

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING
IN ITS MARCH TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE 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

The J. E. Acquah English & Arabic School)
Bushrod Island, Monrovia, Liberia.....Appellant)
)
Versus) APPEAL
)

His Honor S. Geevon Smith, Assigned Circuit)
Judge, Sixth Judicial Circuit, Magistrate Sylvester)
D. Rennie, of the New Kru Town Magisterial)
Court.....Appellees)
)

GROWING OUT OF THE CASE:)
)

The J. E. Acquah English & Arabic School)
Bushrod Island, Monrovia, Liberia.....Petitioner)
)

Versus) ACTION
) PETITION FOR A
) WRIT OF PROHIBITION

His Honor S. Geevon Smith, Assigned Circuit)
Judge, Sixth Judicial Circuit, Magistrate Sylvester)
D. Rennie, of the New Kru Town Magisterial)
Court.....Respondents)
)

GROWING OUT OF THE CASE:)
)

The J. E. Acquah English & Arabic School)
Bushrod Island, Monrovia, Liberia.....Petitioner)
)

Versus) SUMMARY PROCEEDINGS
)

His Honor S. Geevon Smith, Assigned Circuit)
Judge, Sixth Judicial Circuit, Magistrate Sylvester)
D. Rennie, of the New Kru Town Magisterial)
Court.....Respondents)
)

Heard: November 8, 2018

Decided: August 5, 2019

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On December 17, 2008, the appellant/petitioner herein, J. E. Acquah English & Arabic School, filed a petition for the writ of prohibition before Madam Justice Jamesetta H. Wolokolie. Justice Wolokolie cited the parties to a conference and ordered a stay on all proceedings in the matter pending the outcome of the said conference. The matter remained pending before the Chambers Justice until the

former Associate Justice Gladys K. Johnson who had succeeded Madam Justice Wolokolie in Chambers, ordered the issuance of the alternative writ of prohibition but also did not conduct a hearing of the petition until she was out of term.

Subsequently on August 10, 2016, Madam Justice Wolokolie, Associate Justice then presiding in Chambers, entertained arguments on the petition for the writ of prohibition filed by the appellant herein, and ruled thereon, denying the petition and quashing the alternative writ of prohibition issued, hence this appeal.

Having reviewed the certified records culminating in this appeal, and this Court being in full agreement with the decision contained in the Ruling of the Chambers Justice, in which Ruling she succinctly narrated the facts and circumstances leading to the prohibition proceedings, we incorporate and quote same verbatim in this opinion as follows:

“RULING

The facts of this matter before us are that on August 27, 2007, Messrs. Joshua G.K. Odoi and George O. Mends, Administrators of the Intestate Estate of the Late Isaac Essei instituted an action of Summary Proceedings to Recover Possession of Real Property in the Bushrod Island Magisterial Court, New Kru Town, Monrovia, Liberia, as plaintiffs, against Tenneh and Morris Sombai, as defendants. The Administrator alleged that these persons occupying the disputed premises were undesirable tenants and were wrongfully withholding the plaintiff's premises to the disadvantage of the said Intestate Estate. Based upon the complaint, the Co-respondent, His Honor Sylvester D. Rennie, Stipendiary Magistrate of the aforesaid court, then issued out a writ of summons commanding Tenneh Sombai and Morris Sombai and all those under their control to appear before him to answer to the complaint. Before the Magistrate, administrators averred that their late father bought seven (7) acres of land from King Peter in Logan Town; that several individuals entered an understanding with the estate to squat on various portions of the property, paying rents to the estate. Tenneh and Morris Sombai, defendants, were one of such squatters who were tenants at will of the estate, and who paid rent regularly to the administrators of the estate for many years. The defendants constructed a place on the property where they resided, and also operated a school called the J.E. Acquah English and Arabic School, the petitioner herein. After a

period of harmony between the parties, the respondents said the defendants insisted on building a fence around the property which the administrators opposed. This led to some disagreement between the parties and which eventually led to the administrators declaring the defendants Tenneh and Morris Sombai as undesirable tenants. The defendants were then asked to vacate the premises. After several letters written by the administrators and their lawyer to the defendants to vacate the premises but to no avail, the administrators filed an action of summary proceedings against Tenneh and Morris Sombai and all those acting under their control to recover possession of real property. The Co-respondent, Magistrate Sylvester D. Rennie, summoned the defendants and proceeded to hear the matter.

Further into the hearing, the administrators of the King Peter Estate requested the Magistrate to intervene in the matter; they stated that the defendants were their tenants. The magistrate denied the intervention, stating that the intervention was belated and that the administrators of the King Estate had a remedy at law. The Co-respondent, Magistrate Sylvester D. Rennie found the defendants liable and ordered them evicted from the premises.

The defendants, Tenneh and Morris Sombai, took Co-respondent Magistrate Rennie on summary before Judge Yussif D. Kaba, then presiding in the Sixth Judicial Circuit, Montserrado County, who after a conference sent a mandate to the magisterial court as follows:

“By directive of His Honor Yussif D. Kaba, Assigned Circuit Judge presiding over the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia, the above named Magistrate, is hereby order to resume jurisdiction over the above captioned case out of which these proceedings grew, investigate whether the petitioners herein have any direct privy with the estate of the late King Peter, and if they do not, up hold the Ruling denying the Motion to Intervene and proceed in keeping with law.”

GIVEN UNDER MY HAND AND
SEAL OF COURT, THIS 7TH
DAY OF NOVEMBER, A.D. 2007

Ellen Hall
Clerk of Court

Upon the reading of the mandate, the defendant failed to appear for hearing upon several assignments being made and sent out. The magistrate then proceeded to hear the matter. Relying on the original receipts of payments made to the plaintiffs, administrators of the Essel Estate, which the defendants were ordered under an assignment of contempt to produce in court, and which proved that there was a landlord and tenant relationship between the defendants and the administrators of the Essel Estate, Magistrate Rennie ruled confirming the court's previous ruling finding the defendants liable in the action of summary proceedings, and had the defendants evicted from the premises.

The administrators alleged that the defendants, having been evicted, returned and forcibly entered the property few hours later predicated upon a petition for summary proceedings filed against the magistrate by the petitioner, J.E. Acquah English & Arabic School, operated by the defendants. In its complaint, petitioner averred that co-respondent Magistrate Rennie completely disregarded the due process requirements when he ordered the school's eviction without bringing it under the jurisdiction of the court by a complaint; that the Magistrate's act had caused inconvenience to more than three hundred students because of the dismantling and dislodging of the computer lab and other important equipment of the school by court officers who carried out the eviction. The petitioner alleged that the action of Co-respondent Magistrate Rennie denied the petitioner its day in court and its rights to defend the premises that it occupied under the law. The petitioner therefore prayed the trial judge to order its repossession of the subject premises and to further order the respondent magistrate to set aside all actions taken in these proceedings against it and show cause why he proceeded in such an irregular manner. The Sixth Judicial Circuit then presided over by Judge Geevon Smith ordered Magistrate Rennie to file his returns to the complaint.

In response to the complaint, Magistrate Rennie contended basically that the magisterial court found that the Petitioner, J.E. Acquah English and Arabic School, was owned and operated by Tenneh and Morris Sambai; that the petitioner being in privy with Tenneh and Morris Sambai, the eviction of Tenneh and Morris Sambai from the premises also related to the petitioner. The Magistrate also stated in his returns that the petitioner being in privy with the defendants, Tenneh and Morris Sambai, petitioner's challenge to the action of summary proceeding to recover possession of real property in the magisterial court constituted res judicata of the matter.

Co-respondent Judge Smith assigned the hearing of the petitioner's summary proceedings complaint for December 10, 2008, but counsel for the petitioner sent an excuse that he was appearing before the Supreme Court and therefore was unable to appear in the lower court. Judge Smith upon receipt of the counsel's excuse had the matter reassigned for December 12, 2008, at 9:00 a.m. At the call of the case at 10:00 a.m., the respondent brought to the attention of the Judge that the assignment to hear the subsequent petition for summary proceeding was served, signed for and received by the petitioner's counsel, but they failed to attend the hearing. The administrators of the estate therefore prayed the court to have the petition for summary hearing dismissed. The Judge, noting the absence of the respondents and their counsel without an excuse, proceeded to dismiss the case, ordering that a mandate be sent to the respondent magistrate of Bushrod Island to oust and evict the petitioner and have the administrators of the Isaac Essel Estate repossessed of the property.

Few days later, on December 17, 2008, the petitioner obtained a clerk's certificate from the Civil Law Court which stated that at the call of the case petitioner was absent and no witness(es) took the stand when judgment was rendered. The petitioner, with this certificate in hand, fled to the Justice in Chambers, Her Honor Jamesetta Howard Wolokolie, with a petition for the writ of prohibition, praying the Chambers Justice to order the issuance of the alternative writ of prohibition, to prohibit, to restrain, and correct the irregular behavior of the Co-respondent Judge. The Justice called for a conference of the parties, ordering a stay of the lower court's

ruling pending the outcome of the conference. There is no evidence on record of what transpired thereafter, but on August 19, 2009, the Justice in Chamber, former Associate Justice Gladys K. Johnson, commanded the issuance of the alternative writ of prohibition ordering the respondents to file their returns to the petition.

In its petition, before the Chambers Justice, the petitioner averred that on July 10, 2008, the Co-respondent Judge Smith assigned the summary proceedings for hearing and that due to its counsel appearance before the Supreme Court on the selfsame date, an excuse was sent to the said Co-respondent Judge along with a copy of the Supreme Court's notice of assignment; that although the co-respondent judge accepted the excuse, he however reassigned the case the next day, at 9:00 a.m., and that due to the late arrival of its counsel occasioned by the short notice, Judge Smith, instead of holding a hearing into the matter, elected to dismiss the complaint against the magistrate and to send a mandate to the New Kru Town Magisterial Court to have the petitioner evicted.

The respondents in their returns before the Justice in Chambers contended that summary proceedings against a magistrate is within the discretionary power of the trial judge to hear and which discretionary power cannot be reviewed or reversed by a Chambers Justice or the Full Bench. The respondents further argued that the remedial writ of prohibition sought by the petitioner is inapplicable and ineffectual since a writ of error is the most appropriate remedial writ to have been sought based on the petitioner's averment.

The Justice in Chambers having listened to the argument pro et con, on July 1, 2016, reasoned that the salient issue determinative of this controversy is whether under the facts of the case a writ of prohibition would lie?

Our Revised Code, Civil Procedure Law 1:16.21(3), 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. *Garlawolu et al. v. Election Commission*, 41 LLR 377, 384 (2003). The

Supreme Court has held that prohibition will lie where the tribunal or respondent has assumed jurisdiction not ascribed to it by law, has exceeded its designated jurisdiction, or in the exercise of its lawful jurisdiction, it proceeded by wrong rules other than those which should be observed at all times, or to prevent an inferior court from proceeding by irregular means. *Gittens & Davies v. Yanfor et al*, 10 LLR 176, 180 (1949); *Liberia Agriculture Company v. Elais T. Hage et al.*, 38 LLR 259 (1995); *Western Steel, Inc. v. R.L. et al.*, Supreme Court Opinion March Term, A.D. 2015.

The petitioner argued in its petition that on December 10, 2008, the Co-respondent Judge Smith assigned the summary hearing but due to its counsel appearance before the Supreme Court on the self-same date an excuse was sent to the said Judge Smith along with a copy of the Supreme Court's notice of assignment. That the Judge in respect of the hearing in the Supreme Court had the hearing postponed and assigned for the next day at 9:00 a.m. We, however see from the records that the matter was assigned not on the next day as the petitioner alleged, but two days after the matter was postponed, that is December 12, 2008. The respondents argued, and we also see from the records, that there were numerous assignments for hearing made by Magistrate Rennie but the petitioner absented itself, which eventually led to an ex-parte hearing and the granting of a default judgment by the correspondent Judge Rennie in the magistrate court. This attitude of delay tactics, the respondents said, was the same being adopted by the petitioner in the circuit court.

The petitioner argued that the Judge proceeded by the wrong rule when he had the hearing on a complaint summarizing the Magistrate summarily dismissed without a hearing and a lawyer appointed to take a final ruling.

Firstly, we believe that the two days granted by the Co-respondent Judge Smith postponing the hearing of the petitioner's summary proceeding complaint when the petitioner's counsel requested an excuse to appear for an assignment before the Supreme Court was adequate and sufficient time for the petitioner to have appeared for hearing of the summary proceeding which was assigned for December 12, 2008, at 9:00 a.m. We also agree

with the respondent that a summary proceeding hearing against a judge is not a regular trial, but rather a remedial process to rectify the errors made by a magistrate. The petitioner having failed to appear for the hearing on its petition, and abandoned its cause, the Judge did not proceed by wrong rules or exceeded his jurisdiction when he had the matter dismissed and the judgment of the magisterial court enforced, especially where he was convinced that the Magistrate Rennie did not proceed wrongly, as the petitioner was in privy with the defendants in the magisterial court since they owned and operated the school on the disputed premises.

The Supreme Court held in the case *Sonnie Jallah v. the Intestate Estate of George S.B. Tulay*, Supreme Court Opinion, March Term, A.D. 2013, that during a landlord and tenant relationship, a tenant is estopped to deny, challenge or dispute his/her or its landlord's title; and that while in possession, a tenant may not defeat even a landlord's suit for possession by showing a superior outstanding title (49 Am Jur 2d, *Landlord and Tenant*, Section 764-265). The defendants, Tenneh and Morris Sombai, were summoned to bring the original receipts of rents paid to the administrators of the Isaac Essel Estate which they did, and which evidenced landlord and tenant relationship. The petitioners were also found in the Magisterial Court to be owned and operated by the defendants, and there is further evidence from the Education Ministry to this effect that the petitioner J.E. Acquah & Arabic School is owned and operated by the defendants, Tenneh and Morris Sombai. The petitioner being in privy with the defendants, they are estopped from denying the plaintiff/administrators of the Isaac Essel's Estate possession of their property. Black Law Dictionary defines privy as "someone whose interests are represented by a party to a law suit" (9th Edition, Pg. 1320). This Court has further held that the doctrine of *res judicata*, briefly stated, is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of the rights, questions, and facts in issue, as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction". *Branly v. Vamply of Liberia*, 22 LLR 337, 354 (1973); *Mahmoud v. Pearson et al*, 37 LLR 3 (1992).

Our practice in this jurisdiction is that a magistrate summarized based on a complaint of a party does not require a regularly hearing. Rule 33 states: “Upon the application of a party by petition for Summary Proceedings against a Magistrate or Justice of the Peace, the Judge will cite the parties to a conference prior to issuing the writ which contains a stay order. Rule 34 states: “All writs for Summary Proceedings issued must be heard and determined during the term of court in which it is issued.” There is no evidence on record that Judge Smith after holding a conference into the complaint filed by the petitioner issued a writ which contained a stay order so that regular hearing into the matter could be held. As the respondents rightly stated, where a judge is satisfied after a conference that the magistrate proceeded rightly, or as in the case where the petitioner abandon its complaint by not appearing for the hearing, it is not an error for the judge to dismiss the complaint, and it cannot be said that the Judge proceeded by wrong rule when he had the summary proceedings dismissed and the magistrate ordered to dispossess the petitioner and the defendants who had illegally re-entered the premises. The Judge having proceeded regularly in keeping with law, and we are convinced that the petitioner school are in privy with Tenneh and Morris Sombai, defendants in the magisterial court who were found liable in a summary proceeding action to recover real property, the doctrine of res judicata applies and there is no legal basis for issuance of the peremptory writ of prohibition. The alternative writ of prohibition is therefore quashed.”

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the considered opinion of this Court that the Ruling of our Colleague, Madam Justice Wolokolie, denying the petition for the writ of prohibition is hereby affirmed and confirmed. The alternative writ of prohibition is hereby quashed and the peremptory writ denied. The appellant, the J.E. Acquah English and Arabic School, and Morris and Tenneh Sombai are ordered ousted, ejected and evicted from the property, subject of this appeal and the Intestate Estate of Isaac Essel immediately placed in possession thereof. That for forcibly re-entering the subject property and withholding it from the Intestate Estate of Isaac Essel, the appellant, and Morris and Tenneh Sombai are adjudged liable and ordered to pay to the Intestate Estate of Isaac Essel the amount of US \$30,000. (Thirty Thousand United States Dollars). Additionally, the lower court is ordered to calculate rental payments that would have otherwise accrued to the Intestate Estate of Isaac

Essel for the entire period the appellant and Morris and Tenneh Sombai remained on said premises without the payment of rent, up to and including the date of this Opinion. Hence, the alternative writ of prohibition is ordered quashed and the peremptory prayed for denied. The Clerk of this Court is hereby ordered to send a mandate to the trial court ordering the judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Judgment affirmed

When this case was called for hearing Counsellor S. L. Lofen Keneah appeared for the appellant. Counsellor G. Weifueh Alfred Sayeh of the Law Offices of Sayeh & Sayeh, Inc. appeared for the appellee.