

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2021

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

Charles R. Johnson, Jr., Fredrick E. Johnson, Margaret Johnson,
Cephas Johnson, Jackie Johnson, all of the City of Monrovia,
Liberia.....Informants)

VERSUS)

His Honor Peter W. Gbenewelleh, Assigned Circuit Judge,
December Term of the Sixth Judicial Circuit and Jessie S. Payne, Sr.)
Attorney-In-Fact for Victoria Johnson-Maxwell of the City of
Monrovia, Liberia.....Respondents)

GROWING OUT OF THE CASE:)

Charles R. Johnson, Jr., Fredrick E. Johnson, Margaret Johnson,
Cephas Johnson, Jackie Johnson, all of the City of Monrovia,
Liberia.....Appellants)

VERSUS)

His Honor J. Vinton Holder, Probate Court Judge, Montserrado
County and Jessie S. Payne, Sr. also of the City of Monrovia,
Liberia.....Appellees)

GROWING OUT OF THE CASE:)

Charles R. Johnson, Jr., Fredrick E. Johnson, Margaret Johnson,
Cephas Johnson, Jackie Johnson, all of the City of Monrovia,
Liberia.....Petitioners)

VERSUS)

Jessie S. Payne, Sr., also of the City of Monrovia,
Liberia.....Respondent)

GROWING OUT OF THE CASE:)

The Intestate Estate of Geneva Johnson-Duff, Fredrick E. R.
Johnson and Victoria Johnson-Maxwell)

) BILL OF
) INFORMATION

) APPEAL

) PETITION FOR
) REVOCATION OF
) LETTERS OF
) ADMINISTRATION

Heard: May 19, 2021

Decided: August 20, 2021

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

“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...A bill of information will also lie to prevent any one whomsoever from interfering with the Judgment and or Mandate of the Supreme Court”. Rules for Procedure in the Courts, 1999. Moreover, the Supreme Court has held in a litany of Opinions that “in order for a bill of information to be granted, the matter forming the basis of the information must have been pending before the court, or decided by it; there must be an act to usurp the province of the Court; there must exist some irregularities or obstruction in the execution of the Supreme Court’s mandate; or there must have been a refusal to carry out the Supreme Court’s mandate”. *Kromah v. Badio and Hill*, 34 LLR 85 (1988); *Barbour-Tarpeh v. Dennis*, 25 LLR 468 (1977); *Liberia Aggregate Corporation v. Taylor et el*, 35 LLR 3 (1988); *Jawhary v. Jones*, 38 LLR 584 (1998).

The issue we are called upon to settle in this case given the facts and the laws controlling is: whether or not bill of information as filed by the informants will lie?

To traverse this issue, we take a recourse to the facts as summarized thus: On February 26, 2020, the informants filed with the Supreme Court of Liberia an eleven (11) count bill of information in which they informed the Court that co-respondent, Jessie S. Payne, Sr., Attorney-in-Fact for Victoria Johnson-Maxwell, instituted an action of ejectment against the intestate estate of Thomas Wesley-Philips and that while the ejectment action was pending before the Supreme Court on appeal, the parties thereto agreed and executed a Joint Stipulation of Voluntary Discontinuance upon which the Supreme Court entered a Judgment Without Opinion; that in the Joint Stipulation the parties agreed that

the disputed property covers nine (9) lots of land and that said disputed land was disposed of in the following manner: 2 lots to Madam Alissar Georgette Walker; 3 lots to Madam Victoria Johnson-Maxwell, appellant; 3 lots to the intestate estate of Thomas Johnson-Philips, the appellee, and 1 lot to Madam Kebbeh Jensen; that despite the execution and enforcement of the Joint Stipulation of Voluntary Discontinuance, the co-respondent, Jessie S. Payne, Sr., Attorney-in-Fact for Victoria Johnson-Maxwell, had the court below to issue a writ of possession against third parties who were not parties to the action of ejectment out of which the Joint Stipulation of Voluntary Discontinuance was entered at the Supreme Court; that said third parties were ousted and ejected from the property administered by the informants and have same sold to third parties, which conduct necessitated informants to file bill of information against His Honor J. Boima Kontoe and Jessie S. Payne before the Supreme Court on November 10, 2017; that in that bill of information they informed the Supreme Court that they are children of the late Charles R. Johnson, Sr., brother of the late Victoria Johnson-Maxwell, and that Charles R. Johnson, Sr. and Victoria Johnson-Maxwell, during their natural life acquired title to, and were issued executor's deed to 16 acres of land from the testate estate of Frederick E. R. Johnson by the executrix, Geneva Johnson-Duff.

The informants further averred that co-respondent Jessie S. Payne, Sr. attempted using the judgment obtained in the action of ejectment to oust and eject informants and their tenants from the property covered by the sixteen (16) acres of land acquired by Charles R. Johnson, Sr. and Victoria Johnson-Maxwell in gross violation of informants' right to due process of law; hence, the informants prayed the Supreme Court to halt, prohibit and restrain the co-respondent from further proceeding

with that bill of information filed on November 10, 2017, which is yet undetermined by this Court; that there is also a challenge to the authority and capacity of co-respondent Jessie S. Payne, Sr. to administer the intestate estate of Victoria Johnson-Maxwell and other heirs of the Johnson family pending before this Court undetermined; that notwithstanding the averment contained hereinabove, the co-respondent Judge, His Honor Peter W. Gbeneweleh has ordered, and the Clerk has written a communication to Col. Patrick T. Sudue, Inspector-General of the Liberia National Police, to place co-respondent Jessie S. Payne, Sr., Attorney-in-Fact for Victoria Johnson-Maxwell, in possession of nine (9) lots of land to be identified; that notwithstanding fact that the nine (9) lots of land have been distributed consistent and in keeping with the Joint Stipulation of Voluntary Discontinuance entered on the records of the Supreme Court of Liberia, the informants are praying the Supreme Court to halt, prohibit and enjoin the respondents from evicting them and their tenants from the premises of their aunt, Victoria Johnson-Maxwell and their father, Charles R. Johnson, Sr. because the Joint Stipulation of Voluntary Discontinuance executed by and between the intestate estate of Thomas Wesley-Philips and Jessie S. Payne, Sr., Attorney-in-Fact for Victoria Johnson-Maxwell cannot be enforced against them since they were not parties to the action of ejectment.

The co-respondent, Jessie S. Payne, Sr., filed returns to the bill of information and averred that, his principal, Victoria Johnson-Maxwell, instructed him to institute an action of ejectment against the intestate estate of Thomas Wesley-Philips, filed in the Civil Law Court, Sixth Judicial Circuit, which action after trial is before this Court on appeal. The parties entered a Joint Stipulation of Voluntary Discontinuance; that count "e" of the Joint Stipulation of Voluntary Discontinuance

allots to Victoria Johnson-Maxwell, as appellant, six (6) acres or twenty-four (24) lots of land and should be placed in possession consistent with her Deed and diagram exclusive of the three (3) lots identified in count "c" of the Joint Stipulation of Voluntary Discontinuance which the informants failed to mention only because of dubious motives; that consistent with said Joint Stipulation and the Mandate from Supreme Court, the court below issued writ of possession to have the parties possessed following the demarcation of the disputed nine (9) lots and fifteen (15) lots, respectively; that there are no third parties but the illegal tenants who repossessed themselves after the demarcation and division of the land, subject of the Joint Stipulation; hence, it is the court that could have them removed and that the police was requested to assist the bailiff and the sheriff enforce the Mandate of the Supreme Court due to the violent conduct of the illegal occupants; that the bill of information is filed in bad faith because the lower court did not go contrary to the Mandate of the Supreme Court and therefore, same should be denied and dismissed.

Before delving into the undisputed facts in this case, this Court must take due cognizance of the parties to this bill of information before it to determine the singular issue whether this bill of information is an outgrowth of a pending issue between the parties. A recourse to the records shows that the informants are Charles R. Johnson, Jr., Frederick E. Johnson, Margaret Johnson, Cephass Johnson and Jackie Johnson versus His Honor Peter W. Gbeneweleh, Assigned Circuit Judge, December Term of the Sixth Judicial Circuit and Jessie S. Payne, Sr., Attorney-in-Fact for Victory Johnson-Maxwell, but this bill of information concerns third parties who claimed that they were summarily evicted by the co-respondent through a judgment of the court below when they were never brought under its jurisdiction and

therefore could not have been affected by its judgment. This Court says if that were the case, the affected tenants should have filed the appropriate legal action in the court below instead of a bill of information before this Court as this Court can only entertain bill of information which grows out of a pending matter before it. The Supreme Court of Liberia has held that “in order for a bill of information to be granted, the matter forming the basis of the information must have been pending before the court, or decided by it...” *The intestate estate of Sarah Sirleaf v. El-Bim et al*, Supreme Court Opinion, March Term, A.D. 2013.

Besides, the undisputed facts speak to a Joint Stipulation of Voluntary Discontinuance which grew out of the ejectment action to which the Supreme Court entered a Judgment Without Opinion and a Mandate sent to the lower court to be acted upon. The Joint Stipulation set forth, among other things that, apart from the distribution of the disputed nine (9) lots, count “e” provides that: “that the remaining six (6) acres or twenty-four (24) lots shall be for the appellant in keeping with appellant’s Deed and diagram” and according to the records available to this Court, the appellant is the intestate estate of Victoria Johnson-Maxwell. However, the informants are contending that the co-respondent, Jessie S. Payne, Sr., is using the Mandate from the Supreme Court to oust and eject them from the sixteen (16) acres of land acquired by their late father Charles R. Johnson, Sr. and their late aunt, Victoria Johnson-Maxwell from the testate estate of Frederick E. R. Johnson through its executrix Geneva Johnson-Duff, without due process of law and that parties being affected were not parties to the ejectment action for which they filed a bill of information before His Honor J. Boima Kontoe, for which a writ of summons was issued out of the Sixth Judicial Circuit, Civil Law Court for Montserrado County.

In response to this bill of information, the co-respondent Jessie S. Payne, Sr. notified the court that said bill of information should not be countenanced by the court because the Civil Law Court was only enforcing the Mandate of the Supreme Court and if the informants had any issue with the enforcement, the proper forum was the full bench of the Supreme Court; that predicated upon the notification from the co-respondent, the writ of summons was quashed; that because the Mandate of the Supreme Court was not fully executed, the co-respondent moved court to have the 15 lots demarcated and given to the intestate estate of Victoria Johnson-Maxwell consistent with count “e” of the Joint Stipulation for Voluntary Discontinuance; that predicated upon the application, the Presiding Judge, His Honor Peter W. Gbeneweleh, cited the parties along with their counsels to a conference and thereafter, ruled that the “remaining 15 lots of land to be given to the intestate estate of Victoria Johnson-Maxwell consistent with the Joint Stipulation of Voluntary Discontinuance be carried out with the aid of a government surveyor; that the demarcation was performed as instructed but that co-respondent has not been put in possession due to obstruction from illegal occupants, including the informants.

We must note that this assertion made by the co-respondent, Jessie S. Payne, Sr. was never refuted neither challenged by the informants in any of their pleadings nor argument before this Court. We also note that, in response to some of the inquiries from this Court during argument, the informants acknowledged that there were additional 15 lots aside from the disputed 9 lots. Further, did the informants produce any title to the alleged 16 acres they claimed they were being ousted from during the demarcation of co-respondent’s 15 lots as per the Joint

Stipulation of Voluntary Discontinuance? This Court says that a recourse to the certified records found no trace of proof to clear this doubt. That said, on what foundation did the informants rely to file this bill of information praying this Court to halt and prohibit the lower court from enforcing its Mandate growing out of the Joint Stipulation for Voluntary Discontinuance entered in 2014? In light of the informants' failure to convince this Court that the enforcement of its Mandate by the court below was contrary, bill of information will not lie.

Having thus said and consistent with the premise upon which a bill of information is entertained by this Honorable Supreme Court as enunciated in the opening paragraphs of this Opinion, we are not inclined to grant the informants' bill of information.

WHEREFORE, and in view of the forgoing, the bill of information is hereby denied and dismissed. 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 case and give effect to this Opinion. AND IT IS HEREBY SO ORDERED.

Counsellor J. Johnny Momoh appeared for the informants. Counsellor Sylvester D. Rennie appeared for the respondents.