

NO. 12-0225

IN THE
TEXAS SUPREME COURT

IN RE: GIBRILL MUSTAPHA, ET AL,
Relators

**RELATORS' EMERGENCY MOTION FOR IMMEDIATE
TEMPORARY RELIEF AND TEMPORARY ORDER
STAYING PROCEEDINGS UNDER WRIT
OF POSSESSION.**

TO THE HONORABLE JUSTICES OF SAID COURT:

GIBRILL MUSTAPHA, ET AL,
Relators, files this (their) Emergency Motion For Immediate
Temporary Relief and Temporary Order Enjoining Proceedings
Under Writ of Possession, and in support thereof, would
respectfully show:

1. Relators have filed the instant mandamus proceeding seeking to
INVALIDATE, a "Wrong Service" or "Improper Delivery", on
June 28, 2010, of an "ORIGINAL PETITION FOR FORCIBLE
DETAINER" from the trial court of HON. TOM LAWRENCE,
Justice of the Peace, Precinct Four, Place Two, Harris County,
Texas. See Exhibit A1¹.

¹ Docket No. 5039447 submitted as Exhibit A1.

CONFLICT OF INTEREST

2. Relator GIBRILL MUSTAPHA, was wrongfully served with a “Writ of Citation In Forcible Detainer”, on July 6, 2010, herein incorporated as Exhibit A2 (CR) ², and was arraigned and maliciously prosecuted based on false claims accusations leading to a final judgment order, issued on July 21, 2010 (see Exhibit A2). Through indiscretion, the judge rendered a “Wrongful Judgment” for “Forcible Detainer” in Cause NO: EV42C5039447 (CR) , by, and, IN JUSTICE COURT, PRECINCT 4 PL. 2, HARRIS COUNTY, TEXAS.

3. Relators, after receiving the petition and trial schedule, immediately went to the trial court and filed answers in defense to the false claims and charges, herein incorporated and labeled as Exhibit A3³.

3.. Relators received **NOTICE OF TRIAL** on July 9, 2010, herein incorporated as ExhibitsA4 (2 pages), that was supposed to be handled in the following manner: JURY TRIAL. However, because of the trust Relator Gibrill Mustapha had at the time for the Judge and the faith reposed on the Hon. Judge, being a member of the Republican Party, a political organization Relator Gibrill Mustapha occasionally supports and volunteers to help, Relator Gibrill let his guard down and was induced by the Judge, to make a decision to accept trial by the “Bench” against the wishes of my spouse, Aidah J. Mustapha, who objected to my decision. However, the Judge decided to override her wishes and proceeded to conduct the trial against Relator Aidah J. Mustapha, denied Due Process, and is the real debtor of Loan No. 0154694476.

3. Relator GIBRILL MUSTAPHA, was wrongfully served with

² CR = Court Record: Trial Schedule

³ CR = Court Record: Denial and allegations of monetary theft, Identity theft and a demand for “Strict Proof by preponderance of credible evidence.

citation, and was arraigned and maliciously prosecuted based on false claims accusations leading to a final judgment order, issued on July 21, 2010 (see Exhibit A5)⁴. Through indiscretion, the judge rendered a “Wrongful Judgment” for “Forcible Detainer” in Cause NO: EV42C5039447 (CR) ,by, and, IN JUSTICE COURT, PRECINCT 4 PL. 2, HARRIS COUNTY, TEXAS.

4. Relators also filed an appeal “IN FORMA PAUPERIS” and were granted relief to obtain legal help to proceed with their contentions to the Appeals Court – Harris County Civil Court At Law NO. 3. Relator Gibrill Mustapha, then contacted the judge via EX PARTE. The judge of the said court, being my friend and party colleague, recused herself from the matter and the case was transferred to the Harris County Civil Court At Law NO. 4, Judge Roberta A. Lloyd presiding. See Exhibit A6

5. Relators pursued their appeal, filed timely motions for continuance and made exhaustive requests for a court appointed attorney which was finally granted but due to conflicts of interest, as a result of an Adversary Proceedings filed in the Bankruptcy Court, Cases No. 10-32153 and Adversary Proceedings No. 10 - 3265, in which Lone Star Legal Aid, was named as a defendant, ended the provision that was granted by the lower trial court. Due to conflict of interest, our court appointed attorney withdrew their services and Judge Lloyd informed Relators that our chances were lost because the trial court only contracts with Lone Star Legal Aid and that we the Relators have lost our chances for legal representation, and warned us that we were on our own.

6. Relators have filed the instant mandamus proceeding seeking to also invalidate a Final Judgment Order (See Exhibit A7)⁵

⁴ CR = Court Record: Clearly Erroneous Judgment for Plaintiff HSBC BANK U.S.A ET AL; Relators know that the judgment was indiscretional, unjust and wrongful.

⁵ CR = Court Record: Final Judgment for Superior Possession in Cause no. 968686

Rendered in a judgment for “Writ of Possession” Case by the Harris County Civil Court At Law NO. 4, in cause NO. 968686, herein incorporated as Exhibit A8⁶, that was issued on January 18, 2011, and has since not been revoked or extinguished but continued to be use to intimidate Relators and to forcibly take them out of their bonafied home paid for “Fee Simple” from Countrywide Home Mortgage in 2006.

7. Real party in interest? (questionable and is being challenged by Relators). HSBC BANK U.S.A, has obtained issuance of a writ of possession,pursuant to the final judgment rendered clearly erroneous and through indiscretion in cause No. 968686. Relators are scheduled for eviction unlawfully from their home on Tuesday April 3, 2012, at about 9:00 AM (See Exhibits A9 and A 10⁷).

8. The basis of the mandamus action is that the trial court which rendered the judgment in the forcible detainer action in Cause No. 968686 did not follow the legal procedures necessary to enter judgment because a “Cloud Over Title” action was pending and remains pending in the Harris County Civil Court At Law NO. 4, in Houston, Texas. (See Motion for Continuance and Motion on trial De Novo), rendered MOOT; and Relators appealed to the 14th Court of Appeals, case now dismissed for want of prosecution and currently pending in this court.

A. REQUIREMENTS FOR MANDAMUS RELIEF

9. Mandamus is an extra ordinary remedy which issues “only to correct a clear abuse of discretion or a violation of a duty imposed by law when there is no adequate remedy by appeal.” Cantu

⁶ CR = Court Record: THE STATE OF TEXAS WRIT OF POSSESSION ON PROPERTY

⁷24 Hour Notice to Move Out by Tuesday April3, 2012.

v.Longoria, 878 S.W, 2d 131, 132 (Tex. 1994), citing Walker v. Packer, 827 S.W. 2d 833, 839-840 (Tex. 1992).

An appellate court can find a clear abuse of discretion only where action is “so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” Johnson v. Fourth Court of Appeals, 700 S.W. 2d 916, 917 (Tex. 1985).

10. The Texas Supreme Court explained the standard of review in a mandamus case as follows:

The test for abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action. Rather, it is a question of whether the court acted without reference to any guiding rules and principles. Craddock v. Sunshine Bus Lines, 134 Tex. 388, 133 S.W.2d 124, 126 (Tex.Comm.App.--1939, opinion adopted). Another way of stating the test is whether the act was arbitrary or unreasonable. Smithson v. Cessna Aircraft Co., 665 S.W.2d 439, 443 (Tex.1984); Landry v. Travelers Insurance Co., 458 S.W.2d 649, 651 (Tex.1970).

11. The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred. Southwestern Bell Telephone Co. v. Johnson, 389 S.W.2d 645, 648 (Tex.1965); Jones v. Strayhorn, 159 Tex. 421, 321 S.W.2d 290, 295 (Tex.1959). Downer v. Aquamarina Operators, Inc., 701 S.W.2d 238, 241-242 (Tex. 1985).

B. TITLE DISPUTE PRECLUDES FORCIBLE DETAINER JURISDICTION

12. There is presently a pending lawsuit asserting that the

foreclosure from which Aidah J. Mustapha's title emanates was wrongful. That case is styled GIBRILL MUSTAPHA ET AL, V. HSBC BANK U.S.A, ET AL, Harris County Civil Court At Law NO. 4, Cause NO. 968686. The prior lawsuit asserting that the foreclosure from which Aidah J. Mustapha's title emanates was wrongful; was styled wrongfully and disposed of incorrectly.

13. Relators case in the 14th Court of Appeals was dismissed on January 31, 2012. As shown by Exhibits 11 and 12, title is at issue and was at issue when the trial court granted the final judgment on the forcible detainer action. Therefore, the trial court lacked jurisdiction to go forward on the forcible detainer action; *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex. App.—Corpus Christi 1998, no writ); See *Yartov. Gilliland*, 287 S.W.3d 83, 89-90 (Tex.App.—Corpus Christi 2009, no pet.).

14.. As the Thirteenth Court of Appeals stated more than a decade ago:

Justice courts may adjudicate possession even where issues related to the title of real property are tangentially or collaterally related to possession. See *McGlothlin v. Kliebert*, 672 S.W.2d 231, 233 (Tex.1984); *Home Sav. Ass'n*, 6004 S.W.2d at 913-14; *Fry v. Ahrens*, 256 S.W.2d 115, 116-17 (Tex.Civ.App.--Galveston 1953, no writ). If the question of title is so integrally linked to the issue of possession that possession may not be determined without first determining title, Justice and county courts are without jurisdiction to make any determinations regarding title. *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex.App.--Houston [1st Dist.] 1995, writ denied); *Johnson v. Fellowship Baptist Church*, 627 S.W.2d 203, 204 (Tex. App). Corpus Christi 1981, no writ). *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex.App.—Corpus Christi 1998, no writ) .

C.. MANDAMUS RELIEF APPROPRIATE WHERE TRIAL COURT ACTS WITHOUT JURISDICTION

15. Where a trial court acts when it lacks jurisdiction, mandamus relief is appropriate. Entry of a void order – an order that the court had no power or jurisdiction to render – is a basis for mandamus relief. *Urbish v. 127 th Judicial District Court*, 708 S.W.2d 429, 431 (Tex.1986)(original proceeding). *In re Steiger*, 55S.W.3d 168, 170 (Tex.App.–Corpus Christi 2001, original proceeding).

16.. Where an order is void, a relator need not show that it has no adequate remedy upon appeal. *In re Southwestern Bell Tel. Co.*, 35 S.W.3d 602, 605(Tex.2000)(original proceeding).

17. In support of this motion, Relators have included the following exhibits of documents recently filed to seek relief from the unlawful possession:

- a. Exhibit 1 is a true copy of the NOTICE OF APPEAL, in Cause NO. 968686/ 14-11-00112-CV
- b. Exhibit 2 is a true copy of the EMERGENCY MOTION TO STAY EXECUTION OF WRIT OF POSSESSION, Cause No. 968686
- c. Exhibit 3 is a true copy of the MOTION TO RECUSE JUDGE ROBERTA A. LLOYD in Cause NO. 968686.

WHEREFORE, PREMISES CONSIDERED, Relators requests that this Court grant immediate temporary relief in the form of a temporary order staying all proceedings (including eviction) under any writ of possession issued in or based upon the judgment rendered in the case styled HSBC BANK U.S.A, ET AL VS. GIBRILL MUSTAPHA, ET AL (His Wife: Aidah J. Mustapha), Case No. 14. 11. 00112- CV, currently with this Honorable Court and numbered as Case NO. 12- 0225, and that this Court grant

Relators such further relief to which they may be entitled.

Respectfully submitted,

GIBRILL MUSTAPHA ET AL (PRO SE),
RELATORS,
23922 VERNGATE DRIVE,
SPRING, TEXAS, 77373
Tel. (281) 353-0092
Fax. (281) 353-0092

CERTIFICATE OF NOTICE TO OPPOSING COUNSEL OF
INTENT TO SEEK TEMPORARY ORDER

I/We, Mr. and Mrs. Gibrill Mustapha, hereby certify that I/We have advised opposing counsel, Mr. Rex Kesler and Anthony C. Waddell, that Relators were filing a motion for immediate temporary relief in the form of a temporary order enjoining and staying all proceedings under any writ of possession issued in or based upon the judgment rendered in the case styled GIBRILL MUSTAPHA, ET AL, VS. HSBC BANK U.S.A ET AL, Cause NO. 12 - 0225, in the SUPREME COURT OF TEXAS.

Such notification was filed electronically and served through the same process to be followed by hard copy of the Exhibits that would be sent via the U.S.P.S Certified Mail. This should occur as soon as e-filing is completed this day 03/30/2012.

Respectfully submitted by:

Gibrill Mustapha and Aidah J. Mustapha, Pro Se,
Relators.

CERTIFICATE OF SERVICE

I/We the undersigned certify that a true and correct copy of Relators' Notice of: **RELATORS' EMERGENCY MOTION FOR IMMEDIATE TEMPORARY RELIEF AND TEMPORARY ORDER STAYING PROCEEDINGS UNDER WRIT OF POSSESSION,** was served on the parties mentioned below via Personal delivery, US Mail, and/or served electronically and via attempts to Facsimile such on this 30th Day of March, 2012.

Gibrill Mustapha, ET

AL

Service To

Trial Court Justices:
Supreme Court of Texas,
P.O Box 12248,
Austin, Texas, 78711

Attorney for Plaintiffs/Respondents

1. Rex L. Kessler, Attorney
14202 Champion Forest Drive
Houston, Texas 77069
Phone: 281/440-1311; Fax 281/440-9111

Anthony C. Waddell,
C/O BARRETT DAFFIN FRAPPIER TURNER &
ENGELS, LLP.
15000 Surveyor Boulevard, Suite 100,
Addison, TX 75001

IN THE SUPREME COURT OF TEXAS

Emergency Motion Case No. 12-0225

In re: Aidah J. Mustapha, and Gibrill Mustapha, Plaintiffs,

V.

HSBC BANK USA, ET AL,
Alleged Creditors/Respondents

Affidavit of Indigence

I/We Aidah J. Mustapha, and my husband Gibrill Mustapha, do swear or affirm the following:

1. I, Aidah J. Mustapha, filed for Bankruptcy on March 15, 2010.
2. On November 4, 2010, I was inadvertently late for appearance in Bankruptcy Court Hearing (15 minutes) and was advised by the Court Clerk, that my case was dismissed.
3. On January 12, 2011, I and my husband Gibrill Mustapha, filed our Original Petition to the JUDGE OF SAID COURT: 281 JUDICIAL DISTRICT, which got moved out of time to the

Federal Court without our knowledge.

4. The nature and amounts of my current employment income is approximately \$XX.000.00 Annually; (Pay Stubs attached for verifications). My husband Gibrill Mustapha, is currently a music producer with hopes for ROI.

5. The nature and amount of my current government-entitlement income is zero.

6. The nature and amount of my current income, other than that described in my answers to 4, 5, above, is zero.

7. The income of my spouse is currently \$0.00

8. I/We own the following real property: Single Family Home: 23922 Verngate Drive, Spring, Texas, 77373.

9. I/We own the following personal property: Automobile: 2006, Chrysler.

10. I/We have the following amount of cash: \$xx.xxxx

11. I/We have the following amounts of Zero Funds on deposit that I/We may withdraw: Zero.

12. I/We have the following assets, other than those described in our answers to 4 through 11 above. Household furnitures, Electronic Appliances, Clothes, Shoes, Books, Music Collections etc., Valued: \$XX.XXX.XX

13. I/We have 1(one) dependent, my son XXXXX- XXXXX
My/Our relationship to him is a mother and Step Father.

14. The nature and amount of my/our debts are deplorable.

15. The nature and amount of my/our monthly expenses are very high.

16. My/Our ability to obtain a loan for court costs is non-existent.

17. An attorney, is not providing free legal services to me/us without a contingent fee.

18. An attorney, has not agreed to pay or advance Court costs.

19. My/Our Chase Bank Checking Account #: xxx-xxx-xx-XX65, has balance of \$XX. XXX.XX; my Savings Account #:xxx-xxx-XX09, has a balance of \$XX. XXX., XX, and our joint account has a balance of \$XX.XXX.XX.

Aidah J. Mustapha and Gibrill Mustapha, Plaintiffs

Date: 03/30/2012

Certificate of Oath or Affirmation

On this date, I administered the above oath or affirmation from the person (s) named above.

I am a _____ and am authorized to administer an oath or affirmation pursuant to Texas Government Code section 602.002, 602.003, 602.004, or 602.005. If I have a seal of office that I am required by law to affix to documents when administering an oath or affirmation, then I have included an original impression of my official seal below.

Signed By: -----

[Date]-----

[original impression of official seal, if any, of person administering
oath or affirmation]