IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER 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 H. WOLOKOLIE.....................ASSOCIATES JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..............................ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE ....ASSOCIATE JUSTICE

The Intestate Estate of Julia R. Taylor, by and thru its Administrator, Winston Browne of the City of Monrovia Liberia...INFORMANT	)	
Versus	)	BILL OF NFORMATION
His Honor Peter W. Gbenewelleh, Assigned Circuit Judge, Sixth Judicial Circuit and the International Bank Liberia (Limited), represented by its Chief Executive Officer Thomas S. Jeffery, II of the City of Monrovia, Liberia ....Respondents	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of Julia R. Taylor, by and thru its Administrator, Winston Browne of the City of Monrovia Liberia.. ....Petitioner	)	
Versus	)	PETITION FOR A WRIT OF PROBITION
His Honor Peter W. Gbenewelleh, Assigned Circuit Judge Sixth Judicial Circuit and the International Bank Liberia (Limited), represented by its Chief Executive Officer, Thomas S. Jeffery, II of the City of Monrovia, Liberia ....Respondents	)	

HEARD: October 27, 2016 **DECIDED**: January 31, 2019

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This bill of information derives from the objection of informant to an execution of sale of a mortgaged property said to be part of the Intestate Estate of Julia R. Taylor, the informant.

The records of this matter reveal that LibCapital Group, Ltd. obtained a loan of $250,000.00 from the International Bank Liberia, Ltd. (IB), co-respondent, on December 20, 2005; that the Intestate Estate of Robert H. Taylor, represented by its administratrix, Coral E. Taylor, obtained a Court's Decree of Mortgage from the Probate Court of Montserrado County, presided over by His Honor J. Vinton Holder, to put up as mortgage and security for the loan, a property comprised of one and three quarter acres of land with buildings thereon, situated and lying at Bushrod Island, City of Monrovia, County of Montserrado County, Republic of Liberia. Cora E. Taylor alleged in her petition to the Probate Court that the mortgaged property was part and parcel of her father Robert H. Taylor's intestate estate. Having obtained the decree and entered a mortgage agreement as security for the loan taken from the Co-respondent Bank, and upon the failure of LibCapital Group, Ltd. to meet up with its loan obligation to the Co-respondent Bank, the Bank filed a petition for foreclosure of the mortgaged property under the loan agreement before the Sixth Judicial Circuit Court of Montserrado County. The Civil Law Court granted the petition for foreclosure of the mortgage. Thereafter, a writ of execution was issued to seize and expose to sale the mortgaged property with instruction from the court that the sales of the mortgaged property when received is paid over to the Co-respondent Bank to liquidate the amount due under the loan agreement.

Upon the exposure for sale of the mortgaged property, the Intestate Estate of Julia Taylor, represented by its administrator, Winston Browne, ran up to the Justice presiding in Chambers, His Honor Justice Kabineh M. Ja'neh, filing before him a petition for a writ of prohibition to stay the execution of the sale. The Julia R. Taylor Estate alleged that the mortgaged and foreclosed property was not owned by the late Robert H. Taylor, Cora E. Taylor's father; that in order to obtain the decree to mortgage the property, Cora Taylor made false representation to the Probate Court and thereby obtained the decree of mortgage fraudulently.

Because of the nature of this matter, the contentions raised, and this Court's ruling being based on the issue of substantive justice, we have decided to include verbatim in this opinion papers filed by the parties.

The file reveals that on March 13, 2012, the Intestate Estate of Julia R. Taylor, by and thru its Administrator Winston Browne, filed before Justice Kabineh M. Ja'neh, the presiding Chambers Justice, the following petition for a writ of prohibition:

"And now comes petitioner in the above entitled cause of action showing for cause the following cogent reasons, to wit:

1. That the petitioner is the administrator of the intestate estate of the late Julie R. Taylor, who, by virtue of the authority of will of her grandfather, the late Robert J. Taylor, acquired co-ownership of one and three quarters acres of land with buildings therein. Petitioner is authorized by three of the natural surviving heirs of the late Julia R. Taylor; namely, Hagar Turay, Robert Johnson and Israel Johnson, evident by attached letters of administration and power of attorney, marked P/1.
2. Petitioner says that late Julia R. Taylor and Cora E. Taylor are co-owners in fee of a parcel of land situated on Bushrod Island upon which valuable buildings are erected, and which both of them leased to the Saleebys, as can be seen by the attached lease agreement marked P/2.
3. Petitioner says that subsequent to the above mentioned lease, both families benefited from the property and received rent therefrom from year to year, as can be seen by attached receipts marked P/3.
4. Petitioner says that, they have just been informed that the Civil Law Court conducted a foreclosure proceeding of their jointly held property in November 2011, based upon a questionable arrangement with the Co-respondent Bank that involved their cousin, Cora E. Taylor's, alleged execution of a mortgaged deed to the bank for property in which their mother's intestate estate is co-owner.
5. Petitioner says it was never made a party to this case; as such, no decision or judgement rendered by the trial court should affect its property interest, especially so, where a close review of the mortgaged deed allegedly executed by Cora E. Taylor (cousin) clearly indicates that she signed same as administratrix of the intestate estate of the late Robert H. Taylor, her father, and not her grandfather, Robert J. Taylor, who willed the properties to Julia R. Taylor and Cora E. Taylor. Copy of the deed to the property is hereto attached and marked P/4.
6. Petitioner respectfully requests court to closely observe that the deed to the property is in the name of the grandfather of the petitioner; moreover, the lease agreement to the property is signed by Robert H. Taylor as attorney-in-fact for Cora E. Taylor. By what basis then did the co-respondent bank effectuate a loan for US$250,000.00 to Cora E. Taylor as administratrix of the intestate estate of her late father Robert H. Taylor, who, prior to this transaction, had served as her attorney-in-fact for the lease

to Saleebys for the very property the co-respondents alleged to be owned by Cora E. Taylor, singly, as administratrix of the intestate estate of Robert H. Taylor.

7. Petitioner says and strenuously contends that even a first year law student would recognize that there existed a difference between the name appearing on the letters of administration and on the deed to the property, object of the mortgaged deed, and advised his/her client accordingly. However, the co-respondent bank negligently ignored this cardinal difference, and instituted foreclosure action, and obtained a judgement, attempting to enforce against the wrong party, who was never summoned, or brought under the jurisdiction of court, for which, prohibition will lie. See *Boye v. Nelson,* 27 LLR 174 (1978).

8. Petitioner solemnly affirms that Robert H. Taylor possessed no property that the Civil Law Court is foreclosing; on the contrary, evident by the title deed, the property was purchased by Robert J. Taylor in 1949, and upon his death, transferred title thereto to his grand daughters, Julie R. Taylor and Cora E. Taylor. Therefore, petitioners not being a party to this entire transaction, and since the document of transfer is concerning a very different property which the court is erroneously attempting to enforce judgment against, prohibition will lie to undo what has been illegally done. See copy of the writ of execution marked P/5.

9. Petitioner says that the co-respondent bank and the trial court proceeded by wrong rules than rules which ought to be observed at all times when a mortgaged deed to property allegedly held by an intestate estate was executed based upon the deed that carries an extremely different name that appears on the mortgage deed. Thus, for this very fatal legal blunder, the entire judgment of the trial court is in excess of jurisdiction, for which, prohibition will definitely lie to undo.

Wherefore, and in view of the foregoing facts and circumstances, petitioner prays Your Honor to cite the co-respondents to a conference to show reasons, if indeed they can, why they are enforcing a judgment obtained against the intestate estate of Julia R. Taylor, STAY all proceedings pending the outcome of the conference, and to issue the alternate writ commanding the co-respondents to cease and desist from enforcing any judgment of the trial court against the petitioner herein who was not party to the proceedings in the court below, and to grant unto the petitioner each and every relief deemed just, legal and equitable."

The petition for prohibition having been filed, His Honor Justice Ja'neh had the Clerk issued a citation to the parties for a conference on March 20, 2012, with an order to stay all further proceedings in the matter pending the outcome of the conference. After holding of the conference, the Chambers Justice wrote the Clerk of the Supreme Court, on March 28, 2012, ordering the following:

> "Madam Clerk:
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> Having had the conference and determined that the petitioner has adequate remedy at law, I order the Stay lifted and the co-respondent judge ordered to proceed with matter in keeping with law."

On March 29, 2012, the Clerk sent a mandate to the court below as follows:

> "By directive of His Honor Kabineh M. Ja'neh, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction in the above captioned case and proceed in keeping with law."

The file further reveals that this mandate of March 29, 2012 was subsequently ordered stayed based on another petition dated March 27, 2012, filed by the Intestate Estate of Robert H. Taylor, by and thru its Administratrix Cora E. Taylor, who also prayed that the Chambers Justice, Kabineh M. Ja'neh, issue a writ of prohibition to prevent the execution of the lower court's judgment.

In her petition, Cora E. Taylor alleged that as administratrix of the Robert H. Taylor Estate and guarantor of the loan, she was never informed of the borrower being in default besides the letter of September 17, 2011, written to her by the co-respondent bank's lawyers, in which she was informed that the bank desired to foreclose on the mortgage; further, it was barely ten (10) days after receipt of that letter that she was served a copy of a petition for foreclosure of the mortgage. She submitted that under the statute regarding foreclosure, the mortgagee is required to give the mortgagor six (6) months grace period prior to seeking foreclosure (Section 2.12.3 of 1LCLR); that the purpose of this provision of the Law is to give the mortgagor an opportunity to secure his/her property because of the importance of real property.

The Chambers Justice again sent a stay order to the court below assigning the parties to appear for a conference. After holding several conferences with the mortgagor and the co-respondent bank, he issued an order to the Clerk of Court upon which the Clerk sent down the following mandate on April 17, 2012, and which reads:

> "By directive of His Honor Kabineh M. Ja'neh, Associate Justice presiding in Chambers, you are hereby mandated to enforce the judgment ordered stayed on March 29, 2012, without any further delay.

The lower court, having read the mandate sent by the Chambers Justice on April 17, 2012, the informant, the Intestate Estate of Julia R. Taylor, ran up to the Supreme Court with a bill of information filed before the full bench. The bill of information reads as follows:

"And now comes informant in the above entitled cause of action, showing for cause the following cogent reasons, to wit:

1. Informant says that all courts in this Republic are statutorily mandated to take judicial notice, even if not requested, of the constitution, and statutory laws of Liberia. The Justice in Chamber proceedings are no exception to the law. See 1LCLR 25.1.

2. Informant says that our Constitution expressly provides that no person shall be deprived of life, liberty or property except as the outcome of a judgment consistent with due process. See article 20(a) 1986 constitution.

3. Informant says that the late Julia R. Taylor and Mrs. Cora Taylor are co-owners in fee of a parcel of land situated on Bushrod Island upon which valuable buildings are erected, and which the both of them leased to the Saleebys as can be seen by the attached lease agreement marked I/1.

4. Informant says that subsequent to the above mentioned lease, both families benefited from the property and received rent therefrom form year to year, as can be seen by attached receipts marked I/2.

5. Informant says that it was never informed that the Civil Law Court conducted a foreclosure proceeding of its jointly held property in November 2011, based upon a questionable arrangement with the bank that involved Cora E. Taylor's alleged execution of a mortgaged deed to the Co-respondent Bank for the mortgaged property, in which, the intestate estate of Julia R. Taylor is a co-owner.

6. Informant says that it was never made a party to this case; as such, no decision or judgment rendered by the trial court should affect its property interest; especially so, where a close review of the mortgaged deed allegedly executed by Cora E. Taylor clearly indicates that she signed same as administratrix of the intestate estate of the late Robert H. Taylor, her father, and not her grandfather, Robert G. Taylor who willed the properties to Julia R. Taylor and Cora E. Taylor. Copy of the deed to the property is hereto attached marked I/3.

7. Informant respectfully requests court to closely observe that the deed to the property is in the name of the grandfather of the informant; moreover, the lease agreement to the property is signed by Robert H. Taylor as attorney-in-fact for Cora E. Taylor. By what basis did the co-respondent bank effectuate a loan for US$250,000.00 to Cora E. Taylor as administrator of the intestate estate of her late father Robert H. Taylor, who, prior to this transaction, had served as her attorney-in-fact for the execution of the lease to Saleebys of the very property the co-respondents alleged to be owned by Cora Taylor, singly, as administrator of the intestate estate of Robert H. Taylor, that has been illegally ordered auctioned.

8. Informant says and strenuously contends that there existed a difference between the names appearing on the letter of administration, and that on the deed to the property. However, the co-respondent negligently ignored this cardinal difference, and instituted foreclosure action, and obtained a judgment, that they are attempting to enforce against the wrong party, who was never summoned, or brought under the jurisdiction of court, for which, prohibition will lie. (*Boye v. Nelson,* 27 LLR 174 (1978).

9. Informant solemnly affirms that Robert H. Taylor does not own or possess the property that the Civil Law Court is foreclosing; evident by the title deed, the property was purchased by Robert J. Taylor in 1949, and upon his death, transferred title thereto to his granddaughters, Julia R. Taylor and Cora E. Taylor. Therefore, informant, not being a party to this entire transaction, and since the mortgaged deed is concerning a very different property which the court is erroneously attempting to enforce against its property, prohibition will lie to undo what has been illegally done. See copy of the writ of execution marked I/4.

10. Informant says that being petitioner in the proceedings in the Chambers wherein its property is being auctioned, even though it was not party to the transaction with the co-respondent bank, the learned Chambers Justice has ignored sacrosanct constitutional safe guards vouchsafed unto the people of Liberia, and which he took an oath to uphold, protect, and defend, by dismissing its petition. Informant says that the overruling and dismissal of its petition by the learned Chambers Justice is tantamount to permitting its

property to be sold by the co-respondents when it was never summoned, or brought under the jurisdiction of any court; thereby, violating its constitutional right to due process. Moreover, the act of the learned Justice is clear of the discretionary powers vested in him to grant remedial writs.

11. Informant strenuously contends that applying constitutional principles of due process and respect for property rights, to the facts of this case, coupled with the grievous error of the bank's lawyers to have advised their client to effect a loan to a person claiming authority for an estate (Robert H. Taylor) that was different from the deed (Robert J. Taylor) offered as a security for the mortgage, it is obvious that the learned Chambers Justice committed a grievous abuse of the discretion lodged in the Office which he occupies by ordering the trial court to resume jurisdiction and vaguely "proceed in accordance with law." For such abuse of his sacred oath which if not corrected by the bench en banc, irreparable damage would be done to the informant.

12.Informant says and submits further to count eleven (11) that especially is the abuse self-evident where during the conference, ordered by the Justice the co-respondent's lawyer did not deny the allegation but proceeded to challenge the capacity of the petitioner/informant. What is not denied is deemed admitted. Yet, the learned Chambers Justice turned a blind eye to the respondent's admission that the deed to the property upon which a judgment was being enforced bears a name (Robert J. Taylor) different from the administrator of the intestate estate of Robert H. Taylor.

13.Informant say that this Court in interpreting section 2.2 of New Judiciary Law opined that whenever a Justice in Chambers abuses the discretionary powers to grant remedial writs, such abuse will constitute grounds for review by the full bench. See, In Re: Interpretation of Section 2.2 of the New Judiciary Law, March term, 2004.

Wherefore and in view of the foregoing, informant prays Your Honors to review the herein above mentioned acts of the Justice in Chamber, which if allowed to stand will manifestly injure the informant and deprive them of their property, without any hearing, contrary to constitutional provisions, and to grant a stay of all proceedings, pending a review by the Supreme Court *en banc,* and grant unto informant each and every relief deemed just, legal and equitable."

This above bill of information was filed on April 20, 2012, and endorsed by the former Chief Justice Johnnie N. Lewis who requested the Clerk of Court to issue the writ. We note that this bill of information was filed prior to the Supreme Court's Opinion, in the case, *Jawary v. His Honor Kabineh M. Janeh,* Supreme Court Opinion, October Term, A.D. 2012, in which this

Court held that a "bill of information although not ordinarily permitted where the grounds specified by the Rules of this Court are not shown, was allowed under the exceptions to the rule allowing a complaint to be filed against an action of a Chambers Justice, who without issuance of the alternative writ orders an action taken, and in such case, this Court would only entertain the bill of information when approved by not less than two Justices of the Court. In this case, the writ was issued in accordance to the rule in vogue, that the approval of the Chief Justice or an Associate Justice is not required prior to the filing thereof (See Revised Rules of the Supreme Court IV- Part 12(c)), and the general practice that the Chief Justice was the one that instructed the Clerk for the issuance of a writ in a bill of information filed.

The Clerk of the Supreme Court, based on Chief Justice Lewis' order, sent down to the lower court a mandate placing a stay on the foreclosure sale of the mortgaged property and requiring that the respondents file their returns to the bill of information on the date specified in the Court's order. The co-respondent bank, IBBL, upon receipt of the writ, filed its returns to the bill of information. It reads:

> "The within named respondent denies the legal and factual sufficiency of the bill of information, and most respectfully requests Your Honors to dismiss and overrule the said bill of information, and for reasons, respondent showeth as follows to wit:
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> 1. Because as to the entire bill of information, that is to say, from paragraphs one (1) through thirteen (13) thereof, respondent says under the law controlling in this jurisdiction, a bill of information cannot lie to review a Chambers Justice's refusal to grant a petition for remedial writs. "The right of a Justice in Chambers to grant or not to grant a petition for remedial writ is a discretionary exercise of his authority, and that such authority cannot be questioned. However, where the Chambers Justice denies the granting of a remedial writ after a full hearing before all the parties concerned, such decision is appealable to the full Bench." *Saab et al. v. Harb*, 29 LLR 113 (1981); *Kpadeh v. RL et al.,* 22 LLR 121 (1973).
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> 2. Further to paragraph one (1) above, and still traversing the entire bill of information, respondent says the only other exception to the law contained in paragraph one (1) above is that "when a Chambers Justice exercises his discretion not to grant a citation of the alternative writ, he cannot go any further in his instructions to the trial Judge other than to resume jurisdiction and proceed with

the case along the path the trial Judge had chosen." Opinion of the Honorable Supreme Court, March 2005, based on an interpretation of §2.2 of the new judiciary law; In RE: *Ibrahim et al. v. Paye et al.,* March A. D. 2006 Opinion of the Honorable Supreme Court.

3. Still further to the entire bill of information, respondent says that the informant has made several unsupported factual conclusions, which, if permitted to stand will force this Honorable Supreme Court to take evidence, something which is a legal impossibility, except in the few cases over which the Supreme Court exercises original jurisdiction as per Article 66 of the Constitution of Liberia. For instance, the bill of information alleged, among others, that one Winston Browne is the administrator of the purported intestate estate of Julia R. Taylor. This factual allegation of informant needs evidentiary support, probably in the form of a letter of administration, but this Honorable Court cannot take evidence.

4. Further to paragraph three (3) above, respondent says that in paragraph six of the bill of information, informant alleged that the property, subject of the bill of information, was willed to Julia R. Taylor by her grandfather, Robert J. Taylor. Again, this factual conclusion needs evidentiary support, which evidentiary support cannot be legally solicited by this Honorable Court. At the minimum, a copy of the will or more precisely, an Executor deed will be appropriate.

5. The averments contained in paragraph ten (10) of the bill of information are denied. Respondent clarifies that the Justice presiding in Chambers, His Honor Kabineh M. Ja'neh, did not dismiss the informant's petition for the writ of prohibition as erroneously alleged. On the contrary, the Justice presiding in Chambers, His Honor Kabineh M. Ja'neh, properly exercising his discretion, refused to grant the petition or order the issuance of the alternative writ of prohibition, an act which is not reviewable by, nor appealable to this Court, except in a very limited situation, which is not present. Respondent submits that dismissal of a petition and refusal to grant a petition without hearing, as in this case, are separate and distinct. Respondent says dismissal of a petition ought to be preceded by a regular hearing, whereas refusal to grant a petition is not necessarily preceded by a formal hearing. Overall, the fact that the informant couldn't appeal clearly suggests that there was no hearing.

6. Further to paragraph five (5) above, respondent says if informant believes that it was never summoned, and as such was never a party in the underlying foreclosure proceeding in the court below, then, the resulting judgment is probably void as to informant. In such a case, the proper legal remedy available to informant is by way of a motion for relief from judgment, especially so since no manifest effort was ever made to enforce the judgment against the informant.

7. Like the entire bill of information, respondent specifically denies the averment contained in paragraph ten (10) thereof, and submits that the Justice in Chambers did not abuse his discretion to refuse to grant informant's petition or the writ therein prayed for. Respondent further submits that the opinion of this Court, IN RE: The Interpretation of §2.2 of the New Judiciary law is completely inapplicable in this case. Had the Justice refused to grant the writ, and in his instruction to the Judge below, ordered an act different from how the Judge was proceeding before informant's petition for prohibition, then in such a case the Justice's decision would be a proper case for review by the Honorable Supreme Court upon bill of information.

8. Respondent says the intent of this bill of information filed by informant's Counsel, is to simply undermine the administration of justice which is not only unethical of a Counsellor of this Bar, but contemptuous of this Honorable Court. Respondent therefore urges Your Honors to hold Counsellor Samuel R. Clarke to show cause why he should not be held in contempt of this Honorable Court.

9. Respondent denies all and singular, allegations of both law and facts contained in the bill of information and not made a subject of specific traverse in this respondent's returns.

WHEREFORE, and in view of the foregoing, respondent most respectfully prays Your Honors to overrule and dismiss the bill of information, cite informant's Counsel, Counsellor Samuel R. Clarke, to appear and show cause why he should not be held in contempt of this Honorable Court for his deliberate attempt to unnecessarily delay the administration of justice; and rule all costs of this proceeding against the informant; granting unto co-respondent all and any further relief deemed by Your Honors just, proper equitable and legal as in keeping with law."

The informant in turn filed the following reply:

"And now comes informant disputing and denying the legal efficacy of the co-respondent's returns for the following legal reasons, to wit:

1. That as to the entire Respondent's Returns, same is a fit subject to be overruled, dismissed, and stricken as a matter of law in that Mrs. Ellen Hall Dixon who allegedly verified the affidavit does not hold executive appointment to function as a Justice of the Peace in Liberia. Thus, for improper verification, the entire returns is dismissible. See 1LCLR 9.4 (5) page 108. Also see Article 55 1986 Constitution.

2. Informant says as to count one of the legally defective returns reiterates counts ten (10) and eleven (11) of the information and says that the exercise of discretion by the Justice in Chambers is to see what would be just according to the laws in the premises; discretion bound by the rules and principles of law. It is not indulgence in judicial whims, not arbitrary, capricious or

unrestrained, but bounded by the law. See Black's Law Dictionary fourth edition page 553. That is precisely the rationale for this court's interpretation of section 2.2 of the New Judiciary Law during its March term 2005.

3. Informant says further to count two (2) above that it was for precisely for this reason that the National Legislature recognized that any judge may from time to time be tempted to be arbitrary, capricious or whimsical. For this reason, the Legislature enacted section 2.2 of the New Judiciary Law, which in unambiguous terms provides that the right of appeal from any decision of the Justice in Chambers ..." including refusal to issue writs..." would lie to the full bench. This Honorable court in interpretation of the provisions of this law went a step further, and set parameters within which to exercise discretion. Moreover, the case interpreted in the above case concerns a matter in which the parties were the same parties in the court below and slightly different from this case, in that the informant/petitioner was not party to the case in the court below; the informant was never summoned, (a fact admitted by the co-respondent), neither did it participate in the trial of the case in the court below. Could the learned Chambers Justice exercise his "discretion" in such a manner that would result into the informant's property being auctioned? Did his failure to act mean that the constitutional rights of the informant never to be deprived of life, liberty, or property, except as the outcome of a hearing consistent with due process, was violated? Therefore, in our opinion the failure to act of the Justice, would have resulted into the carrying out of the auction as scheduled and further fuel the unfair and unwarranted negative impression or perception of our judicial processes.

4. Informant specifically as to count two of the returns says that this Honorable court has consistently decided cases on a case by case basis, since in fact and indeed, no two cases present identical facts or circumstances. In the opinion cited, the principle of law laid down with respect to curbing judicial excesses appear to us to apply definitively to cases wherein the same parties in the remedial proceedings were the same parties before the court below. However, in the instant case, the petitioner/informant was never summoned, cited, or in any way brought under the jurisdiction of court. Moreover, a motion for relief from judgment would not operate as a STAY to enforcement of the void judgment against them. Therefore, that was the reason that immediately upon the receipt of the Chambers Justice's mandate, the trial judge immediately assigned and denied the motion for relief from judgment, using the Supreme Court's mandate as a rationale and setting the stage for the sale of the informant's property. Had it not been for the timely act of this Court, the property would have by now been sold without the informant being accorded its constitutional right to due process. See 1LCLR 41.7 (4) pp 213.

5. Informant denies count three (3) as untrue, since annexed to the prohibition proceedings is a copy of the letters of administration of the informant which this Honorable court is urged to take judicial notice of and which informant pleads again as IR/1.
6. Informant says as to count four (4) requests Court to deny and overrule same since the court can take judicial notice of historical facts that are so well known as not to constitute any dispute, specifically, the occurrence of the civil war in our country. However, court is requested to also note the annexed lease agreement and rental receipts executed between the lessee and lessors concerning the identical property which is sought to be auctioned by the co-respondent, to satisfy a loan that the informant knew absolutely nothing about.
7. Informant traversing count five (5) says that this Honorable Court in an effort to curtail any abuse of the discretionary powers vested in the Chambers Justice laid down certain basic rules, which are subject to evolve as more cases present themselves. The beauty of the law is it dynamism; and, since this case is of first instance, the Chief Justice, as the administrative head of the judiciary, acted properly and wisely to save this institution from negative public sentiment.
8. Informant says as to count six (6) that inherent in said count is a deceptive admission that:

    a. Co-respondent's counsel miserably failed to exercise due diligence when reviewing of documents for the loan, subject of the foreclosure proceedings, it ignored the crystal clear fact that the deed to the property (Robert J. Taylor) was different from the intestate estate represented by Cora E. Taylor (Robert H. Taylor)

    b. Having improperly handled this matter at its inception, which resulted into the bank paying out its funds erroneously, and, in an attempt to apparently cover-up their conduct which resulted into substantial losses to its client, it then embarked upon the path of forcing this matter through our courts;

    c. Informant says that the proper remedy for the co-respondent to take that would have saved our court system from the negative public sentiment associated with this sordid transaction was simply to proceed by garnishment; this, the learned counsels failed to do.

    d. Informant says that it is deceptive to say the least for co-respondent to assert that "no manifest effort was made to enforce the judgment against it." when the truth of the matter is that, but for the timely action of this Honorable Court, the auction of the property, preceded by newspapers publication, was imminent. Did respondents expect the informant to fold its hands and sit supinely whilst their property was auctioned for a loan which it knew absolutely nothing about? See copy of the writ of execution marked IR/3.

e. Because, as respondent averred, the judgment is admittedly void as to informant, that is the reason why, in our opinion, the Justice in Chambers erred when he allegedly exercised his discretion not to grant the writ and allowed the respondents to proceed with their auction of the informants property, contrary to constitutional safe guards contained in Article 20 (a), 1986 Constitution of Liberia.

9. Informant says count seven (7) of the legally defective returns reaffirms counts 10, 11, and 12, of its information in traversal of said count.

10. Informant says that as to count eight (8), if any lawyer should be held in contempt of the Honorable Supreme Court, it is the respondent's counsels, Counsellors Stephen B. Dunbar and Jerome Korkoya, who being under oath, knowingly instituted court proceedings based on faulty instruments, that, but for the swift act of the Chief Justice, would have resulted in the sale of the informant's property. The result of such sharp practice by these two lawyers, if left unchecked, probably would have exposed our entire judiciary and the administration of justice in this country to public ridicule. Therefore, if for possessing the legal fortitude and courage to present the facts of this sordid matter to the full bench, is construed "undermining the administration of justice," then the definition of as justice in the minds of these lawyers is incompatible with, and inconsistent with our constitutional and statutory laws of Liberia. As such, it is these two lawyers who have conducted themselves in a most unprofessional manner, first to their client, and to the courts; as a lawyer duty is to be candid and fair with the facts. (See Rule 22 of the Rules of Moral and Ethical Conduct of Lawyer)."

11. Informant reaffirms counts three (3) through twelve (12) of its information, which throughout the returns, remain uncontroverted by a single specie of documentary or other evidence annexed thereto; what is not denied, is deemed admitted. See. 1LCLR 9.8 (3) page 110; 1 LCLR 25.8 page 200.

12. Informant denies all and singular the allegations of fact and law contained in the returns, not specifically traversed.

Wherefore and in view of the admissions implicitly contained in the returns, informants pray the court to overrule the returns, grant the bill of information, and attach these two lawyers in contempt for knowingly instituting proceedings in our courts on less than candid instruments, and to grant unto informant every relief deemed just, legal and equitable."

We gather from the bill of information and other pleadings filed by the informant/petitioner before this Court that informant was apprehensive, and urgently willed that the Court grants it a reprieve by preventing the mortgaged property in which it has interest as co-owner from being sold. The informant alleges that the transaction which led to the property being mortgaged and the lower court's subsequent foreclosure proceeding and attempt at sale of the property was based on misrepresentation and fraud perpetrated by the co-owner of the property, Cora E. Taylor, when she obtained from the probate court a decree of mortgage unbeknown to the informant, falsely stating that the property she sought to mortgage was part of her father's intestate estate, and subsequently, the Co-respondent bank institution of a foreclosure proceeding on the property which action the informant had no prior knowledge of and did not participate when the hearing was held.

The informant in its pleadings alleged that the disputed property was originally that of the late Robert J. Taylor; that the late Robert J. Taylor willed the property in fee simple to his granddaughters, informant, Julia R. Taylor, and Cora E. Taylor, the guarantor of the loan from the co-respondent bank. Informant says that though Cora E. Taylor questioned the authority of the informant's administrator to file the petition before the Chambers Justice, in the conference before the Chambers Justice, she did not however deny that the informant had interest in the mortgaged property, and that the property was not part of her father's intestate estate as she represented to the Probate Court. Informant, in its bill of information, says that it is aggrieved that the Chambers Justice refused to issue the alternative writ despite the fact that Cora E. Taylor did not deny informant's interest in the property and the fact that the administrator of the informant did attach a copy of his Letters of Administration to the petition which was obtained from the Probate Court of Montserrado County authorizing him to serve as administrator of informant's intestate estate. The informant contends that though the Supreme Court has opined that the Chambers Justice has the discretion either to issue an alternative writ as prayed for by a party in a remedial proceeding or not, and his/her discretion is not to be questioned, however, the Chambers Justice's refusal to order the alternative writ of prohibition issued in this case was tantamount to permitting the informant's property sold and proceeds therefrom paid over to the co-respondent bank for a loan which was based on a misrepresentation made to the Probate Court by the co-owner of the property without the informant's knowledge and also with the informant not having been summoned and brought under the jurisdiction of the lower court, during the foreclosure proceedings. The Chambers Justice by permitting the property to be auctioned, informant says, ignored the sacred constitutional safeguards of Article 20(a), and by this, committed a grievous abuse of his discretion, especially where during the conference the deed for the mortgaged property was shown to be in the name of Robert J. Taylor, the mortgagor's grandfather and not Robert H. Taylor, her father.

The informant says that it acknowledges the settled rule by this Court that the full bench cannot question the discretion of the Justice in Chambers refusal to issue the alternative writ prayed for, that in *Brown et al v. R.L.* 22 LLR 121, 123 (1973), and *Saah et al. v. Harb,* 29 LLR 113, 116 (1981), the Supreme Court held that it is the right of a Justice in Chambers to grant or not to grant the alternative writ in a petition for remedial writs and that this discretionary authority of the Chambers Justice cannot be questioned or appealed from unless where the Chambers Justice after the granting of the alternative writ denies the granting of the preemptory writ after a full hearing before all the parties concerned, and in which case such decision is appealable to the full Bench. The informant, however, refers to the Supreme Court's ruling making an exception to the non-appeal from a Chambers Justice's refusal to issue the alternative writ in a remedial process. This exception, the informant says, to be filed in the form of a bill of information before the full bench, means that the settled rule that no appeal can be taken from the refusal of a Justice in Chambers to order the issuance of an alternative writ is subject to evolve as more cases present themselves.

Opinions of the Supreme Court in the interpretation of Section 2.2 of the Judiciary Law dealt with parties who were the same parties in the court below, or in the case of first instance, it was the petitioner seeking a writ against a government institution. In the instant case, informant argues that it was not a party to the case in the court below, was never summoned nor participated in the case in the court below, and in which case the informant asks whether the Chambers Justice could exercise his discretion in such a manner that would result in the informant's property being auctioned without granting the informant a hearing under our cardinal constitutional principle of due process. The beauty of the law, the informant continues, is dynamism; and since this case is of first instance, the Chief Justice acted properly and wisely when he issued the writ and stay to conserve the constitutional right of the informant never to be deprived of life, liberty or property except as the outcome of a hearing consistent with due process of law.

The informant is therefore requesting this Court to place this matter under the exception to the general rule in order to allow the informant whose property is set to be sold by a court below based on an alleged misrepresentation and fraud perpetrated by Cora E. Taylor and of which proceedings the informant had no knowledge to have its matter heard by the full bench after the Chambers Justice's refusal to issue the alternative writ of prohibition prayed for.

A review of Supreme Court cases dealing with exception to the general rule of a non-appeal from the Justice in Chambers' discretion not to issue an alternative writ, centers around the issue of a Justice in Chambers travesty of justice occasioned by the Chambers Justice abusing his discretion, and such review cannot wait until the main case is brought before the full bench on regular appeal. Accordingly, the Supreme Court Rule IV, part 8, page 71 was expanded to allow for filing a bill of information before the full bench when a Justice presiding in Chambers is accused of exercising his discretion in refusing to order the issuance of a citation or an alternative writ, but yet gives a mandate or order to the trial court to take specific action(s) that may violate the right of a party. *In Re: The Effect of the New*

Judiciary Law and Article 20(b) of the 1986 Constitution As They Relate to Appeal After Refusal of the Chambers Justice to Issue a Remedial Writ, March Term A.D. 2005; Jawary v. His Honor Kabineh M. Janeh, Supreme Court Opinion October, Term, A.D. 2012. The signatories of two Justices is required in such case.

In the case before us, the Justice in Chambers, in his discretion, did not see it fit to issue the alternative write, determining that the informant had adequate remedy at law, and therefore sent a mandate to the court below ordering the stay previously placed lifted and the co-respondent judge ordered to proceed with matter in keeping with law.

We do not find the Chambers Justice's refusal to issue the alternative writ and his instructions to the clerk to send a mandate to the lower court to proceed in keeping with law to be an abuse of his discretion, and like the co-respondent bank stated in its returns to the bill of information filed before this Court, if the informant was never summoned, and as such was never a party in the underlying foreclosure proceedings in the court below, then, the resulting judgment is void as to informant, and in such a case, the proper legal remedy available to informant is by filing an application to the lower court for a motion for relief from judgment. Further, the co-respondent bank states in its returns that the informant has made several unsupported factual conclusions, which, if permitted to stand would force the Supreme Court to take evidence, something which is a legal impossibility, except in the few cases over which the Supreme Court exercises original jurisdiction as per Article 66 of the Constitution of Liberia. For instance, the co-respondent bank challenges the capacity of Winston Browne as the administrator of the intestate estate of Julia Taylor. This factual allegation by the informant, the co-respondent bank says needs evidentiary support. The co-respondent bank also states that the informant had alleged that the property, subject of the bill of information, was willed to Julia R. Taylor along with Cora E. Taylor by their grandfather, Robert J. Taylor. Again, this factual conclusion needs evidentiary support, which evidentiary support cannot be legally solicited by this Honorable Court; at the minimum, a copy of the Will or more precisely, an executor deed would be appropriate.

This Court, in the case *Management of the Forestry Development Authority (FDA) v. Walters et al.*, 34 LLR 777, 783 (1988) held, "In this jurisdiction, it is evidence alone which enables the court, tribunal or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence."

We see in the records a letter from Mrs. Eleanor Taylor-Cooper who alleges that she is the sole executrix of the [testate] estate of the late Robert J. Taylor, testator of the disputed property. The letter reads:

" Mamba Point
Monrovia, Liberia
March 26, 2012

Mr. Henry Saamoi
Acting CEO/
Mr. Thomas S. Jeffery, III
International Bank (Liberia) Limited
Monrovia, Liberia

Dear Mr. Henry Saamoi,

On March 23, 2012, I noticed in the Daily Observer a notice of sale of a piece of property in the foreclosure case involving the International Bank and the Intestate estate of the late Robert H. Taylor. For your information, the property in question is Lot #13A Bushrod Island. The property was owned by my late father Robert J. Taylor. I, Eleanor Taylor Cooper, write to inform you, as the sole executrix of the Estate of the late Robert J. Taylor, that Lot # 13A Bushrod Island property is not part or parcel of the Estate of the late Robert H. Taylor. The deed for the said property is in the name of Robert J. Taylor, my father and not Robert H. Taylor, my brother. According to the will of the late Robert J. Taylor, this property belongs to two of my sisters, Martha Taylor and the heirs of Julia Taylor, and my niece, Cora Taylor. My sisters and I, the sole executrix of the estate, knew nothing about this transaction and we never gave any authority to anyone, including our niece Cora Taylor, to mortgage or otherwise use said property as security.

In view of the above, I have made the necessary arrangements for legal representation to secure the interest of my sister and their heirs. I have also been advised that no court can have any authority to sell our estate property without due process of law.

Please see attached the newspaper clipping mentioned above.

Kind regards.

Sincerely,

[signed]
Eleanor Taylor-Cooper

Cc: His Honour Emmanuel M. Kollie
Circuit Judge
Cllr. Bill Dunbar"

What we gather from this letter from Mrs. Cooper is a confirmation that the property in dispute was owned and willed by her father, Robert J. Taylor to two of his daughters Martha Taylor, and Julia R. Taylor (informant), and his granddaughter, Cora E. Taylor. The overwhelming evidence gathered from the records is that the property was that of Robert J. Taylor and not Robert H. Taylor. Also, as per Mrs. Eleanor Taylor-Cooper's letter, the property was willed not only to Julia R. Taylor and Cora E. Taylor as the administrator of the informant states in the bill of information, but also to Martha Taylor, another daughter of the decedent, Robert J. Taylor. Although the co-respondent bank has questioned Winston Browne's capacity to represent Julia R. Taylor's intestate estate, we see in the file letters of administration granted to Winston Browne by the Probate Court of Montserrado County to administer the intestate estate of Julia R. Taylor.

Again we see in the records of the court's file a bill of information filed before the lower court by the Monoprix Supermarket, Inc. who alleged that it was the assignee of the mortgaged property, by virtue of an agreement of lease made and entered into on the 11th day of March A.D. 1986, by and between Julia R. Taylor and Cora E. Taylor who was represented by and through her father and Attorney-in-Fact, Robert H. Taylor, whose daughter is now claiming the property as part of Robert H. Taylor intestate

estate. Monoprix reiterated that the property sought to be exposed to sale by public auction on the 30th day of March, A.D. 2012, was not the property of Robert H. Taylor but rather Robert J. Taylor, and Cora Taylor could not have mortgaged the leasehold property without notice and/or prior knowledge to Monoprix.

There are overwhelming allegations that the mortgaged property sought to be auctioned was that of Robert J. Taylor and not of Robert H. Taylor, Cora E. Taylor's father. However, like the co-respondent bank stated in its returns, copy of the Will was not proffered, or yet still, a copy of an executor deed. For this Court to make a decision firmly assigning the mortgaged property to the right parties and determining whether misrepresentation and fraud was perpetrated by Cora E. Taylor in mortgaging the property, it would require the establishment of evidence in the court below.

To question the discretion of the Chambers Justice and allow the bill of information will be outside the settled law, particularly when the Chambers Justice having had the conference and determined that the petitioner had adequate remedy at law, did not go beyond ordering the stay order that he had imposed lifted, and that the co-respondent judge proceed with the matter in keeping with law. Order by a Chambers Justice who refuses to issue an alternative writ, instructing the court below to proceed in accordance with law is simply requiring the court to proceed with the matter along the legal path of justice, equity and fairness.

Our Revised Code, Civil Procedure Law 1:41.7 to which the respondent refers provides for relief from judgments as follows:

> "*1. Common law writs to secure relief from judgment abolished.* Writs of *coram nobis, coram vobis, audita querela,* and bills of review and bills in the nature of a bill of review are abolished for use in civil proceedings, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this section or by an independent action.
>
> *2. Grounds.* On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment for the following reasons:

a) Mistake, inadvertence, surprise, or excusable neglect;

b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;

c) Fraud (whether intrinsic or extrinsic), misinterpretation, or other misconduct of an adverse party;

d) Voidness of the judgment; or

e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or in-equitableness in allowing prospective application to the judgment..."

The informant however contends that certainly it cannot be expected to fold its hands and sit supinely whilst its property is being auctioned for a loan which it knew absolutely nothing about and while it pursued an independent action of a motion for relief from Judgment; and we do agree that an immediate action was necessary to stop the alleged fraudulent alienation of the informant's property. In the case *Ayad v. Dennis,* 23 LLR 165, 177-178 (1974), the Court held that any act which tends to deprive a person of his property or other rights without employing the required constitutional safeguards of due process is unconstitutional, and will be declared as such upon proper application to the courts. Moreover, the Supreme Court has held that where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of the nonparty with title to the property in question. *Jantzen et al. v. Modern Housing Construction Company,* 14 LLR 508 (1961).

The informant is vehemently contesting that its property is being alienated without exercise of its due process rights which would have provided it an opportunity to establish the informant's rights in the mortgaged property and it is only but fair that it be allowed to file an independent action so as to accord it an opportunity to establish its allegations of fraud perpetrated by Cora Taylor.

As previously stated, the Justice in Chambers denied the issuance of the writ of prohibition prayed for by the informant, stating that he having had a scheduled conference and determined that the petitioner had adequate remedy at law, he was ordering the stay previously placed lifted and the co-respondent judge ordered to proceed with the matter in keeping with law. However, the subsequent order sent by the Justice in Chambers to the court below, lifting the stay on the sale of the mortgaged property based on a petition for a writ of prohibition filed by Cora E. Taylor, mandated the enforcement of the judgment without any further delay. This order based on the petition filed by Cora E. Taylor, instructing the lower court to proceed with enforcement of its judgment without delay, excluded further consideration of the lower court from entertaining an action from the informant in a bid to stay the sale execution. The informant says that based on the Chambers Justice subsequent order to the court below, the property was set to be immediately auctioned and it was out of desperation that it ran up to the full bench with a bill of information.

We agree that though the Chambers Justice did not issue a specific instruction to the court below in the case of the informant, sending only an instruction to the court below to proceed in accordance with law, his subsequent instruction to the lower court based on the petition filed before him by Cora E. Taylor, ordering that the court below enforce the judgment ordered stayed on March 29, 2012, **without any further delay,** left the lower court with no option of proceeding as it saw fit.

The Court takes note of the constitutional implication of alienation of property without due process. The pleadings in this case present material allegations that the mortgaging of the subject property did not form part of the Robert H. Taylor intestate estate as alleged by Cora Taylor and that the informant who had interest in said property did not participate in the proceeding below. The Court is even appalled that a review of the file of the Probate Court shows that Judge J. Vinton Holder of the Probate Court for Montserrado County issued Letters of Administration to Cora E. Taylor, the mortgagor, on November 14, 2005, to administer her father's intestate estate without a hearing and a report made to close the estate as mandated by the Decedent Estates Law; he further issued a Decree of Mortgage for an intestate estate a month later, that is, on December 21, 2005, again with no hearing held on the petition for issuance of a decree of mortgage which would have ascertain whether the petition was in fact truthful and whether there existed other heirs to the property who had given their consent to the mortgaging of the property. A proper hearing on the petition would have established whether Cora E. Taylor mortgaging of the property was fraudulent and was without the knowledge of those with interest in the property.

There are several Opinions of the Supreme Court where this Court has stayed the enforcement of lower courts judgment which affected the petitioners interest in property rights and upon which allegation of fraud was alleged, or where the petitioner was not summoned or participated in the judgment proceedings in the court below; and this Court opined that where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of the nonparty with title to the property in question. These Opinions were based primarily on the provision of Article 20(a) of our Constitution which states that no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law. A*shkar v. Johnson et. al.*, 33 LLR 74, 82 (1985); *Jantzen et al. v. Modern Housing Construction Company*, 14 LLR 508 (1961); *Davies Johnson v. Alpha et al.*, 13 LLR 573 (1960); (*Ashkar v. Badio, Johnson et al.,* 32 LLR, 294, 297 (2001); *Koroma and Jallah v. Parker Paint Company, Inc,* 23 LLR, 133, 139 (1974).

We do agree that under the circumstances a hearing is necessary to ascertain the informant's allegation. The question for determination is not whether there exist other legal remedies, but whether in view of the precise circumstances in which the petitioner finds itself, the other remedy is adequate in the particular instance. As this Court has stated, the records tend to substantiate that the disputed property is not part and parcel of the intestate estate of Robert H. Taylor, and that fraud might have been perpetrated by Cora E. Taylor in her actions which led to the putting up for sale of the property in which the informant has interest. In such case, we hold that the stay order of the execution and sale of the mortgaged property shall remain in force and effect to give the informant an opportunity to pursue a course of action to establish its right in the property consistent with Article 20(a) of the Liberian Constitution (1986) which guarantees the preservation of property right. The trial court is mandated to give preference to the hearing and determination of the authenticity of the informant's allegations.

The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction of the case and give effect to this judgement. Cost will abide final determination of the case.

WHEN THIS CASE WAS CALLED FOR HEARING, NO COUNSELLOR APPEARED FOR THE INFORMANT. COUNSELLOR STEPHEN B. DUNBAR, JR. OF THE DUNBAR & DUNBAR LAW OFFICES APPEARED FOR THE RESPONDENTS.