

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
OCTOBER TERM, A.D. 2020

PRESENT:	HIS HONOR	FRANCIS S. KORKPOR, SR.....	CHIEF JUSTICE
"	HER HONOR	JAMESETTA H. WOLOKOLIE.....	ASSOCIATE JUSTICE
"	HER HONOR	SIE-A-NYENE G. YUOH.....	ASSOCIATE JUSTICE
"	HIS HONOR	JOSEPH N. NAGBE.....	ASSOCIATE JUSTICE
"	HIS HONOR	YUSSIF D. KABA.....	ASSOCIATE JUSTICE

Reginald Goodridge et al. of the City of Monrovia, Montserrado County, Liberia.....INFORMANTS	)	
	)	
Versus	)	BILL OF INFORMATION
	)	

The Testate Estate of Joseph M. Togba, represented) by its Executrix and Executor Helen Juah Togba, John W. Togba, and Joseph N. Togba, III., all of the City of Monrovia, Liberia.....RESPONDENT	)
--	---

GROWING OUT OF THE CASE:

The Testate Estate of Joseph M. Togba, represented) by its Executrix & Executors, Helen Juah Togba, John W. Togba, and Joseph N. Togba, III., all of the City of Monrovia, Liberia.....MOVANT	)
--	---

Versus	)	MOTION TO DISMISS
--------	---	-------------------

Reginald Goodridge et al. of the City of Monrovia, Montserrado County, Liberia.....RESPONDENTS	)
---	---

GROWING OUT OF THE CASE:

Reginald Goodridge et al. of the City of Monrovia, Montserrado County, Liberia.....APPELLANTS	)
--	---

Versus	)	APPEAL
--------	---	--------

The Testate Estate of Joseph M. Togba, represented) by its Executrix and Executor Helen Juah Togba, John W. Togba, and Joseph N. Togba, III., all of the City of Monrovia, Liberia.....APPELLEE	)
--	---

GROWING OUT OF THE CASE:

The Testate Estate of Joseph M. Togba, represented) by its Executrix and Executors, Helen Juah Togba, John W. Togba, and Joseph N. Togba, III., all of the City of Monrovia, Liberia.....PLAINTIFF)	)
--	---

Versus	)	ACTION OF EJECTMENT
--------	---	---------------------

Reginald Goodridge et al. of the City of Monrovia, Montserrado County, Liberia.....DEFENDANTS	)
--	---

HEARD: November 3, 2020

DECIDED: March 3, 2021

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

The facts culled from the certified records in this case show that on March 28, 2019, a final judgment was handed down by our Colleague, His Honor Yussif D. Kaba, then presiding as the Resident Circuit Court Judge over the Civil Law Court, Sixth Judicial Circuit, Montserrado County in favor of the respondent/appellee, the Testate Estate of Joseph M. Togba, represented by and thru its Executrix, Helen Juah Togba and Executors, John W. Togba and Joseph N. Togba, III. The informants/appellants, Reginald Goodridge et al., excepted to the final judgment of the trial court and announced an appeal to this Court sitting in its October, Term 2020.

On October 1, 2019, the respondent/appellee filed a motion to dismiss the appeal contending that the informants/appellants did not fully comply with the requirements of perfecting an appeal in that the informants/appellants failed to serve and file their notice of completion of appeal within the time required by law. The motion was heard *pro et con* and granted, and the informants/appellants' appeal was dismissed, and the final judgment of the lower court affirmed and ordered enforced.

The minutes of this Court reveal that on October 30, 2019, when the motion to dismiss was called for hearing, Mr. Justice Yussif D. Kaba recused himself from the hearing and determination thereof for reason that he, while serving as the Resident Circuit Judge, Sixth Judicial Circuit, Montserrado County prior to his elevation to this Bench, had entered a final ruling in the case out of which the motion to dismiss appeal grew. The records show that even though Mr. Justice Kaba did not participate in the hearing and determination of the motion to dismiss the appeal, he inadvertently signed the Judgment in the motion to dismiss which was subsequently forwarded to the lower court for execution. The informants and the respondent acknowledge that the Judgment was mistakenly and by oversight signed by His Honor Yussif D. Kaba.

On September 18, 2020, the informants/appellants (Reginald Goodridge et al.) filed a seven - count bill of information before this Court contending basically that this Court's final Judgment dated September 4, 2020, was mistakenly and by oversight signed by His Honor Yussif D. Kaba who had served as a trial judge in the case in the court below, and whose final judgment was the subject of the appeal before the Full Bench of this Court. The informants/appellants also said that in perfecting their appeal at the lower court, the bill of exceptions and appeal bond were approved by His Honor Yussif D. Kaba, then presiding as a circuit judge at the Sixth Judicial Circuit Court, within the period provided for by law; that the problem arose when the respondents'/appellees' counsel refused to accept and receive

the appeal bond and notice of completion of appeal, which documents were presented to him. The informants/appellants therefore prayed this Court to grant their bill of information, set aside the Judgment of this Court entered on September 4, 2020, stay the enforcement and execution of the said Judgment, and have the case re-docketed for hearing anew.

On September 23, 2020, the respondent/appellee filed an eight - count resistance contending that it was a harmless error for His Honor Yussif D. Kaba to have signed the final Judgment, which act can be corrected without changing the Opinion of this Honorable Court. The respondent/appellee therefore requested this Court to have the bill of information denied and dismissed, order the correction of the Court's Judgment by permitting only the four Justices who heard the case to sign the Judgment, and to order the enforcement and execution of the said Judgment.

Having carefully perused the bill of information and the returns thereto, as well as the entire records in this case, the question we ask is – for inadvertently signing the Judgment in a case in which a Justice had recused himself, must this Court set aside the content of the said Judgment, stay the enforcement and execution thereof, and have the case re-docketed for a new hearing? We hold no!

As stated, Mr. Justice Kaka did not participate in the hearing and determination of the motion to dismiss the appeal, the case out of which this bill of information grows. He knew fully well that he had ruled in the matter while serving as a circuit judge before his elevation to the Supreme Court Bench; so, he recused himself when the matter came up before the Supreme, where he is now serving as an Associate Justice. The fact that Justice Kaba indeed recused himself is supported by the records and acknowledged by the informants and the respondent. It was therefore a sheer inadvertence that he signed the Judgment. It is the law in this jurisdiction that the court is the master of its own records, thus on its own initiative or, on the initiative of a third party, the court can correct its records. We have therefore corrected our record by setting aside the Judgment entered on September 4, 2020, which Judgment was inadvertently signed by Justice Kaba. The new Judgment which will soon be read by the Clerk of this Court is signed by only the four Justices who sat, heard and determined this case; Justice Kaba's name has been omitted.

The informants/appellants have brought to our attention in their bill of information that in perfecting their appeal at the lower court, the bill of exceptions and appeal bond were approved by His Honor Yussif D. Kaba, then presiding as a circuit judge at the Sixth Judicial Circuit Court, Montserrado County, within the period provided for by law; that the problem arose when the respondent's/appellee's counsel refused to accept and receive the appeal

bond and notice of completion of appeal, which documents were presented to him. The informants/appellants therefore prayed this Court to grant their bill of information, set aside the Judgment of this Court entered on September 4, 2020, stay the enforcement and execution of the said Judgment, and have the case re-docketed for hearing anew. On this point, we say that this very issue of the alleged refusal of the respondent's/appellee's counsel to accept and receive the appeal bond and notice of completion of appeal, was raised in the informants'/appellants' returns to the motion to dismiss appeal and this Court carefully considered the position of the informants'/appellants' and nonetheless entered a Judgment dismissing the said appeal. This means that the Court passed on the issue. Had the Court deemed that the issue raised by the informants/appellants was decisive and operated to allow judgment in their favor, this Court would have found for the informants/appellants. In our view, raising this issue in a bill of information and praying this Court to set aside its Judgment and re-docket the case for hearing is a clever maneuver by the informants/appellants to have this case heard again. This is not the office of a bill of information.

Now, if the informants'/appellants' counsel verily believed that this case ought to have been heard anew because there was an important point of law or fact that this Court overlooked, which, if had been considered would have caused the informants/appellants to win the case, he should have filed a petition for re-argument. Under Rule IX, *Part 1 of the Revised Rules of the Supreme Court*, for a good cause shown to this Court by petition, a re-argument of a cause may be once allowed, when some palpable substantial mistake is made by inadvertently overlooking some fact, or point of law. A petition for re-argument shall be presented within three days after rendition of the opinion in the case, except by special leave of the Court *en banc*. But as we have said, the remedy for this Court's failure to consider an important point of law or fact in a case does not lie in a bill of information.

Rule IV, Part 12 of the Revised Rules of the Supreme Court sets the grounds for a bill of information as follows:

- a) "A bill of information will lie to prevent a Judge or any Judicial Officer who attempts to execute the mandate of the Supreme Court in an improper manner from doing so".
- b) "A Bill of Information will also lie to prevent anyone whomsoever from interfering with the Judgment of the Supreme Court.
- c) "The Bill of Information shall be venued before the Court *en banc* and shall be filed with the Clerk of Court. The approval of the Chief Justice or an Associate Justice shall not be required prior to filing thereof.

d) "Once a Bill of Information shall have been filed, it shall be governed by the procedures outlined in these Rules and the Civil Procedure Law for handling of Petitions."

e) "Any counsellor who files a Bill of Information before this Court assigning reasons therefore other than reasons expressly prescribed by these Rules shall be penalized by the imposition of a fine, suspension or disbarment."

The Counsel for the informants/appellants has assigned none of the foregoing grounds prescribed by the Supreme Rules as the ground for the filing of this bill of information. He is therefore fined the amount of USD 200.00 to be paid into Government Revenue within 72 hours.

WHEREFORE AND IN VIEW of the foregoing, this Court has ordered the Clerk of this Court to omit the name of Justice Kaba and accordingly, his name, has been omitted from the Judgment of the case. The Judgment now reflects the names and signatures of only the four Justices who participated in the hearing and determination of the motion to dismiss appeal. The Counsel for the informants, for filing this bill of information and not stating therein reasons expressly prescribed Rule IV, Part 12 of the Revised Rules of the Supreme Court is hereby fined the amount of USD 200.00 to be paid in Government Revenue within 72 hours. The Clerk of this Court is ordered to send a mandate to the trial court from whence this matter emanated to resume jurisdiction over this case and enforce its Judgment. AND IT IS SO ORDERED.

Counsellor M. Wilkins Wright appeared for the informants. Counsellors G. Wiefueh Alfred Sayeh and J. Augustine Toe of the Law Offices of Sayeh and Sayeh, appeared for the respondent.

Information denied.