

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS OCTOBER TERM, A.D. 2023

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

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Amos Clinton and Rufus Wesley.....Appellants)  
)  
Versus ) APPEAL  
)  
His Honor Joe S. Barkon, Resident Judge, 2<sup>nd</sup> Judicial )  
Circuit Court, Grand Bassa County.....Appellee )  
)  
GROWING OUT OF THE CASE: )  
)  
Amos Clinton and Rufus Wesley.....Petitioners )  
)  
Versus )  
) PETITION FOR A WRIT  
) OF MANDAMUS  
His Honor, Joe S. Barkon, Resident Judge, 2<sup>nd</sup> Judicial )  
Circuit Court, Grand Bassa County.....Respondent )  
)  
GROWING OUT OF THE CASE: )  
)  
Amos Clinton and Rufus Wesley.....1<sup>st</sup> Movant )  
)  
And ) MOTION FOR RELIEF FROM  
) JUDGMENT  
Wahyeahyein Joe.....2<sup>nd</sup> Movant )  
)  
Versus )  
)  
Anthony Halaway, by and thru his Attorneys-in-fact )  
Mr. Philip Paye & Mr. Patrick B. Zondo.....Respondent )  
)  
GROWING OUT OF THE CASE: )  
)  
Anthony Halaway, by and thru his Attorneys-in-fact )  
Mr. Philip Paye & Mr. Patrick Zondo.....Plaintiff )  
)  
Versus ) ACTION OF EJECTMENT  
)  
Mr. Amos Clinton & Rufus Wesley.....1<sup>st</sup> Defendant )  
)  
And )  
)  
Wahyeahyein Joe.....2<sup>nd</sup> Defendant )

HEARD: MARCH 28, 2023

DECIDED: DECEMBER 19, 2023

## MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This appeal emerges before the full bench of the Supreme Court, praying this court to review and reverse the ruling of our distinguished learned Colleague, Mr. Justice Yussif D. Kaba; which ruling he denied the preemptory writ of mandamus prayed for by the appellants. To agree or disagree with the Chambers justice's ruling, it is expedient to briefly state the synopsis of the facts culled from the certified records of this case from the court below.

Having rendered a default judgment against Amos Clinton and Rufus Wesley in an action of ejectment predicated on the sheriff's returns which indicated that the appellants rejected or evaded the court's precepts including writ of summons and several assignments, the appellants filed a motion in the court below praying the court to relieve them from judgment on several grounds. The said motion was entertained and denied on March 31, 2021. From the denial of the motion for relief from judgment, the appellants excepted and announced an appeal on the 31<sup>st</sup> of March A.D.2021, which appeal was granted by the judge presiding in the court below. The records reveal that instead of pursuing the appeal process, the counsel for appellants elected to and filed a petition for a writ of prohibition on the 1<sup>st</sup> of April A.D. 2021 before Mr. Justice Joseph N. Nagbe, then presiding in chambers. On April 1, 2021, the Chambers Justice ordered a stay in the proceedings in the court below. One of the appellants' bones of contentions is that they, the appellants received the court's ruling on the motion to relief from judgment on June 4, 2021.

Pending the stay order the appellants allegedly presented a bill of exceptions to the presiding judge on April 1, 2021 and subsequently on April 12, 2021, for approval, but the judge declined to approve said bill of exceptions based on the stay order which was yet in force. The respondent judge also declined to approve the appellants' third bill of exceptions presented to him on July 20, 2021. The appellants contend that because the respondent judge also refused to approve their bill of exceptions filed with the court on July 20, 2021, at which time the stay order has been lifted. Appellants contend further that on September 14, 2021, they filed their appeal bond with a notice of completion of appeal with the clerk, while persuading the judge to approve their bill of exceptions and their appeal bond. They further contend that on September 15, 2021, the judge required them to augment the appeal bond from Twenty Thousand United States Dollars (US\$20,000) to Fifty-Five Thousand United States Dollars (US\$55,000) as a pre-condition for his approval of their appeal bond nunc pro tunc. The appellants maintained further that having exhausted all the legal remedies available to them, a petition for the writ of mandamus will lie to compel the respondent to approve their bill of exceptions and appeal bond. The records further show that when the justice in chambers

declined to issue the writ prayed for in the petition for prohibition, the appellants' counsel filed a petition for a writ of error which was also declined by the Justice in Chamber on July 17, 2021.

On October 1, 2021, the appellants filed a petition for a writ of Mandamus. Our distinguished colleague Justice Kaba issued the writ of mandamus and the respondents filed their returns. Having listened to arguments pro et con, the Justice ruled denying the preemptory writ. It is from this ruling that the appellants have appealed before this Court. Justice Kaba disagreed with the appellants' contention that they received the ruling on the motion for relief from judgment on June 4, 2021, and reasoned out that it could not have been possible for the appellants to receive a ruling on June 4, 2021 and have said ruling attached to their petition to the Justice in Chambers which petition was filed on April 1, 2021.

The issue decisive of this matter is: whether or not the chamber justice erred in dismissing the appellants' petition for mandamus?

The Court answers in the negative. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Civil Procedure Law, Rev. Code 1:16.21(2). The essence of the petition for the writ of mandamus is that the respondents have an official duty to perform and so they should be ordered and commanded to perform their official duties.

Mandamus has been employed on many occasions to compel a judicial officer to perform legal duties. It has been successfully and properly employed to (1) compel a judge to approve an appeal bond (*Amierable v. Cole*, 13 LLR 17 (1957)); (ii) compel judge to endorse the date of tender of a bill of exceptions (*Rottger v. Williams and Summerville*, (1937) LRSC 1; 5 LLR 348 (1937)); (iii) to compel a judge to enter judgment on a verdict (*Republic V. Shannon-Walser* (1978)); (iv) to compel the Secretary of State (now Minister of Foreign Affairs) to issue a passport to a Liberian Citizen (*Wiles v. Simpson*, 8 LLR 365 (1944)); (v) to compel Commissioner of Immigration to grant an exit visa to a foreigner to leave the country (*Liberia Air Taxi Inc. and Jones v. Meissner*, [1967] LRSC 6; 18 LLR 40 (1967)); and (vi) to compel the minister of finance to refund the value of a cash bond posted as security for custom levies (*Bah v. Philips* [1978] LRSC 37; 27 LLR 210 (1978)).” *R.L v. the leadership of the LNBA*, 40 LLR 635 (2001)

In addressing the issue, the Court first of all, observed that the counsel for the appellant deceived the Court when he contended that they received the ruling on the motion for relief of judgment of June 4, 2021. The records before us reveal that the judge below entered a

final ruling on the motion for relief from judgment on March 31, 2021, and the appellants herein excepted to the said ruling and announced an appeal. The records further show that the appellants filed a petition for a writ of prohibition one day after the ruling on the motion for relief from judgment, that is to say on April 1, 2021, and that on the said ruling, a copy of the judge's ruling on the motion to relief from judgment was annexed thereto. By no parity of reasoning can a ruling received on the 4<sup>th</sup> of June 2021, would have been annexed to a petition filed on the 1<sup>st</sup> of April.2021. It is therefore an established fact that the appellants received the ruling on April 1, 2021. The records further reveal that the Justice in Chambers ordered a stay immediately upon the filing of the petition for prohibition on April 1, 2021. The records also show that the stay order of the justice in chambers was not lifted until May 7, 2021. Ordinarily, since a stay order tolls the appeal statute, the ten-day period for the presentation of a bill of exceptions to the trial judge would have commenced on May 8, 2021 up to and including May 17, 2021, since the ten days of the presentation of the bill of exceptions was not exhausted when the appellant filed a petition for the writ of prohibition based on which the Chambers Justice issued the stay order on the same date and day.

We concurred with Justice Kaba that the filing and presentation of a bill of exceptions allegedly on April 1, 2021 was a violation of the stay order and the subsequent presentation of the bill of exceptions to the judge on April 12, 2021 was a violation of not only the stay order, but also the appeal statute as well. Hence the judge was justified in rejecting the bill of exceptions. We further concur with the Chambers Justice that the presentation of the bill of exceptions to the judge on July 20, 2021 and an appeal bond on September 14, 2021 were all in violation of the appeal statute. *Civil Procedure Law Revised Code: 1:51.4*.

From the chronological sequence of the records above, we are of the opinion that the counsel for appellants was on a fishing expedition in seeking a legal remedy for his clients. The judge's refusal to approve the bill of exceptions filed in the face of a stay order; approval of a bill of exceptions filed beyond the statutory period and an approval of the appeal bond and a notice of completion of appeal all filed beyond the statutory period cannot be legally compelled via a writ of mandamus.

As earlier indicated, a writ of mandamus is employed to compel an official to perform a legal duty and not an illegal duty. In the instant case, this Court cannot compel a judge to approve a bill of exceptions presented to him when there was a stay order in full force and later a bond presented to him after the statutory period had expired. The findings and conclusion of the Chambers Justice being fully supported by the facts and the law applicable in this jurisdiction, same need not be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Chambers Justice on the petition for the writ of mandamus should be and is hereby affirmed. 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 enforce its final ruling. Costs are ruled against the appellants.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR FINLEY Y. KARNGAR APPEARED FOR THE APPELLANTS. COUNSELLOR MORRIS MOMO DAVIS OF THE KEMP AND ASSOCIATES LEGAL CHAMBERS, INC. APPEARED FOR THE APPELLEE.