar Richards & Company, who oversaw

the payments. Had Informant's alleged Sixth Group with some members unpaid being an issue, that reservation or observation, should had been brought to the attention of Hitlar Richards & Company and not the respondent who had met with all of her obligations as per Your Honors' ruling. To this, Informant must suffer waiver and lashes for Chapter 2, section 2.14 of 1LCL Revised states that "Actions to enforce a judgment" ruling not enforced within the period of ten (10) years become null and void, hence unenforceable.

6. Further to count six (6) above, respondent says that when ALICO was winding up its affairs, Hitlar Richards & Company was appointed by the court to oversee the payments of informants and the National Port Authority (NPA) was discharged from further liability. Under our laws hoary with age, if the informants did not get paid within the statutory period of three (3) years, they cannot hold respondent liable. For reliance see the case "Veronica Doe's mother, Madam Nancy B. Doe versus Central Bank of Liberia" delivered during the October Term, A. D. 2014, wherein the Honourable Supreme Court held that the winding up period for an appointed agent to pay the receivers is three years after which they are statutorily barred, as in the instant case.

7. Respondent further says that Hitlar Richards & Company in this matter became the payer and informants the payee. With this relationship, respondent then loses all participation and control; hence, cannot at this protracted point in time absorb the duties and responsibilities of Hitlar Richards & Company, a legally ascribed company acting under the laws of the Republic of Liberia.

8. That all other averments of law and facts, which were not specifically traversed in this returns, respondent denies.

WHEREFORE AND IN VIEW OF THE FOREGOING, respondent most respectfully prays Your Honour and this Honourable Court to deny and dismiss Informants' bill of information in its entirety, consider respondent discharged by Your Honors is fully discharged and grant unto respondent any other relief Your Honors would deem just, legal and equitable."

Co-respondent George S. Lansana, Acting Special Administrator of the NPA/ALICO Pension fund also filed returns in which he essentially averred that consistent with the court's mandate he paid all of the former employees and staffs that were listed in the reports prepared by Hitlar Richards & Co and authorized by the court and that thereafter, in 1999, he resigned from the H. Richards & Co. We quote herewith the returns filed by co-respondent Lansana as follows, to wit:

<u>Co-respondent George S. Lansana Returns</u>

And now comes co-respondent, and in his returns to Informants bill of information, says as follows:

1. That as to count one thru nine of informants bill of information, co-respondent says that indeed and in truth he did work for H. Richards & Co from the period 1997 to 1999 as audit assistant.
2. That the Sixth Judicial Circuit Court appointed co-respondent as Acting Special Administrator for the NPAL/ALICO Pension Fund in 1998.
3. That the Sixth Judicial Circuit Court mandate was to pay former employees and staff of the NPA/ALICO Pension Fund who have not been paid as per report prepared by Mr. Hitlar D. Richards, CPA, Managing Partner of H. Richards & Co.
4. That prior to the Sixth Judicial Circuit Court appointment of co-respondent, the following former staff of H. Richards & Co. served in similar capacity:
   a. Mr. Frederick Williams
   b. Mr. Franklin B. Cole, and
   c. Cllr. Jallah A. Barbu
5. That upon the resignation of co-respondent, the following staff also serve in similar capacity:
   a. Philip Delbodo, and
   b. Peter Mondeh
6. That Peter Mondeh managed the Fund to the conclusion of payment of all former employees and staff of NPA/ALICO according to the report in the possession of the Sixth Judicial Circuit Court.
7. That co-respondent resigned from the H. Richards & Co in 1999.
8. That co-respondent, consistent with the mandate of the Sixth Judicial Circuit Court, paid ONLY former employees and staff that were listed in the reports to be paid prepared by H. Richards & Co and authorized by the Sixth Judicial Circuit Court.

Wherefore and in view of the above facts co-respondent prays as follows:

1. That the Court relief co-respondent as he has performed his job as required by the Sixth Judicial Circuit Court.
2. That the Court rule the cost of these proceedings against petitioners; and
3. That the court grants him all other relief as it deems just, legal and equitable.

Respectfully submitted
Co-Respondent by and thru
His legal Counsel/NELAL
Cllr. Viama J. Blama

When the case was called for hearing, counsels for the informants contended that this Court inadvertently confirmed the trial court's ruling relieving the Management of the National Port Authority from any and all obligations under the ALICO Pension Fund; that as a result of such inadvertence on the part of this Court, the informants have not received their respective shares of the Pension Fund; and that the Court should grant their bill of information and by so doing, the Court should recall its previous opinion which confirmed the trial court's judgment relieving the NPA from further obligation so that the NPA can be made to settle with those employees who were not paid by the lower court's appointed Special Administrator.

Co-respondent National Port Authority argued that it having been discharged from all obligations under the ALICO Pension fund, there was no privity of contract between it and the informants; that the enforcement of the Court's Judgment was not a condition precedent to discharging the NPA from all obligation; and that informants having failed to assert their claims for payment by the appointed Special Administrator within three years, they were *estopped* from demanding such payment.

As for co-respondent George S. Lansana, the former Representative of the Acting Special Administrator given the task or responsibility to pay the beneficiaries of the ALICO Pension Fund, he contended that all of the beneficiaries listed for payment were duly paid and a report was submitted to the trial court; and hence, as there was no other person left to be paid he had performed the task which has been assigned to him. He therefore prayed this Court to deny the bill of information and relieve him from answering further to any and all actions in relation to these proceedings.

From the foregoing, the single question presented here is whether a bill of information will lie under the facts and circumstances presented in the instant case? This is particularly important since in the bill of information, the informants, after narrating what they said are the facts that form the basis for the information, then proceeded to make the single prayer to the Court that this Court should recall its previous Opinion wherein it discharged co-respondent NPA from all further liability in respect of the claims of the information unless or until there is full accountability for the payment allegedly due the informants and which the informants assert they have not received. According to the informants, the recall by the Court of its previous Opinion and decision will facilitate resolving the grievance, the non-payment of their claims, which they alleged they suffered over the period of fifteen years on account of or as a result of the Court's decision.

The respondents, for their part, have challenged the appropriateness of the bill of information, asserting that the not only was a separate body set up to make payment of the claims of the beneficiaries but that the Supreme Court's mandate had been fully executed; that the informants had suffered waiver and lashes since they had allowed the judgment to be fully enforced without seeking joinder to the suit until after more than fifteen years, contrary to the statute which provides for an enforcement period of ten years; that since by law ALICO had a period of three years to wind up its affairs, and since the informant had not sought payment during the period, they were barred from seeking any payment thereafter; and that the court-appointed administrator was actually the institution responsible to make payment in respect of the Pension Fund claims and not the NPA which had been discharged.

While we shall address the contentions raised by the parties, and although this Court does not ordinarily address issues not directly or specifically raised by the parties, we are constrained in the instant case to take note that the single core prayer made by the informants not only goes beyond the province of a bill of information and beyond affecting just the parties to the proceedings, but it seeks directly to affect the Court and the core of the previous decision made by this Court, and to have the Court set an astonishingly new precedent that could have serious repercussions for the jurisprudence of this jurisdiction. This Court is asked, not through the medium of a petition for re-argument seeking to have the Court reconsider its decision, which the law provides should have been made within three days following the Opinion and Judgment of the Supreme Court, but by way of a bill of information, fourteen (14) years after its Opinion and Judgment of this Court, to recall the said Opinion and Judgment previously entered to that parties claiming that they did not benefit from the said Opinion and Judgment can effectively be made beneficiaries at this late time. The basic thrust of the prayer, made through this rather strange and unusual channel in the face of the attending facts of this case, is that the Supreme Court allegedly erred, inadvertently, in the Opinion and Judgment delivered and entered over fifteen years ago, and that the Court should by the recall correct the error made and thus revoke its discharge of co-respondent NPA made in said previous Opinion. The prayer bears directly on the issue of the province of a bill of information. Or, stated in the alternative, the question is whether a bill of information can form the basis to have this Court recall an Opinion and Judgment previously handed down by it? Thus, the very nature of the prayer impacts the Court itself, the request stated therein dictates that this Court takes a keen look at the request, even if the parties do not

directly or pointedly reference or address the issue raised thereby, and decide if under the circumstances the Court could legally grant the prayer and the bill of information. The request warrants exploring the province of a bill of information.

A bill of information, the Supreme Court has articulated numerously in a long line of cases, is designed to give relief to a party where a lower court or other judicial or quasi-judicial tribunal or other institution has acted wrongly, improperly, inappropriately, or illegally in executing or enforcing the mandate of the Supreme Court or where one or more of the parties or a third party is believed to have acted contrary to or is impeding or obstructing the Supreme Court's mandate. *Jawhary v. Jones et al.*, 38 LLR 584 (1998); *The National Port Authority v. The Executive Committee of the Six Consolidated Groups of Retirees and Compulsory Employees of the National Port Authority*, 39 LLR 244 (1998); *Ali Saksouk Textile Center v. Cooper and First United American Bank*, 39 LLR 3 (1998); *Majority Membership of the United Church of the Lord, Inc. v. Minority Membership of the United Church of the Lord, Inc. et al.*, 39 LLR 692 (1982); *Nyuman and Freeman v. Kontoe and Payne*, 40 LLR 14 (2000); *Bassam H. Jawhary v. His Honor Kabineh Ja'neh and Oumou Sirleaf Hage et al.*, Supreme Court Opinion October Term, A. D. 2012. In short, the bill of information seeks to correct irregularities committed by judge or judicial officer or party in the execution or enforcement of the mandate of the Supreme Court. *Raymond International (Liberia) Ltd v. Dennis 25 LLR 131, 140 (1976); William E. Dennis et al., v. His Honor Yussif D. Kaba et al., Supreme Court Opinion, March Term, A. D. 2010. Barbour-Tarpeh v. Dennis*, 25 LLR 468, 470 (1977).

In the instant case, however, the essence of the bill of information is that the Supreme Court had acted wrongly, by inadvertence or otherwise, in its Opinion and Judgment handed down fifteen years ago, and upon which the lower court had acted in enforcing the mandate, and that therefore, in order to correct the situation, the Supreme Court should recall its Opinion and Judgment and revoke its discharge of Co-respondent NPA of any further liability. We find the prayer request and the attending practice utterly strange, not only because it is without the province of a bill of information, but also because it seeks to have this Court adopt a new rule in complete violation of the statute, Rules of the Supreme Court and the many Opinions handed down by the Supreme Court.

This Court has consistently said, as dictated by the statute and the Rules of Court, that where this Court hands down an Opinion or decision and a party believes that the Court has acted in error, factually or as a matter of law, on account of some inadvertence or mistake, the party affected thereby may take recourse to a petition for re-argument, but this must be done within three days of the handing down of the Opinion or the receipt thereof. Thus, even assuming that the informants were correct that the Supreme Court inadvertently discharged the NPA, a bill of information would not be a proper remedy. Rather, the informants should have applied for re-argument in accordance with the Rules of Court. This is how the Rules of the Supreme Court set out the requirement: The Rule states:

> "<u>RE-ARGUMENT</u>
>
> *Part 1. Permission for.* For good cause shown to the Court by petition, a re-argument of a cause may be allowed only once when some palpable substantial mistake is made by inadvertently overlooking some fact, or point of law."
>
> *Part 2. Time for.* A petition of re-argument shall be presented within three (3) days after the filing of the opinion unless in cases of special leave granted by the Court *en banc* upon application."
>
> Revised Rules of the Supreme Court, VIII, Parts 1 and 2.

It is by the foregoing process that the Supreme Court is given the opportunity to review the Opinion or decision which is brought into question and, if finding magnitude in the substance or content of the petition, to reverse or otherwise adjust the Opinion or decision. Harris et al. v. Layweah et al., 39 LLR 571 (1999).

However the process outlined above is not without its own constraints. A petition for re-argument can only be entertained by the Court where, in addition to the three day time frame for its filing, at least one of the concurring Justices to the Majority Opinion approves of the petition. The Rules state thus:

> "Part 3. Contents of Petition. The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the Judgement shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions."

It is apparent in the instant case that not only had the informants not met the time requirement for filing of a petition for re-argument, but they also may have been aware that none of the Justices currently serving on the Supreme

Court participated in the hearing and decision in the case which they now seek to have this Court revisit. The informants were therefore not in the position to appeal to any of the Justices to append their signature to any petition for re-argument. This may explain the reason for inappropriately resorting to the filing of a bill of information, as opposed to a petition for re-argument. The informants cannot expect that by this inappropriate and belated filing of the bill of information that this Court would proceed to violate the law governing bill of information and re-argument in order to accommodate the informants or their counsel. Further, a bill of information is also not the proper medium through which an Opinion of this Court can be recalled. We must therefore state emphatically that the informants, having failed to comply with the provisions of the Rules of the Supreme Court relative to re-argument, within the statutory time, in order to allow this Court to review and probably correct what they claimed to be error or inadvertence on the part of the Supreme Court, they are estopped from pursuing such course by way of information or otherwise.

A bill of information is restricted; for while it is a properly available remedy to prevent any judicial officer or person from improper or wrongful execution of the Supreme Court's mandate, *[Bindu Kindii v. Kaba, Supreme Court Opinion, October Term, 2012]* it cannot be a substitute for another available remedy. *Butler-Abdullah v. Pearson et al.,* 36 LLR 592 (1989). The Justices of this Court have sworn to uphold the law and we are not prepared to entertain any appeal to deviate therefrom.

But in addition to the above, we find the request made by the informants for this Court to recall its Opinion and Judgment handed down more than fourteen (14) years ago equally strange for reason that while this Court has not hesitated to recall Opinions and Judgments in the past, where appropriate, those recalls have centered primarily on legal rather than factual grounds. The basis for such recalls has centered on the Court's interpretation of legal principles and their application to the facts of a case. In none of those cases was the Supreme Court asked to recall an Opinion or case so that a party in interest could accrue the benefit of the recall. Rather, the situations have revolved around another completely separate and independent case where the principle enunciated by the Supreme Court in a previous case is challenged and the Court is asked to recall the case and apply a different principle to the more recent case. This is not the situation in the instant case where the basis for the recall is that the Court had erred in its Opinion in a previous decision to which the informants had an interest and hence they now seek, after fourteen (14) years, to have this Court recall the case so that under the defunct Pension Program under which they assert a claim they can become beneficiaries from the new decision or recall while at the same time dispensing with the legal prerequisites under the law.

We must emphasize here, as we have done in many other cases, that this Court cannot condone the continued conduct of lawyers, members of the Supreme Court Bar, which seemingly is contrived to mislead the Court. We expect that lawyers of the Supreme Court Bar will demonstrate the greatest respect for the Court, for the ethics of the profession which they have sworn to uphold and abide by, and show respect for the law.

We therefore must hold, growing out of the analysis articulated above, that a bill of information will not lie under the facts and circumstances of the instant case. But let us now resort further to the contentions raised and argued by the parties before this Court.

As stated earlier, the primary contentions of the informants, for which they request this Court to grant their bill of information, are that they have not been paid their share of the pension fund disbursed by the lower court's appointed Special Administrator and therefore that the mandate of this Court has not been fully implemented; and that the ruling of the Supreme Court, which discharged the National Port Authority from further liability since the lower court had appointed Hitlar Richards and Company to oversee the payments, was an inadvertence and that as a consequence of said ruling it was impossible to trace the whereabouts of the funding of the unpaid members of the informants.

In Co-respondent George S. Lansana's returns, the former Special Independent Administrator responsible for the payment of the enlisted beneficiaries, he contended that all of the required beneficiaries were paid and that report was submitted to the trial court, which report was certified and accepted by the said court and made a part of the records. If the informants were of the view that the report of Co-respondent Lansana was untrue, they could have and in fact should have challenge same at the lower court so that the judge presiding therein could conduct the requisite investigation and make a determination thereon, rather than imposing upon the Supreme Court the task of investigating the said claim or allegation? This, he said, would have been the proper procedure to have followed since the Supreme Court is without authority to take evidence, and hence cannot make a determination of the factual allegations exchanged between the parties. *Lands, Mines and Energy v. Liberty Gold,* Supreme Court Opinion, March Term, A. D. 2013.

Further, the Opinion of this Court from which this information purportedly grew, was rendered fourteen (14) years ago and the Special Administrator had submitted a report to the trial court indicating that all of the required beneficiaries had been paid; that said report having been certified by the trial court without any party appearing before the Supreme Court or challenging the report of the Special Administrator, we hold that this matter has been concluded and thus, a bill of information cannot be entertained. The Supreme Court cannot legally obtain jurisdiction over a bill of information when there is no proceeding pending before it from which such information grew. *Noel v. Razzo,* 38 LLR 476 (1997); *Bassam H. Jawhary v. His Honor Kabineh Ja'neh & Oumou Sirleaf Hage et al.,* Supreme Court Opinion October Term, A. D. 2012.

In order for the Supreme Court to entertain a bill of information, the case must have either been pending before or decided by it, or there must appear to be a usurpation of the province of the Court by the respondents, or there must exist some irregularities or obstruction in the execution of the Court's mandate, or there must have been a refusal to carry out the Court's mandate or orders. *The National Port Authority v. The Executive Committee and Working Committee of the Six Consolidated Groups of Retirees and Compulsory Leave Employees of the National Port Authority et al.,* 39 LLR 618 (1999); *Nimely et al., v. Yancy et al.,* 30 LLR 403 (1982); *Samuels et al., v. Logan et al.,* 32 LLR 433 (1984); *Harris et al., v. Layweah et al.,* 39 LLR 571 (1999); *Kaba et al., v. Messrs. Import-Export Company,* 41 LLR 249 (2002); *Liberia Aggregate Corporation v. Taylor et al.,* 35 LLR 3 (1988); *Bassam H. Jawhary v. His Honor Kabineh Ja'neh & Oumou Sirleaf Hage et al.,* Supreme Court Opinion, October Term, A. D. 2012.

For its part, Co-respondent NPA contended that as the informants did not mount any challenge at the time to the manner in which the court appointed administrator had performed its functions, had made payments and had submitted report closing the matter, but had waited for more than fourteen (14) years, the informants had waived any right to file the instant bill of information. We are in full agreement with the contention advanced by Co-respondent NPA and hence sustain same. The law in this jurisdiction, which this Court has continuously expressed agreement with, is that where a party, with knowledge of a right, fails to assert that right in an ongoing controversy, he or she is deemed to have waived the right, and is forbidden from subsequently seeking to assert the right, as in the instant case, where the informants had waited for more than fourteen years following the settlement made by the administrator. *Ezzedine v. Saif*, 33 LLR21 (1983); *Kruah and Solo v. Weah*, 42 LLR 148 (2004); *Juah v. Konneh et al.*, 42 LLR 187 (2004) Accordingly, we hold that the informants had waived the right to advance any further contest in respect of the Pension Fund, especially given that they were aware of the lower court's appointment of the Special Administrator to administer the payment but filed no claims with the said Special Administrator so that any refusal by the Special Administrator to make such payment could be challenged before this Court by way of a bill of by way of a bill of information rather than as is now being done where the informants seek to substitute the petition for re-argument with a bill of information, a course which the Supreme Court has said repeatedly is not allowed under the law.

Wherefore and in view of the foregoing, the bill of information is denied. The Clerk of this Court is hereby ordered to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over the case and give effect to this Opinion. Costs are ruled against the informants. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Theophilus C. Gould and Fredie R. Taylor, Jr. of Kemp and Associates Legal and Consultancy Chambers appeared for the informants. Counsellors Dexter Tiah, Sr. and Idris S. Sheriff of the Henries Law Firm appeared for the respondents.