

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2024

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

Becca Mulbah of the City of Monrovia, Liberia)
.....Informant)

Versus)

His Honor A. Blamo Dixon, Assigned Circuit Judge,)
First Judicial Circuit, Criminal Assizes Court "C" and)
His Honor Ernest F. B. Bana, Stipendiary Magistrate,)
Brewerville Magisterial Court, Brewerville City,)
Montserrado County, Liberia.....1st Respondent)

BILL OF INFORMATION

And)

Republic of Liberia by and thru Theophilus Kiadii of the)
City of Monrovia, Liberia..... 2nd Respondent)

And)

Sky International Insurance Company by and thru its)
authorized representative of the City of Monrovia,)
Liberia..... 3rd Respondent)

GROWING OUT OF THE CASE:)

Sky International Insurance Company by and thru)
its authorized representative of the City of Monrovia)
Liberia..... Appellant)

Versus)

His Honor Yamie Quiqui Gbeisay, Sr., Assigned)
Circuit Judge, Criminal Court "C", His Honor Ernest)
F. B. Bana, Stipendiary Magistrate, Brewerville)
Magisterial Court and Republic of Liberia by and thru)
Theophilus Kiadii also of the City of Monrovia, Liberiaia)
Monrovia, Liberia.....Appellee)

APPEAL

GROWING OUT OF THE CASE:)

Sky International Insurance Company by and)

Thru its authorized representative of the City)	
Of Monrovia, Liberia.....Petitioner)	
)	
Versus)	
)	
His Honor Yamie Quiqui Gbeisay, Sr., Assigned)	PETITION FOR
Circuit Judge, Criminal Court "C", His Honor Ernest)	SUMMARY
F. B. Bana, Stipendiary Magistrate, Brewerville)	PROCEEDINGS
Magisterial Court and Republic of Liberia by and thru)	
Theophilus Kiadii also of the City of Monrovia, Liberia)	
..... Respondent)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Republic of Liberia by and thru Theophilus Kiadii)	
..... Plaintiff)	CRIME(S):
)	BURGLARY AND THEFT
Versus)	OF PROPERTY
)	
Becca Mulbah of the City of Monrovia)	
..... Defendant)	

Heard: October 23,2024

Delivered: December 19, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This bill of information is based on an action alleging burglary and theft of property filed before the Brewerville Magisterial Court. The informant, Becca Mulbah, was charged with the alleged commission of the crime of burglary and theft of property by the Brewerville Magisterial Court; that upon being arrested and brought under the jurisdiction of the court, a criminal appearance bond was posted by the 3rd respondent, the Sky International Insurance Company ("Sky Insurance") to secure the informant's appearance in court for hearings, and based upon which the informant was released on bail.

The Informant alleges that during the pendency of the hearing of the case at the Brewerville Magisterial Court, she became severely ill; that she, through her legal counsel, wrote the Stipendiary Magistrate John L. Griggs, attaching a medical certificate thereto, pleading for suspension of the court's hearing, and to allow her go to see her doctor; that despite her communication to Judge Griggs, the case was called by the subsequent presiding magistrate, and upon her being found absent from the bailiwick of the court, Sky Insurance was ordered to produce the witness or pay the amount alleged by the private prosecutor as the costs of the things allegedly stolen by the informant.

Sky Insurance contended that Magistrate Griggs having granted permission to the informant to leave the country, the burden was on the court to produce her, but Sky Insurance produced no evidence that Magistrate Griggs acted on the informant's request. The magisterial court therefore ruled that Sky Insurance be held liable to the private prosecutor to indemnify him in the amount of United States Dollars Forty-Five Thousand Three Hundred and Fifteen (US\$47,315.00) representing the alleged value of the items allegedly stolen. Upon the insistence of the magistrate for Sky Insurance to pay this amount, Sky Insurance sought relief through summary proceedings filed at the Criminal Court "C", and asked that the magistrate recuse himself from handling the case as he was biased.

The assigned Judge of Criminal Court "C" heard the summary proceedings and had the clerk sent an order to the stipendiary magistrate of the Brewerville Magisterial Court, which reads as follows:

"By directive of His Honor Yamie Quiqui Gbeissay, Sr. Assigned Circuit Judge, Criminal Assizes "C" First Judicial Circuit, Montserrado County, Republic of Liberia, you are hereby mandated to receive from his Honor Fallah Matthews, Associate Magistrate, Brewerville Magisterial Court, the case file out of which these proceedings grew, resume jurisdiction over the said case, issue a writ of summons *and cause the surety in said case to account for the defendant or satisfy the court's judgment according to the relevant provision of the law on enforcement of judgment when a defendant under criminal appearance bond absconds the bailiwick of a court.*(emphasis ours) Further, this Court orders His Honor Fallah Matthews to recuse himself from the case.

And for so doing, this shall constitute your legal and sufficient authority.

Given under my hand and seal of

Court this 29th Day of May, A. D. 2020

Knowles W. Shain
Clerk of Court
Criminal Court "C"

Sky Insurance then embarked on filing multiple remedial applications in an attempt to prolong the payment of the judgment amount which it did not expect to. This matter having come up to the Supreme Court based on an appeal by Sky Insurance, this Court mandated the court below to enforce its judgment, frowning on counsels of Sky Insurance for filing frivolous applications in the case.

Upon receiving the Mandate of the Supreme Court, Sky Insurance proceeded to the Magisterial Court and entered a stipulation with the court for payment of the judgment amount. Sky Insurance having made a total of United States Dollars Fourteen Thousand Four Hundred

and Twenty-Three dollars (US\$14,423) and the informant, being made aware of the unfolding circumstances and the constraints being suffered by Sky Insurance, returned to Liberia where she was arrested and turned over to the Brewerville Magisterial Court by the instigation of Sky Insurance. Sky Insurance then requested its criminal appearance bond withdrawn after having turned over the informant to the court. The informant thereafter had a subsequent criminal appearance bond of both property valuation and human surety filed and approved by the magisterial court.

Under the facts and circumstances, the informant has filed this bill of information to this court informing it that the present Stipendiary Magistrate, Ernest P.F. Bana, has, despite Sky Insurance having turned her over to the magisterial court and withdrawn its criminal appearance bond, and she having placed a new bond with the court and is now available for trial, insists that the Sky Insurance continues to pay the alleged costs of US\$47,315.00 for items allegedly stolen, and Sky Insurance is now requiring her to pay the balance stipulated amount.

The decision for the Sky Insurance to pay this amount despite the informant now being present in the country and before the court, the Stipendiary Magistrate says, is stringent on the Supreme Court's ruling which confirmed the lower court's ruling that where the informant absented herself from the jurisdiction while the case was pending and with no excuse from the court, the magisterial court should satisfy the court's judgment according to the relevant provision of the law on enforcement of judgment when a defendant under criminal appearance bond absconds the bailiwick of a court. Magistrate Bana states that for Sky Insurance, who had entered a stipulation for the costs of the items allegedly stolen, to stop the payments, though it has brought the informant subsequently before the court, was to disobey the Mandate of the Supreme Court.

The informant in her bill of information, prays the Supreme Court to order the magisterial court to (1) resume jurisdiction and hear the case on its merits; (2) place a hold on any payment to the second respondent, Theophilus Kiadii, pending the hearing and determination of the case, and (3) relieve Sky Insurance of further payment since the informant is now in the bailiwick of the country and has already posted additional bond of both property valuation and human surety.

Alternatively, the private prosecutor, Theophilus Kiadii, in his returns contends that the informant's information is a distortion of the February 7, 2024 Opinion by the Supreme Court which confirmed the ruling of the circuit court finding Sky Insurance liable for the value of the items alleged to be stolen; that the Court's February 7, 2024 Opinion was on the basis that

the Court did not find any evidence that informant was given permission to leave the bailiwick of the Country because she was ill; that her lawyer had made an application for her to travel for medical treatment but the former Magistrate Griggs did not act on said request, and the entire bill of information does not proffer factual or legal justifications consistent with the revised Rules of the Honorable Supreme Court for which a bill of information would lie; therefore, same should be denied.

For its part, Sky Insurance contends that it was entitled to be relieved of any further payment, since through its efforts it has ensured the arrest, detention, and turnover of the informant to the Court for hearing of the main charges, and had withdrawn its criminal appearance bond and a new bond posted by the informant and approved by the court.

The question that this bill of information begs is whether under the facts and circumstances where the informant has been brought under the jurisdiction of the court, continued payments under the stipulation made by Sky Insurance with the magisterial court should be continued?

We think not, since the bond filed was a criminal appearance bond and not a bond to indemnify the private prosecutor of any injury and costs suffered as alleged by the private prosecutor.

Our Criminal Procedure Law provides that a person may be allowed by order of court to be released on bail by the execution of a bond for his appearance. Unlike in a civil case where a bond is required to indemnify a judgment amount, in criminal cases, the primary purpose of a bail bond is to relieve the accused from imprisonment, to relieve the state of the burden of keeping the accused pending trial, to ensure that the accused will submit to the jurisdiction of the court and be in attendance thereon whenever his attendance is required, in other words, criminal appearance bond is to keep the accused constructively in the custody of the court before conviction and during the sentencing period. *Zuo v. Morris et al.* 37 LLR 604, 609 (1994). A criminal appearance bond in general is not meant to satisfy a judgment but to secure the appearance of the criminal defendant in court: *Gbartoe et al. v. Doe*, 40 LLR 150, 154 (2000).

In this case, when the informant left the bailiwick of the court and did not appear for assigned hearings, the Magistrate held Sky Insurance for her appearance and Sky Insurance ran up on summary to Criminal Court "C". The assigned Judge in Criminal Court "C" specifically ordered that the Magistrate issue a writ of summons on Sky Insurance Company, the informant's surety, to account for the informant's (defendant) appearance or satisfy the court's judgment according to the relevant provision of the law on enforcement of judgment where a defendant under criminal appearance bond absconds the bailiwick of a court.

The Sky Insurance proceeded to pay the costs of the alleged stolen items as held by the Magistrate, but the informant returned and Sky Insurance had her placed under the jurisdiction of the court, and withdrawal its criminal appearance bond. We do not see how then it can be further obligated to continue payment for the alleged stolen items. The case must proceed to trial.

In criminal cases one who is charged is presumed innocent until convicted. The Sky insurance having brought the informant to court to answer to the criminal charge brought against her, it is erroneous for the magistrate to insist that the judgment payment be made when the main action of burglary and theft of property stands undetermined. If it was so allowed, why then would there be a trial? Besides, the informant has proffered a new bond of property valuation and human surety for her appearance and this was approved by the same Magistrate Bana.

Ordinarily a bill of information is filed before the Supreme Court to prevent the improper execution of a Supreme Court's Mandate, and to prevent one from interfering with the Mandate of the Supreme Court. This Court has held that a counsel filing a bill of information other than the grounds stated will be suspended, disbarred, or fined.

In this case, however, the basis of this information is to seek clarification from this Court on the implementation of its Mandate, whether Sky Insurance or the informant can be made to make further payments against the costs of the alleged stolen items when the informant has appeared in court and is ready for the hearing and disposition of the case.

In order for a state to impose criminal penalty on an individual, it must be shown that he or she has committed some unlawful acts or engaged in some prohibited course of conduct, together with a wrongful intent - *mens rea* (21 Am Jur 2d elements and requisites of crime or criminal acts, section 4.). The prosecution must confront the accused with witnesses and other evidence to prove its allegation, since an accused is presumed innocent unless proven guilty.

Why would the Magistrate attempt to enforce a judgment based on mere allegation. The magistrates should know that the enforcement of the payment by the 3rd respondent, Sky Insurance was to ensure presentation of the informant for trial, and upon her appearance, the payment ceased.

Unlike a civil case where a judgment can be made summarily depending on the pleadings, or where the defendant is shown to have neglected his case, and the plaintiff evokes rule 7 of the circuit courts or the Civil Procedure Law 1.1. 42 and take the stand and make the imperfect judgment perfect, there is a higher standard in criminal cases to arrive at a judgment; this means that the prosecution must establish the guilt of the accused beyond a reasonable

doubt, with the state bearing the burden of proof at a trial held. Except in certain cases (Criminal Procedure Law Rev. Code II: 2.4 (3)), the presence of the accused is generally required to ensure compliance with court orders, allow observation by the judge and jury of the accused behavior and facilitate a fair trial and sentencing. In the present case, the informant being present and now ready to proceed with the case, it is the responsibility of the 2nd Respondent, the Republic of Liberia, by and thru the private prosecutor to prove the charges of burglary and theft of property against the informant in line with our criminal procedure law. Continuous payment required by the magistrate for the alleged stolen items is therefore held erroneous and unlawful.

WHEREFORE AND IN VIEW OF THE FOREGOING, a criminal appearance bond being an appearance bond and not an indemnity bond, and given that Sky Insurance has brought the informant under the jurisdiction of the court, the Supreme Court Mandate has been executed, and there leaves no reason for the Sky Insurance or the informant to continuously pay costs for the alleged stolen items. The trial is therefore ordered proceeded with and the state to proceed to prove its case in keeping with due process in a criminal prosecution. The Clerk is ordered to send a Mandate to the judge presiding in Criminal Court "C" to give effect to the Judgment of this Opinion. Costs are disallowed. AND IT IS HEREBY SO ORDER.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR TOMMY N. DOUGBA APPEARED FOR THE INFORMANT. COUNSELLOR WELLINGTON BEDELL APPEARED FOR 2ND RESPONDENT AND COUNSELLOR AUGUSTINE W. WILLIAMS OF THE SAYEH & SAYEH LAW FIRM APPEARED FOR 3RD RESPONDENT.