

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA. SITTING IN ITS
OCTOBER TERM, A.O. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR. SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBEASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Hawa Sheriff of Dualla Market, Bushrod)
Island, Monrovia, LiberiaAppellant)
)
Versus) Appeal

)
His Honor Scheaplor R. Dunbar, Assigned Circuit)
Judge, Sixth Judicial Circuit, Montserrado County,)
Republic of Liberia1st Appellee)

)
And)

)
F. Augustus Caesar of the City of Monrovia,)
Republic of Liberia2nd Appellee)

)
GROWING OUT OF THE CASE:)

)
Hawa Sheriff of Dual la Market, Bushrod)
Island, Monrovia, LiberiaPetitioner)

)
Versus) Petition for a Writ of Prohibition

)
His Honor Scheaplor R. Dunbar, Assigned Circuit)
Judge, Sixth Judicial Circuit, Montserrado County,)
Republic of Liberia1st Respondent)

)
And)

)
F. Augustus Caesar of the City of Monrovia,)
Republic of Liberia2nd Respondent)

)
GROWING OUT OF THE CASE:)

)
F. Augustus Caesar of the City of Monrovia,)
Republic of Liberia.....Plaintiff)

)
Versus) Summary Proceeding to Recover

)
Hawa Sheriff of Dualla Market, Bushrod)
Island, Monrovia, Liberia..... Defendant)

Heard: November 17, 2021

Decided: February 17, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

In the instant appeal, the Supreme Court *en bane*, is called upon to review the Ruling of the Justice presiding in Chambers, Madam Justice Jamesetta H. Wolokolie during the October Term 2019.

The records show that on June 13, 2009, the appellant herein, Hawa Sheriff filed a petition for the writ of prohibition before our Colleague, Mr. Justice Joseph N. Nagbe the Justice presiding in Chambers during the March Term 2019 of the Supreme Court. Although Justice Nagbe ordered the issuance of the alternative writ of prohibition, no hearing was had and the matter remained pending until the expiration of his term as the Justice presiding in chambers. He was succeeded in Chambers by Madam Justice Jamesetta H. Wolokolie.

On March 6, 2020, Madam Justice Wolokolie entertained arguments on the petition, *pro et con*, and subsequently entered Ruling thereon, affirming the alternative writ ordered issued by Mr. Justice Nagbe, and mandated the issuance of the peremptory writ of prohibition.

Notwithstanding the granting of the writ of prohibition as petitioned and prayed for by the appellant, the latter is now before the Supreme Court *en bane*, seeking a review of the Ruling of Madam Justice Wolokolie.

Having reviewed the records and noted that the Ruling of Madam Justice Wolokolie succinctly narrates the facts and circumstances leading to the prohibition proceedings, this Court herewith incorporate and quote the said Ruling *verbatim* in this Opinion, to wit:

“RULING

On June 13, 2019. His Honor Associate Justice Joseph Nagbe, presiding in Chambers, issued an alternative writ of prohibition in the above petition for a writ of prohibition. He subsequently left Chambers without a hearing and determination of the writ issued. Associate Justice Jamesetta Howard Wolokolie, coming into Chambers thereafter called for a hearing and determination of the petition.

The facts garnered from the records and hearing of the matter are that the petitioner, Hawa Sheriff, occupied a portion (0.5 lot) of 1.5 lots originally owned by Daniel

Mensah, now deceased; that the 2nd respondent, F. Augustus Caesar, on October 26, 2018, filed an action of summary proceedings to recover possession of real property against petitioner, Hawa Sheriff before the Sixth Judicial Circuit, Civil Law Court, Montserrado

County claiming that he bought the 1.5 lots from Mr. Mensah in 2013 and which included the portion (0.5 lot) of property occupied by the petitioner, Hawa Sheriff. He prayed the court to evict the petitioner whom he claimed was illegally occupying portion of the purchased property and was depriving him of the use and enjoyment thereof.

The 1st respondent, Judge Scheaplor R. Dunbar, Assigned Circuit Judge of Court "B" Sixth Judicial Circuit, had a hearing into the petition for summary ejectment and ruled on June 4, 2019, finding Hawa Sheriff liable and holding that she be evicted from the disputed property). The clerk of the Circuit Court was ordered to issue a writ of possession, placing same in the hands of the Sheriff, who with the aid of a licensed surveyor, was to place the 2nd respondent in possession of the contested property.

The petitioner ran up to the Chambers Justice with a petition for a writ of prohibition. praying the Chambers Justice to issue a writ of prohibition to restrain and enjoin the 1st respondent Judge Dunbar from evicting her from the contested property. In her petition for prohibition. she alleged that she entered a lease agreement with the deceased Daniel Mensah for the period January 1 2005 thru January 1 2025, for the 0.5 lot that she occupies: that she made an offer to Mr. Mensah to buy the property and they reached an understanding for her to purchase the 0.5 lot for Twenty Five Thousand United States Dollars (US\$25.000); that based on their understanding. she made an initial payment of Four Thousand United States Dollars (US\$4.000) to Mr. Mensah and began to improve on the property. She further alleged that the deed proffered by the 2nd Respondent Augustus F. Caesar was fraudulent. making reference to the date of signature on the title deed where the deed was said to have been signed on April 17, 2013, but was prepared by the surveyor on April 19, 2013, and that the name of Counsellor T. Dempster Brown was wrongly spelt evidencing that he did not offer the deed for probation as shown on the deed. Petitioner attached to her petition for a writ of prohibition a copy of the lease agreement between Daniel S. B. Mensah and her for a period of twenty (20) years. running from January 2005 to January L 2025.

In his returns to the petition as mandated by the Justice in Chambers. the 2nd respondent contends that he possesses a genuine warranty deed from Mr. Mensah for the purchase of 1.5 lots which includes the 0.5 lot that the petitioner occupies; that the variance of the date on his deed was due to inadvertence which the petitioner did not raise in her responsive pleading in the court below and which would have been addressed by him and considered by the court; that the contention that Counselor Dempster Brown did not offer the deed for probation as his name was wrongly spelt could not have sufficed since Counselor Dempster Brown himself came and testified at

the hearing in the court below and confirmed that it was his signature on the deed, and that he was the one that offered the deed for probate and registration. The 2nd respondent further contends that mere allegation of fraud is not sufficient unless proven with particularity and that the petitioner having failed to raise the issue of fraud with particularity) in her returns to the 2nd respondent's complaint in his summary eviction action in the court below, she was barred from raising that issue before the Supreme Court.

The counsel for the 2nd respondent in argument before the Chambers Justice, contended that prohibition will not lie where the petitioner had not specifically raised fraud in her returns to the 2nd respondent's complaint filed in the court below and the petitioner did not give the respondents an opportunity to address the allegations of fraud. Besides, where fraud is raised in the pleadings and the lower court from its hearing finds to the contrary, the party excepting to the court's ruling can only come up to the Supreme Court on appeal and not on a petition for a writ of prohibition as the Supreme Court has held that a writ of prohibition cannot be used as a substitute for an appeal from the final ruling of the lower court.

The records in the file reveal that during the trial in the court below, the lawyer for Mr. Mensah, Counselor Dempster Brown, testified for the 2nd respondent. He stated that he was the lawyer for Mr. Daniel Mensah up to the time of his (Mensah) death. He confirmed that Mr. Mensah did enter a lease agreement with the Petitioner Hawa Sheriff for a building situated on a portion of the deceased property, and after a year she expressed interest in purchasing the property: that it was agreed that she purchase the property for the amount of US\$25,000, making payment within six (6) months: that upon her failure to pay the agreed amount within six months, Mr. Mensah had the right to sell the property to another interested party. He confirmed that the petitioner made payments against the purchased amount which amounted to US\$4,000, But she was not able to make the purchase payment in the time agreed, and had even failed to continue making the lease payment. Counselor Brown testified that because Mr. Mensah needed to go abroad for medical treatment he sold his entire property of 1.5 lots to the 2nd respondent and this included the half lot leased to the petitioner. Counselor Brown confirmed that he was the one who probated and registered the warranty deed from Mr. Mensah to the 2nd respondent F. Augustus Caesar. The witness further explained that after the sale of the property to the 2nd respondent Mr. Mensah attempted to refund the petitioner the US\$4,000 payment made by her but she refused to receive the money. This led Mr. Mensah to take the matter to the New Kru Town Magisterial Court where a conference was called, and where Mr. Mensah presented to the petitioner the US\$4,000 part payment plus 15% interest but the petitioner was adamant and refused to accept the money: she went on to file an action for specific performance before the Civil Law Court and the court ruled that since she had defaulted in her payment for the property, she was not entitled to a claim for specific performance. She

therefore did not prevail in her specific performance action. Counselor Brown further testified that Mr. Mensah after sale of the property to Mr. Caesar went abroad for treatment

and returned. and at no time did he (Mr. Mensah) contest the 2nd respondent's possession of the property before his death.

This Chambers notes that the Petitioner Hawa Sheriff has not only alleged that she is entitled to the property based on her understanding with Mr. Mensah to purchase the property that she now occupies and had advanced him Four Thousand United States Dollars (US\$4,000) against the agreed purchase price of Twenty Five Thousand United States Dollars (US\$25,000). but that she had previously entered an agreement with the deceased running from the period January 1, 2005 through January 1, 2025.

The lower court in its final ruling held that the petitioner's witnesses testimonies that Mr. Mensah did not convey the property to the 2nd respondent and that the signature on the 2nd respondent's deed is not Mr. Mensah's signature was unconvincing since Mr. Mensah did not oppose the 2nd defendant's ownership of the property from 2013, the time he sold the property to the 2nd respondent up until his death in 2018: that overwhelming evidence substantiated that Mr. Mensah having sold the property to the 2nd respondent. he made efforts to refund the petitioner her money. the US\$4,000 paid to him. even taking her to court to accept the refund and offering to pay her an interest of fifteen percent on the amount paid to him. This. the court held was a clear demonstration that he had voluntarily sold the property to the 2nd respondent after the petitioner failed to buy the property as agreed.

We agree that the trial court having found from the evidence that Mr. Mensah sold his 1.5 lots including the property being occupied by the petitioner and that the 2nd respondent is entitled to the entire property. The petitioner, under normal circumstances should have registered her disagreement with said ruling by filing a regular appeal therefrom. Prohibition, as this Court has held, will not substitute for an appeal from the decision of the lower court and cannot be used to prevent the enforcement of the trial court's ruling on the ownership right of the 2nd respondent to the property: *Chariff Pharmacy v. Pharmacy Board of Liberia et al.*, 37 LLR 135, 145(1993); *Western Steel, Inc. v. R.L. et al.*, Supreme Court Opinion, March Term 2015.

However, we must determine whether under the facts and circumstances of this matter, where the 2nd respondent F. Augustus Caesar himself acknowledges that his grantor (Mensah) before the sale to him had previously entered a lease agreement with the petitioner for the portion of the property she occupies, can be evicted from the premises before the expiration of the lease period (January 1, 2025)? And whether prohibition will lie to prevent the petitioner's removal before the expiration of the lease period?

The Supreme Court has defined prohibition as a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. It also addresses the reviewability of an order of a lower court, and in this case the dispossession of the petitioner.

This Court has also held that prohibition will lie to prevent some great outrage upon settled principles of law and procedure in cases where wrong, damage and injustice are likely to follow such action: *Togba v. Republic of Liberia* 35 LLR 389.400 (1988); *Broh v. The Honorable House of Representatives*, Supreme Court Opinion, October Term 2013; *LIMINCO v. Judge Paye et al.* Supreme Court Opinion, October Term 2016.

In this case the petitioner proffered a lease agreement as follows:

..REPUBLIC OF LIBERIA
MONTSERRADO COUNTY

AGREEMENT OF LEASE

THIS AGREEMENT of Lease made and entered into this 1st day of January A.D. 2005, by and between DANIEL S. B. MENSAH of the City of Monrovia, Montserrado, Republic of Liberia, known and referred to as LESSOR and HAWA SHERIFF also of the City of Monrovia, Montserrado County, Republic of Liberia known and referred to as the LESSEE, hereby;

WITNESSETH:

ARTICLE I

THAT for and in consideration of the rights herein reserved the LESSOR of stipulations herein covenants to grant, lease unto LESSEE a demise building situated at Dualla, Monrovia, Liberia.

TO HAVE and to hold the said demised premises together with all and singular rights and privileges hereto and thereunto and belonging to LESSOR herein for the full and complete period of ten (10) years certain, commencing the 1st day of January 2005 up to and including January 1, 2015.

ARTICLE II

IT IS MUTUALLY agreed and understood by the parties that for and in consideration of the use and occupancy of the herein demised premises, LESSEE agrees and covenants to pay or cause to be paid unto the LESSOR rental for the lease hold at the following rate to wit:

a) For the five (5) years of the certain period that is from the 1st day of January A.D. 2005. up to and including the 1st day of January 2010, LESSEE shall pay to LESSOR the lease hold rental of US\$500.00 (Five hundred United States Dollars) per annum;

b) For the period of the second five (5) years. that is. from the 1st day of January 2010 to 1st January 2015, the LESSEE shall pay the sum of US\$800.00 (Eight Hundred United States Dollars) per annum:

c) The optional period of ten (10) years that is from 1st of January 2015 to January 1, 2025, the rental will be US\$800.00 (Eight Hundred United States Dollars) per annum.

ARTICLE III

IT IS AGREED and understood...

ARTICLE IV

IT IS FUTHER mutually agreed and understood by the parties hereto that the LESSEE shall have the right to renovate the said demised building:

ARTICLE V

THE PARTIES further agree that the LESSEE shall be responsible for and pay all taxes such as Realty Lease Tax. Coast Guard Tax. and all other taxes imposed by Government with the exception of the Real Estate Tax during the life of this Lease Agreement:

ARTICLE VI

IT IS FURTHER agreed by and between the parties hereto that on his part covenants and promise to faithfully keep and perform each and every provision in this Agreement and that at the expiration of the terms herein granted. she will quietly and peaceably yield and surrender the said demised premises unto LESSOR in good as condition as wear and tear thereof will permit.

ARTICLE VII

AND THE LESSOR also promise that the LESSEE pays annual rental herein agreed upon and performing all of the other conditions contained in this Agreement shall at all times during the life of this Lease hold. possess and enjoy the herein demised premises without hindrance or molestation from any person whomever may claim any right, interest or title in said property or portion thereof. the LESSOR further stipulates to warrant and defend the said Lease during the entire life of the Agreement.

ARTICLE VIII

AND the parties further agree that the terms and conditions of this Agreement shall be binding on both parties and extend to and be binding upon their heirs. successors in

business. Executors. Administrators. and Assigns during the entire life of this Agreement.

DONE IN THE CITY OF MONROVIA THIS 18th DAY OF MAY, A.D 2005

IN WITNESS THEREOF:

DANIEL S.B. MENSAH
LESSOR

HAWA SHERIFF
LESSEE"

The petitioner admitted that when she reached an understanding with Mr. Mensah to purchase the property a year after she entered the lease agreement with him. she discontinued paying rental on the lease. Having failed to meet up with the purchase payment as agreed and thereby forfeited the purchase agreement: this raised the issue of whether her lease agreement with Mr. Mensah is still in force and effect although he had the property sold to the 2nd respondent.

I believe so, as the Supreme Court has held that a purchaser who acquires property after execution of a lease takes the property subject to the lease; that even a purchaser of real property at an execution sale cannot by means of a writ of possession be put in possession of the property which is in the possession of a third party. Ashkar v. Johnson et al. 33 LLR 74. 83 (1985); Delta Corp.v. BCCI 33 LLR 156. 168 (1985).

This means in effect that a lessee remains in possession and the purchaser takes subject to the lease. Fayad v. Dennis 39 LLR 587.593 (1999); Watson v. OAC 13 LLR 94. 99-100 (1957).

We therefore hold that the 2nd respondent's purchase of the property having been found valid by the trial court, he is entitled to the 1.5 lots. However. the trial court cannot dispossess the petitioner while the lease agreement between her and the 2nd respondent's grantor remains in force. The trial court has no authority to, dispossess the petitioner of her right to occupancy of the property. subject of the lease agreement.

It is also admitted that the petitioner made payments amounting to Four Thousand United States Dollars (US\$4.000) to Mr. Mensah against the purchase price for the property which he tried to return to her but she refused to accept. This amount then could be considered against her lease payment stipulated under the lease agreement. The 2nd respondent having bought the property from Mr. Mensah on May 3. 2013. he falls in the stead of Mr. Mensah as owner of the property and he is therefore entitled to

all rental payments due under the lease agreement less the payments made to Mr. Mensah which the petitioner refused to have refunded to her.

The Supreme Court having held that a writ of prohibition will lie where the act complained of will result in injury and where there is no other immediate and adequate remedy (*Togba v. Republic*, 35 LLR. 389 (1988)), we are bound under the facts and circumstances of this matter to grant the peremptory writ of prohibition, overturn and reverse the Judge's ruling relating to the dispossession of the petitioner from the property subject of these proceedings, while her lease agreement with the 2nd respondent's grantor remains in force and effect. She is entitled to remain on the leased premises until the lease period has expired, paying the lease rental to the 2nd respondent who now owns the property..."

We are in agreement with the foregoing Ruling of our esteemed Colleague, Madam Justice Wolokolie and will not disturb same.

This Court therefore holds that although prohibition cannot be substituted for an appeal, the extraordinary writ of prohibition will lie where, as in the instant case, there is no other readily available remedial writ and the act complained of amounts to an outrage on justice that will result in serious injury/irreparable loss if the writ is not issued. In the instant case, the appellant being ordered ousted from the premises she had leased from the 2nd appellee's grantor before the expiration of her lease is an outrage on justice, for which prohibition will lie.

We also hold that a purchaser of an already leased property, acquires the property with the leasehold right as a priority lien; until the lease expires, the property right of the purchaser does not vest; hence, the appellant who is the leaseholder in this case cannot be dispossessed until her lease which commenced on January 1, 2015, expires on January 1, 2025, and, that by virtue of the purchase of the entire 1.5 lots by the 2nd appellee which includes the 0.05 lots leased by the appellant, the 2nd appellee is the owner of the property and he is entitled to all outstanding rental payments due under the lease agreement entered into between his grantor and the appellant, less the payment of the US\$4,000.00 made to the said grantor, and at the expiration of the lease, the appellant will quietly and peaceably surrender the demised premises to the 2nd appellee.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Ruling of the Justice in Chambers is hereby affirmed. The alternative writ of prohibition is sustained and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the 2nd appellee. AND IT IS HEREBY SO ORDERED.

Judgment affirmed

When this case was called for hearing, Counsellor Amara M. Sheriff appeared for the appellant. Counsellors George D. Sagbeh and Stanley S. Kparkillen of the Sagbeh & Sagbeh Law Chambers appeared/or the appellee.