

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

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

In Re: The complaint of Hon. Borbor Y. Boeyon against His Honor Peter G. Massey, Debt Court Judge, Fourteenth Judicial Circuit, Rivercess County, Liberia.

Heard: August 12, 2020

Decided: February 8, 2021

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

On March 16, 2016, the District Commissioner of Zarflahn District, Rivercess County, Honorable Borbor Y. Boeyon, filed with the Office of the Chief Justice a complaint against His Honor Peter G. Massey, Debt Court Judge, Fourteenth Judicial Circuit, Rivercess County.

The complainant alleged in his complaint that while serving as Chairman of the Liberia Decentralization Local Development Project (LDLDP), in his District, the LDLDP obtained a loan from Mr. Emmanuel Saybay in the amount of Twelve Thousand Liberian Dollars (L\$12,000.00), but failed to settle the loan in keeping with the stipulated time of the loan agreement due to financial difficulties. Predicated upon the failure of LDLDP to have the loan obligation settled in keeping with the time specified, the creditor, Mr. Emmanuel Saybay, filed a debt action against the LDLDP before His Honor Peter G. Massey, Debt Court Judge, Rivercess County.

The Debt Court Judge entertained the debt action and upon a call of the case, the members of the Organization admitted to owing Mr. Emmanuel Saybay L\$12,000.00 as he had alleged. The LDLDP by and through Messrs. Isaac Klay and Abdul Teh then pleaded with the court for a period of one month to make full settlement of the debt. The request, upon no objection from the plaintiff, was granted.

The complainant stated that upon the failure of the LDLDP to comply with the one month suspension of the judgment payment, the Respondent Judge issued an order, seizing the Organization's fishing canoe, valued at Three Thousand Three Hundred and Fifty United States Dollars (US\$3,350.00) and eight bales of new fishing nets valued at Four Hundred United States Dollars

(US\$400.00) each, and had them auctioned without notice to the complainant for Twelve Thousand Liberian Dollars (L\$12,000.00); that despite the auction of the fishing canoe and nets, Judge Massey had the Commissioner arrested and brought to court. After being threatened by the Respondent Judge to pay Fourteen Thousand Liberian Dollars (L\$14,000.00) or go to jail, and because he had no knowledge of the auctioning of the Organization's property by the court, the complainant said he paid the L\$14,000.00, thereby making full settlement of the debt. He then requested the Judge to have the Organization's properties that were seized returned; however, Judge Massey refused to grant the request.

Hon. Boeyon explained that he and his colleagues then had the canoe and nets taken away from the court and relocated in Grand Bassa County in an effort to retain possession of the items. The Judge had one of the members of the Organization, Mr. Tony Jackson who resisted returning the canoe and nets back to the court arrested and it was only when Mr. Jackson paid the Judge One Hundred United States Dollars (US\$100.00) and the Judge confiscated Mr. Jackson's phone valued at Thirty Five United States Dollars (US\$35.00) that he was released. Members of the LDLDP, having failed to return the canoe and nets as instructed by the Respondent Judge, the Judge had Mr. Jackson re-arrested; that upon hearing that Mr. Jackson was re-arrested, the Commissioner stated that he went to the court to follow up and it was when he too was incarcerated and together with Mr. Jackson remained in prison until the LDLDP spent L\$15,000 to buy gas to have the canoe and nets returned to the court.

The complainant questioned why the Respondent Judge after receiving L\$14,000.00 from him on behalf of the Organization insisted on auctioning the Organization's properties, especially when up to the date of the complaint the said Judge had failed to pay the plaintiff his money judgment?

Upon receipt of the complaint, the Chief Justice had it referred to the Judicial Inquiry Commission (JIC), requesting it to conduct a full investigation into the allegations made and to make appropriate recommendations to the Supreme Court.

In keeping with the JIC's mandate to investigate allegations of ethical misconduct by Judges and to make appropriate recommendations that would be subsequently reviewed and considered by the Supreme Court in keeping with due process of law, the Commission wrote the Judge to file a response to the complaint brought against him, and in adherence thereto, Judge Massey filed his answer.

The Judge's answer to the complaint essentially denied the complainant's allegations. According to the Respondent Judge, the complainant and his co-debtors were duly served with court process and properly brought under the court's jurisdiction to answer to the complaint of debt filed against them by Mr. Emmanuel Saybay; that the debtors confessed judgment, made an initial payment of L\$3,000.00, and pleaded with the court to grant them a one month period to make good their outstanding debt obligation and said request was granted by him. The Judge further stated that the complainant and his associates were said to have given the creditor the impression that they had paid to the court the full amount owed him and said misinformation subjected the court to serious embarrassment with the creditor; that this embarrassment prompted the court to attach the LDLDP canoe and four fishing nets for sale, contrary to the complainants allegation that the fishing nets were eight; that the notice of sales was served on Mr. Abu of the LDLDP who appeared and represented the Organization at the first day's session of the case; that the canoe and nets were subsequently auctioned to the highest bidder but only L\$12,000.00 was generated from the sales of the seized items. The Judge further stated that the amount received from the sales (L\$12,000.00) not been adequate to satisfy the judgment, he then ordered the arrest of the LDLDP members, including the District Commissioner, complainant, in order to have the judgment fully satisfied.

Seized of the complaint and the answer filed in response thereto, the JIC cited the parties to the complaint along with their witnesses to appear on before the Commission for an investigative hearing. At the conclusion of the investigation, the JIC arrived at the following findings:

- 1) That the Organization, Liberia Decentralization Local Development Project (LDLDP) conceded its debt of L\$12,000.00 (Twelve Thousand Liberian Dollars) owed Mr. Emmanuel Saybay.
- 2) That the Debt Court lacked jurisdiction over the case given that the amount sued for was less than US\$2,000.01 (Two Thousand United States Dollars and One Cent) and the amended act of the Judiciary Law, Rev. Code 17:4 provides that: "The Debt Court shall have jurisdiction of all civil actions to obtain payment of a debt in which the amount is \$2,000.01 (Two Thousand United States Dollars and One Cent) or more; that it shall not exercise original jurisdiction where the amount is less than \$2,000.01 (Two Thousand United States Dollars and One Cent), and that it is trite law that if a court is without jurisdiction, it is powerless to act in the case; hence, courts must of necessity, and if need be, upon its own motion always consider the question of its jurisdiction since it is bound to take judicial notice of the limits of authority. Given the fact that all the parties herein have conceded that the amount sued for was far less than US\$2,000.01 (Two Thousand

United States Dollars and One Cent)", Judge Massey was in error to exercise jurisdiction over this case.

- 3) That the sale of the Organization's fishing canoe and nets were ultra vires, given the fact that the sales are unsupported by requisite documentary evidence as to the bidding process and the amount for which the properties were sold; thus, this violated the law controlling enforcement of judgments through sales (Section 44.41(1) & (2) of the Civil Procedure Law).
- 4) That there is no evidence in the records showing that Judge Peter G. Massey ever made payment to the judgment debtor, Mr. Emmanuel Saybay, from the proceeds of the public auction or from the total sum of cash payments made to the court by members of the indebted Organization, which sum total L\$18,000.00(Eighteen Thousand Liberian Dollars); that in fact, Judge Massey admitted before the Commission that the judgment debtor had not received any payments from the proceeds of the sales and from the cash payments made by the complainant.
- 5) That the conduct of Judge Peter G. Massey is an abuse of judicial power which must be checked and censured pursuant to Judicial Canon 35. The said Canon provides that a "A judge should be subject to disciplinary action for wanton and reckless abuse of discretion which violates the Constitution, Statutes and Laws."
- 6) That the conduct of Judge Peter G. Massey is an affront and a complete disregard of the law which exposes the Debt Court of Rivercess County to public ridicule, all of which are wanton violations of Judicial Canons 8 & 9, which provides:" Courts exist to promote justice, thus to serve the public's interest. Theirs is the administration of justice which they must do with speed and care. Every judge should at all times be alert of his rulings in the conduct of the business of the court, so far as he can" (Judicial Canon 8); and hat "it is the duty of all judges in the Republic to uphold and support the Constitution and the laws of the land; they as custodians of the Constitution should fearlessly observe and apply fundamental rights and guarantees"(Judicial Canon 9).

Based on its findings stated herein above, the Commission made the following recommendations:

- 1) That Judge Peter G. Massey be suspended from the practice of law directly and indirectly for his unethical conduct for a period not less than six (6) consecutive months and that his salaries, benefits and other emoluments be withheld during the period of his suspension.
- 2) That Judge Peter G. Massey be ordered to immediately turn all payments received in connection with this case over to the Debt Court of Rivercess County, and that the judge presiding therein should remit the said monies to their rightful owners.
- 3) That the sales of the Liberian Decentralization Local Development Project (LDLDP) canoe and fishing nets being illegal, they should be

retrieved and placed under the custody of the trial court for further determination as per the payment of the debt owed the judgment debtor. If the Organization's canoe and fishing nets are irretrievable, or severely damaged, Judge Peter G. Massey should be made to retribute fully the amount of US\$4,950.00 (Four Thousand Nine Hundred Fifty United States Dollars) representing the value of the fishing canoe and four (4) nets.

- 4) That the failure of Judge Peter G. Massey to comply with these recommendations within the period of one (1) month, his six month suspension should automatically become disbarment from the practice of law directly and indirectly."

When the JIC report was forwarded to the Supreme Court, the Clerk of Court on the orders of the Honorable Supreme Court of Liberia, wrote Judge Peter G. Massey, directing the Respondent Judge to file a brief in defense to the findings and recommendations made by the JIC. The Court also ordered the Clerk to have four Counsellors of the Honorable Supreme Court Bar notified of their appointment by the Court to serve as amici curiae on the matter, and to file an amicus brief in keeping with said appointment. The appointed amici curiae comprising of Counsellors F. Juah Lawson, J. Augustine Toe, Arthur T. Johnson and Denise S. Sonkan filed an amicus brief.

At the call of the case, the Respondent Judge appeared pro se after having filed his brief.

The amici curiae were called to present their view on the matter and they presented two issues for determination by the Court, viz: (1) whether or not the evidence against the respondent, Judge Peter G. Massey, conformed to the findings and recommendations of the JIC? (2) Whether or not the sanctions recommended by the JIC against the Respondent Judge suffice to deter recurrence?

Agreeing with the findings of the JIC, the amici curiae, in closing, prayed the Court to affirm the Commission's recommendations but with the following modification:

- (1) That the Respondent Judge be made to retribute the amounts that the JIC recommended he account for within three (3) months; that failure to do so should automatically lead to his six month suspension.

- (2) That failure on the part of the Respondent Judge to make full restitution after six months, the maximum penalty recommended by the JIC should apply.

The Respondent Judge, in his argument and in his brief filed before the Court, recounted the litany of denials in his answer filed before the JIC and presented the following issues for determination:

(1) Whether or not a higher court can hear a matter below its trial jurisdiction and make a determination without costs being awarded to the plaintiff?

(2) Whether or not the LDLDP's confession of judgment that it owed the judgment debtor is sufficient to render summary judgment, since there was no material issue of fact left in dispute for determination?

(3) whether or not the failure of the complainant to attach receipts of the canoe and fishing nets to justify the amount to be restituted by the Respondent Judge, as per the JIC recommendations, is consistent with the best evidence rule?

The Respondent Judge answered "yes" to the first two questions, tending to impress upon this Court that he had jurisdiction to entertain the debt suit and make determination thereof in keeping with law. He cited for reliance Section 45.2 of the Civil Procedure Law as basis for assuming jurisdiction in a debt action for L\$12,000.00 which is originally cognizable before the magistrate court. In referring to Section 45.2 of the Civil Procedure Law, he stated that said law allows circuit courts to exercise jurisdiction over a matter cognizable before magistrate courts, provided the plaintiff is not awarded cost. By this, the Respondent Judge is of the view that by him not awarding cost to the judgment debtor, Mr. Emmanuel Saybay, his handling of a debt action involving L\$12,000.00 in the Debt Court had no jurisdictional defect, and as such, same cannot properly form the basis of a disciplinary action against him, as he had violated no law especially where the party had not denied that they owed the plaintiff.

We shall pass upon this defense proffered by the respondent judge later in this Opinion.

As to the second issue we note that the complainant did not proffer any denial of the debt owed the plaintiff and it was therefore obligated to pay the judgment sued for in conformity with law.

As to his third question, the Respondent Judge answered in the negative. He argued that the best evidence that would justify the amount recommended by the JIC as restitution for the canoe and fishing nets that he seized from the LDLDP ought to have been the receipts of purchase of the said items; that by operation of the best evidence rule, the LDLDP failure to attach said receipts to their complaint rendered the Commission ability to verify the complainant's claims untenable, and for which the JIC recommendation that he restitutes US\$4,950.00 (Four Thousand Nine Hundred Fifty United States Dollars) representing the value of the canoe and four (4) fishing nets was erroneous.

In closing, the Respondent Judge prayed the Supreme Court to set aside the JIC findings and reverse the Commission's recommendations.

Having reviewed the records and considered the arguments presented by the amici curiae and the Respondent Judge, the Court finds these issues dispositive of the case:

1. Whether or not the Respondent Judge had jurisdiction to entertain the debt action filed against LDLDP?
2. Whether or not the conduct of the Respondent Judge amounts to violation of the judicial canons?

Considering the amici curiae brief and the Respondent Judge's brief and their appearance before the Court, the Court finds it necessary to examine the positions taken and raised by the Respondent Judge on the findings and recommendations made by the JIC, and enter an appropriate decision thereon.

The Respondent Judge in defense of the debt court's right to entertain a debt action for L\$12,000.00, drew the attention of the Court to Section 45.2 of the Civil Procedure Law, quoted herein below:

Chapter 5. COST AND INTEREST of the Civil Procedure Law Revised (1974), Sections 45.2 state:

"Section 45.2. Penalty for bringing action in a higher court. Whenever an action is brought in a Circuit Court which could have been brought in a justice's or magistrate's court, the plaintiff shall not be entitled to costs."

As stated earlier, the Respondent Judge referencing Chapter 45.2 of the Civil Procedure Law (1974) submits that for debt suits where the amount is less than Two Thousand United States Dollars and One Cent (US\$2,000.01), as is the case herein, where original jurisdiction vests in the magistrate court, the circuit courts have authority to entertain the matter provided that costs are not awarded to the plaintiff; that the plaintiff in this case, not been awarded costs, he was justified under the law in entertaining the debt action for L\$12,000.00.

This Court says that the Respondent Judge's construction of the above quoted provision of the Civil Procedure Law is erroneous, and his adoption of such interpretation to the referenced provision amounts to a serious misunderstanding of the law. The conferral of specific jurisdiction on the various courts is primarily intended to prevent forum shopping by party litigants. Therefore, adopting the Respondent Judge's construction of the statute will loosely allow circuit courts encroach on the jurisdictions of

magistrate courts and have said encroachment legitimized by simply not awarding costs to plaintiffs.

We note that there are exceptional instances where a plaintiff/petitioner is at liberty to choose from a plurality of fora in pursuit of a claim, and to which this section of the law is applicable. In such exceptional cases, the law explicitly vests jurisdiction in the multiple venues available to the plaintiff/petitioner. For example, summary proceeding to recover possession of real property [Civil Procedure Law: 1:62.21] can be brought before both the magistrate and circuit courts; Petition for depositions (under appropriate circumstances) may be venued before any circuit court [Civil Procedure Law: 1:13.1 (a)]; Jurisdiction to issue writs of habeas corpus [Civil Procedure Law: 1:16.54] before any court of record.

The above instances are clearly distinguishable from a debt action which is cognizable only before the magistrate courts, debt courts and commercial courts, and in each case the statute sets out a specific threshold amount for the exercise of original jurisdiction by each of these courts. For example, the Act amending Title 17, Judiciary Law, Rev. Code 17:4 provides that the magistrate court shall exercise original jurisdiction in an action of debt where the amount sought to be recovered or the value of property does not exceed US\$2,000.00; that where the amount is more than US\$2,000.00, the original jurisdiction vest in the debt court. The act expressly prohibits the debt court from entertaining a debt action where the amount is less than US\$2,001.

In essence, Section 45.2 of the Civil Procedure Law Revised is applicable only where a statute grants the plaintiff/petitioner a right of election between a magistrate court and a circuit court. In this case it does not apply to debt cases, and therefore the Respondent Judge, His Honor Peter G. Massey, wrongly entertained the L\$12,000.00 debt suit filed by Mr. Emmanuel Saybay against the LDLDP, since his court, a debt court, lacked jurisdiction over the amount sued for. Due to his court's lack of jurisdiction; it was therefore immaterial whether or not costs were awarded to the plaintiff as same cannot suffice to cure the fundamental legal defect of the Judge entertaining a case over which his court had no jurisdiction.

This Court has held in a litany of cases that courts of Liberia, including the Supreme Court, are duty bound to first determine their own jurisdiction over a given matter, because where jurisdiction is wanting, every action taken by such courts is void ab initio: "*The Management of Lee Group Enterprises, Inc, v. His Honor J. Boima Kontoe, et al*, Supreme Court Opinion, March Term A.D.2019; *Mulbah v. Rulie*, Supreme Court Opinion, October Term, A.D. 2014;

Firestone Plantation Company v. Kollie, 41 LLR 63,78 (2002); *Boakiini and Talinco General and Construction Enterprises v. Karel Logging Corporation*, 37 LLR 247,252 (1993). Had Judge Peter G. Massey declined to entertain the matter, the Cestos City Magistrate Court, situated in the same City as the Debt Court, would have been seized of the matter and the events that prompted the complaint against the Judge would not have occurred.

This brings us to the next issue whether or not the conduct of the Respondent Judge amounts to a violation of the Judicial Canons.

From our review of the records and consideration of the JIC report, this Court is convinced that Judge Peter G. Massey's handling of the entire proceedings not only violated the law but violated ethical standards prescribed for judges and magistrates.

The Respondent Judge himself stated that members of the LDLDP, upon being brought to his court, paid an initial amount of Three Thousand Liberian Dollar (L\$3,000.00) against the debt amount of L\$12,000.00 sued for; that when the members of the LDLDP failed to return and make payment of the amount credited as promised, he had their boat and fishing nets attached and auctioned for L\$12,000.00; he however shows no record of how he auctioned the canoe and nets as the law provides. Besides, if he had auctioned the items for L\$12,000.00 as he alleged and the debt owed was L\$12,000.00, and as he stated, the law upon which he exercised jurisdiction over the case did not permit the charging of costs in such case in his court, why did he have the complainant arrested and made to pay an additional \$14,000.00 and yet not pay the plaintiff his debt sued for? What did the Judge do with the money collected from the sales and from the complainant?

As stated in the JIC's report and confirmed from our review of the records brought up to this Court, Judge Peter G. Massey handled the case when he had no jurisdiction, and his arbitrary use of judicial authority to sell the LDLDP fishing canoe and nets despite the debt amount having been paid was a serious breach of our Judicial Code of Ethics. Worst still is the fact that he showed no evidence that the plaintiff who brought the debt action was paid the judgment amount even though he himself stated that he auctioned the LDLDP properties for L\$12,000.00 and did not deny that he had the complainant pay L\$14,000.00 to settle the debt judgment which the complainant said was done in the presence of the plaintiff.

The Judge's behavior of assuming jurisdiction not given by law, and his seizure and public auction of properties belonging to the LDLDP, despite its members

having paid in excess of the debt amount was a clear violation of the Judicial Canon 14 and 25, which state:

Canon 14:

“A judge should exhibit an industry and application commensurate with the duties imposed upon him to administer, interpret and apply the law.”

Canon 25:

“A judge should be mindful that his duty is the application of general law to particular instances, that our government is that of law and not of men, and that he violates his duty as an administrator of justice under such system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become precedent unsettling accepted principle and may have detrimental consequences beyond the immediate controversy. He should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.”

IN VIEW OF THE ABOVE, this Court finds the conduct of Judge Peter G. Massey reprehensible and therefore affirms the JIC recommendations but with modification as follows;

1. That the Respondent Judge is suspended for a period of one year with salary, benefits and other emoluments withheld during the period of his suspension;
2. That the Respondent Judge is ordered to return the canoe and fishing nets to the rightful owner (the Liberia Decentralization Local Development Project) and to return the amount of LD14,000.00 he took from the complainant, Hon. Borbor Y. Boeyon within three (3) months as of the date of this Judgment through the office of the Circuit Court, 14th Judicial Circuit, Rivercess County;
3. That the failure of the Respondent Judge to return the properties sold within the time specified herein or where he returns the properties in an unusable state, the JIC shall determine the actual value of the items and communicate same to the Respondent Judge who shall pay the assessed value for the items within three months after receipt of the communication from the JIC; failure of the Respondent Judge to pay the value of the properties as determined by the JIC, he shall remain suspended until he complies.

The Clerk of this Court is ordered to have a letter written to the JIC to informing it of this Judgment to have it ascertain the actual value of the complainant’s canoes and fishing nets, if necessary, and to have the value communicated to the Respondent Judge for payment within three (3) months through the office of the 14th Judicial Circuit Court, Rivercess County and a copy of the receipt of payment forwarded to the Supreme Court. The Clerk

shall communicate to the Court Administrator the decision of this Court. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors F. Juah Lawson, J. Augustine Toe, Arthur T. Johnson and Denise S. Sonkan appeared for the Amici Curiae. The Respondent Judge appeared pro se.