

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2020

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

Roomy Brothers double door store #16, Nohad Hage Mensah)
Real Estate, Paynesville City, Montserrado County, Republic of)
Liberia.....Appellant)

VERSUS)

APPEAL)

Madam Nohad Hage Mensah of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE :)

Roomy Brother double door store #16, represented by and thru)
Hassan Roomy of the City of Paynesville, Montserrado County,)
Liberia.....Petitioner)

VERSUS)

PETITION FOR A
WRIT OF
PROHIBITION)

His Honor Yamie Quiqui Gbeisay, Assigned Circuit Judge, Sixth)
Judicial Circuit Court, Montserrado County, sitting in its June)
Term A. D. 2019, His Honor James B. Cooper, Stipendiary)
Magistrate, Paynesville Magisterial Court, Paynesville City,)
Montserrado County, Liberia, and Madam Nohad Hage Mensah)
also of the same address.....Respondents)

GROWING OUT OF THE CASE:)

Roomy Brother double door store #16, represented by and thru)
Hassan Roomy of the City of Paynesville, Montserrado County,)
Liberia.....Petitioner)

versus)

SUMMARY
PROCEEDINGS)

His Honor James B. Cooper, Stipendiary Magistrate, Paynesville)
Magisterial Court, Paynesville City, Montserrado County,)
Liberia Respondent)

GROWING OUT OF THE CASE:)

Madam Nohad Hage Mensah of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Movant)

VERSUS)

MOTION FOR RELIEF
FROM JUDGMENT)

Roomy Brothers double door store #16, Nohad Hage Mensah)

Real Estate, Paynesville City, Montserrado County, Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Madam Nohad Hage Mensah of the City of Paynesville, Montserrado County, Republic of Liberia.....Movant)

VERSUS

Roomy Brothers double door store #16, Nohad Hage Mensah Real Estate, Paynesville City, Montserrado County, Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Madam Nohad Hage Mensah of the City of Paynesville, Montserrado County, Republic of Liberia.....Plaintiff)

Roomy Brother double door store #16, Nohad Hage Mensah Real Estate, Paynesville City, Montserrado County, Republic of Liberia.....Defendant)

) MOTION FOR
) JUDGMENT DURING
) TRIAL

) SUMMARY
) PROCEEDINGS TO
) RECOVER
) POSSESSION OF
) REAL PROPERTY

Heard: March 24, 2020

Decided: June 25, 2020

When this case was called for hearing, Counsellor Thompson Jargba appeared for the appellant. Counsellor David W. Woah appeared for the appellee.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case is on appeal before the Full Bench of the Honorable Supreme Court of Liberia from the ruling of the Chambers Justice, Mr. Justice Yussif D. Kaba, quashing the alternative writ of prohibition and denying the petition for the writ of prohibition. Justice Kaba denied the writ because he determined that the function of prohibition is not to correct errors allegedly committed by the trial judge as claimed by the petitioner, appellant herein.

The facts reveal that on Decembers 20, 2018, the appellee, Nohad Hage Mensah, filed with the Paynesville Magisterial Court an action of Summary Proceedings to Recover Possession of Real Property against the appellant, Roomy Brothers double door store #16, seeking to recover her property being held and occupied illegally by the appellant thus accruing rental arrears in the amount of Fifteen

Thousand United States (US\$15,000.00) Dollars. On February 4, 2019, the appellant appeared and presented to the Paynesville Magisterial court a lease agreement it entered with Oumou Sirleaf Hage on September 14, 2017, raising the issue of title. The appellant then moved the magistrate court to dismiss the action. On April 2, 2019, the magistrate court held that title was at issue and dismissed the case for want of jurisdiction.

On February 18, 2019, the appellee filed with the magisterial court a motion for relief from judgment on ground that it had discovered that the purported lease agreement appellant relied upon was entered with Oumou Sirleaf Hage subsequent to the Judgment of the Honorable Supreme Court of Liberia handed down on December 23, 2014, in which the Court mandated Judge Eva Mappy Morgan, Chief Judge of the Commercial Court, acting by special assignment in the Monthly and Probate Court for Montserrado County, to determine and separate properties of the Testate Estate of Milad R. Hage from properties of his children held in fee simple absolute, which determination was done on January 22, 2015. The motion was resisted by the appellant and argument held by the parties before Magistrate James B. Cooper, who granted the motion and relieved the appellee from the judgment of April 2, 2019 dismissing the action of summary proceedings to recover possession of real property. In a subsequent action, the appellee filed before the Paynesville Magisterial Court a motion for summary judgment. Again, the appellant resisted the motion contending principally that the magistrate court proceeded wrongly by allowing the appellee, after fifteen days had elapsed following the magistrate's ruling of April 2, 2019 to file the motion for summary judgment. The motion for summary judgment was granted in favor of the appellee.

The records show that following the rendition of the final ruling on the motion for summary judgment by the magistrate, the appellant failed and/or neglected to announce an appeal therefrom but rather chose to file before His Honor Yussif D. Kaba, then Resident Circuit Judge for the Sixth Judicial Circuit, Civil Law Court, Montserrado County, a motion for summary proceedings against the Magistrate James B. Cooper; that owing to the elevation of His Honor Yussif D. Kaba to the Honorable Supreme Court of Liberia as an Associate Justice, he did not hear the

summary proceedings motion. Whereupon on June 28, 2019, His Honor Yamie Quiqui Gbeisay, presiding by assignment over the Sixth Judicial Circuit, Montserrado County, assigned the motion and entertained argument from the counsels representing the parties and thereafter denied the motion for summary proceedings. Judge Gbeisay ordered Magistrate Cooper to enforce his ruling out of which the summary proceedings grew.

On July 1, 2019, the appellant, aggrieved by the ruling of Judge Gbeisay, filed before Mr. Justice Joseph N. Nagbe, then Chambers Justice, a six-count petition for a writ of prohibition outlining several alleged irregularities that travelled along with the proceedings in the courts below allegedly committed by Judge Gbeisay and Magistrate Cooper. To fully understand what transpired in the trial courts, we quote verbatim the appellant's petition for a writ of prohibition.

"Petitioner in the above entitled cause of action petitions this Honorable Court against the within named respondents praying this Honorable Court to restrain, prohibit and enjoin the respondents from enforcing and executing a judgment for reasons showeth, to wit:

1. That, on the 20th day of December A. D. 2018, a writ of summons was obtained by co-respondent Nohad Hage Mensah from the Paynesville Magisterial Court in an action of Summary Proceedings to Recover Possession of Real Property against the petitioner. Photocopy of the writ of summons is herewith attached, marked as exhibit "p/1" to form part of this petition.
2. That, on the 4th day of February, A. D. 2019, the case was called and an application was made for the dismissal of the case on ground that title was in issue since petition/defendant presented a valid lease agreement which was probated and registered in keeping with law, as such, the co-respondent magistrate sustained the application/motion and dismissed the case, but to which dismissal co-respondent, Nohad Hage Mensah, did not announce an appeal as evidenced of photocopies of the lease agreement and the court minutes reflecting the dismissal of the case are herewith attached, marked as exhibit "p/2" in bulk to form part of this petition.
3. Further above, petitioner says after the statutory period as provided by the statute within the jurisdiction of the magisterial court for the perfection of an appeal, the co-respondent Nohad Hage Mensah filed a motion for Relief from Judgment which was heard on April 2, 2019, and during the hearing thereof, the co-respondent magistrate sustained the motion and relieved the co-

respondent Nohad Hage Mensah from the final judgment and entertained on the same date an application for judgment during trial which was resisted but the co-respondent magistrate Cooper denied said resistance and sustained the submission for judgment during trial ordering the petitioner evicted which petitioner excepted and took advantage of the statute by the filing of a petition for summary proceedings against the co-respondent magistrate Cooper. Photocopy of the minutes are herewith attached, marked as exhibit "p/3" in bulk to form a part of this petition.

4. That, petitioner says the summary proceedings was heard and His Honor then presiding, now Justice Yussif D. Kaba, ordered the writ of summons issued against the co-respondent magistrate Cooper and further instructed him to file his Returns to the petitioner's complaint within ten days as of the date of service of the writ of summons before the court below but since then, up-to-date, the co-respondent magistrate is yet to file his Returns as instructed by the court as such, petitioner secured a Clerk's Certificate to that effect as can be seen from the herewith attached photo copies of the writ of summons and the Clerk's Certificate, marked as exhibit "p/4" in bulk to form part of this petition.
5. That, petitioner says on June 28, 2019, the hearing in the summary proceedings was heard by co-respondent Judge Yamie Quiqui Gbeisay who elected to ignore all of these cardinal issues of law and denied the petition for summary proceedings and, despite an exception was taken and an appeal announced, he denied the substance of the appeal and ordered the petitioner to be evicted which at on the part of the o-respondent Judge is a reversible error. Petitioner says because of the recording system he is yet to obtain copy of the minutes.
6. That, petitioner says this petition is filed in good faith and not for dilatory purposes.

WHEREFORE, AND IN VIEW OF THE FOREGOING, petitioner prays this Honorable Court to order the respondents to appear before this Honorable Court to show cause, if any, why petitioner's petition should not be granted and the alternative writ of prohibition issued, restraining, prohibiting and enjoining respondents; further order Your Honor that respondents herein named stay all proceedings pending the efficacy of this petition and, grant unto petitioner all other relief as the law directs."

Upon receipt of the petition, Mr. Justice Nagbe cited the parties to a conference; thereafter, issued the alternative writ of prohibition but did not hear the petition and the appellee's returns thereto to make a determination because he was out of Chambers.

During the October Term A.D. 2019 of the Supreme Court, Mr. Justice Yussif D. Kaba assumed the responsibilities as the Chambers Justice, entertained argument *pro et con* into the matter and subsequently, denied the petition for the writ of prohibition, quashed the alternative writ and ordered the trial courts to resume jurisdiction of this matter and proceed according to law. It is from this latest ruling of Mr. Justice Kaba, the appellant is seeking the intervention of the Full Bench of the Honorable Supreme Court on the strength of an appeal.

From the foregoing facts, the singular issue this Court is called upon to consider is: Whether or not given the facts and circumstances of this case, the writ of prohibition will lie? In other words what this Court is to determine is, assuming that the acts complained of by the appellants are indeed irregular acts committed at the trial levels where this case was had, is prohibition the appropriate remedial writ to address the said alleged irregularities?

But before discussing this issue, let us give a brief historical perspective of this matter for better understanding and at the same time pass on a few collateral issues. This case borders on the testate estate of the late Milard R. Hage which was decided by this Court during its October term A.D. 2013. In its Judgment, the Supreme Court ordered the Monthly & Probate Court for Montserrado County to resume jurisdiction over the case and proceed *inter alia* as follows:

g) Determine whether or not the lease agreement executed by and between Oumou Sirleaf-Hage and Milad R. Hage has expired in accordance with its terms and conditions, and in the event that said lease agreement is determined to have expired, return all properties covered by the lease agreement to Oumou Sirleaf-Hage.

h) Determine whether or not the property or properties covered by the lease agreement include properties owned by the children of Milad R. Hage and Oumou Sirleaf-Hage, and if so, render void the lease agreement by and between Oumou Sirleaf-Hage and Milad R. Hage insofar as it covers and relates to the properties owned by said children.

Because Probate Court Judge Vinton Holder did not proceed as directed in accordance with the Mandate of this Court, the Court appointed and mandated

Her Honor Eva Mappy Morgan, Chief Judge of the Commercial Court to preside by assignment over the Monthly and Probate Court for Montserrado County to give effect to its Judgment.

The instructions contained in the Court's judgment are clear and unambiguous to all intents and purposes especially in count (h); to determine whether or not the property or properties covered by the lease agreement include properties owned by the children of Milad R. Hage and Oumou Sirleaf-Hage, and if so, render void the lease agreement by and between Oumou Sirleaf-Hage and Milad R. Hage insofar as it covers and relates to the properties owned by said children. This instruction was executed on January 22, 2015 by Judge Morgan, directing that all tenants occupying the property of the children of Milad R. Hage pay rent obligations to the children themselves. Notwithstanding this decision, Oumou Sirleaf-Hage, two years after Judge Morgan had carried out the mandate of the Supreme Court, later entered a lease agreement with the appellant covering the property of the appellee in flagrant disregard of the Mandate of the Honorable Supreme Court.

Judge Morgan was succeeded by His Honor J. Boima Kontoe who was also mandated by this Court to preside over the Monthly & Probate Court by assignment in furtherance of the Supreme Court's Mandate in the Milad R. Hage case. The appellant contended that the February 27, 2018 order from Judge Kontoe, which placed Nohad Hage Mensah in possession of the property in question after it was demarcated, was illegal. That order reads:

"The tenants/occupants of the properties of Nohad Hage Mensah, Paynesville, Red-Light, Montserrado County, Liberia...by directive of His Honor J. Boima Kontoe, assigned Judge over the Testate Estate of Milad R. Hage, you are hereby ordered to make direct rental payment due the private real property of Mrs. Nohad Hage Mensah and not to Oumou Sirleaf Hage, as she has no dealing with the said property as per the orders of the Monthly and Probate Court for Montserrado County, dated December 15, 2017; hence, anyone failing to adhere to this order will have himself to blame as this court will proceed against you in keeping with law"

We disagree with the appellant's assertion and hold that the order from His Honor J. Boima Kontoe, presiding by assignment over the Monthly and Probate Court for Monsterrado County, was intended to give effect to the Honorable Supreme Court's decision. Guided by the records in this case, we are satisfied that the mandate of the Supreme Court of January 24, 2014 to Judge Eva Mappy Morgan and subsequently to Judge J. Boima Kontoe was executed, thereby returning the subject property, Roomy Brothers double door store #16, to the appellee the rightful owner.

The Court observes that Oumou Sirleaf-Hage entered the lease contract with the appellant in this case on September 14, 2017, in clear violation of the Supreme Court's Mandate of January 24, 2014; she was aware that the property had been demarcated by Judge Morgan and the tenants had been directed to pay rent to the rightful owners (the children). This means that it was only the appellee who could have entered lease agreement for her property, the double door store #16. Madam Oumou Sirleaf-Hage's action was quite disingenuous.

However, there is no information to form a belief that the appellant, the Roomy Brothers, had knowledge that Oumou Sirleaf-Hage who had all along leased the property in question to it did not have the authority to enter the lease agreement of September 14, 2017. Moreover, the fact that Judge J. Boima Kontoe's order of February 27, 2018, requiring all tenants to pay rent to the appellee was issued two months after the appellant's lease with Oumou Sirleaf-Hage supports the fact that the appellant was not aware that indeed Oumou Sirleaf-Hage was without authority to enter the lease. It can be concluded therefore that the appellant innocently acted in entering the lease agreement. In such a case, and in order to ensure equity and justice, the appellant whose intent was never shrouded in fraud should not be made to suffer. As a matter of fact, the records show and to further portray the appellant's good intent, it offered to pay to the appellee the amount of Fifteen Thousand United States (US\$15,000.00) Dollars representing the rent for the premises previously paid to Oumou Sirleaf-Hage.

Let us now address the lone issue – whether or not given the facts and circumstances in this case, prohibition will lie?

Prohibition is defined as "an extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a non-judicial officer or entity from exercising a power". Black's Law Dictionary, Ninth Edition.

Moreover, our statute also defines prohibition as "a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein". Civil Procedure Law, Rev. Code 1: 16.21(3).

The appellant contended that the trial court committed many irregularities, i.e., when it failed to properly rule that title was at issue in this case therefore that action of summary proceedings filed at the magistrate court by the appellee should not lie; and that the statutory period for taking an appeal in the magisterial court had lapsed, therefore the motion seeking relief from judgment filed by the appellee should not have been entertained. Again, we ask, assuming that the acts complained of by the appellants are indeed irregular acts committed at the trial levels where this case was held, is prohibition the appropriate remedial writ to address the said alleged irregularities? We answer in the negative.

The Supreme Court has held that: "prohibition cannot correct errors or irregularities committed in a trial where adequate and complete remedy lies in appeal, error or certiorari". *Henries et al v. Fahnbulleh et al*, 42 LLR 446 (2005). This Court has also held that: "a writ of prohibition to a court of first instance will be issued only where the court exceeds its jurisdiction or proceeded in a novel or unheard of manner. It will not be issued to merely correct a party's neglect to act in his own interest". *LAC et al v. Hage et al*, 38 LLR 259 (1995). It is therefore the holding of this Court that prohibition will not lie.

In our opinion, if the appellant were "affected" by wrong acts of the trial judge during the conduct of this case, it should have proceeded forthwith to apply for the appropriate remedial writ to the Supreme Court through certiorari. The Supreme Court has said time and again that: Court has said time and again that: "Certiorari concerns itself only with the records; it is to review the records and correct prejudicial errors of a trial court during the pendency of a case. Further, it is a writ issued from a superior court to an inferior court commanding the later to send its records for review to correct decisions of officials, boards and agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a trial court". *JIDSANC Inc. et al v. Pearson et al*, 35 LLR 742 (1988).

WHEREFORE, AND IN VIEW OF THE FOREGOING, it is the considered opinion of this Court that given the facts and circumstances in this case, the writ of prohibition as prayed for by the appellant will not lie; the alternative writ of prohibition issued is ordered quashed and the peremptory writ is hereby denied. The ruling of the Chambers Justice is hereby affirmed by this Court. However, given what we have said herein above concerning the appellant's innocent entry of the lease agreement, we hold that it will pay all accrued and future rents stipulated in the subject lease agreement to the appellee and that at the end of the subject lease agreement on September 13, 2021, the appellant shall vacate forthwith the leased property.

The Clerk of this Court is ordered to send a Mandate to the court below commanding the Judge presiding therein to resume jurisdiction over this matter and give effect to this Judgment. AND IT IS HEREBY SO ORDERED. Costs are ruled against the appellant.