

GLENWEH COOPER and **MAMA GLEONDER**, Plaintiffs-In-Error, v. **HIS HONOUR HARPER SOE BAILEY**, assigned Circuit Judge, presiding over the People's First Judicial Circuit Court "B", Montserrado County, February Term, A. D. 1983, and **HIS HONOUR JOHN P. LANSANA**, Justice of the Peace, City of Monrovia, Defendants-In-Error.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR A WRIT OF ERROR.

Heard: May 9, 1983. Decided: July 6, 1983.

1. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed.
2. The law does not give the Supreme Court authority to take away from what the Legislature has commanded unless the said command is repugnant to or breaches provisions of the Constitution; and in such case, the constitutional issue must be squarely raised.
3. The function of the courts is to interpret the law, and they are not concerned with whether or not legislation is wise or unwise; and the Court has no authority to add to or take away from what the Legislature has commanded.
4. The necessity for an assignment of errors required by statute or rule of court is a matter of substance, and not a mere matter of form which can be waived or dispensed with by agreement or conduct of the parties or their counsel.
5. Compliance with the rules of court is jurisdictional and absolutely obligatory. Thus, compliance with a court rule requiring an appellant who does not include in his statement of facts or bill of exceptions the complete record of all proceedings and evidence in the cause to file a concise statement of the facts on which he intends to rely is jurisdictional and mandatory. Hence, it is not a matter of choice for a plaintiff-in-error to by-pass the statutory provisions governing the application for a writ of error or competent to declare such provision of the statute as a "trivial technicality" in the assignment of error.
6. The difference between a statute and a legal maxim is that the former is the fundamental element that controls adjudications between parties in law courts, whereas the latter may be used to merely justify adjudicated cases.
7. When the statute commands or prohibits the performance of an act, no legal maxim can be invoked to nullify such command or prohibition, as to do so is an attempt to render the statute silent on a point on which it is unequivocally vocal.
8. In the absence of a judicial resolution of a jurisdictional issue, the Court is without judicial and legal authority, capacity, power or right to perform any of its judicial acts.

Plaintiffs-in-error filed a petition before the Justice in Chambers contending that they had been denied their right to due process by the co-respondent judge. The plaintiffs-in-error alleged that having been denied due process in the court of the justice of the peace in an action of summary proceedings, wherein the justice of the peace sought to enforce a judgment by default entered against them, they had applied to the correspondent judge for redress. The co-respondent judge, who was presiding in a criminal court, in a quasi-criminal matter, they alleged, had in their absence entered judgment against them, issued a bill of costs, and a commitment to have them taken to jail in the event they failed to immediately satisfy the bill of costs. The plaintiffs-in-error also alleged that the correspondent judge had extorted the amount of \$62.00 from them.

The Chambers Justice found magnitude in the petition and ordered the same issued. From that ruling, an appeal was taken to the Supreme Court en banc.

The Court, after a hearing, reversed the ruling of the Justice in Chambers, noting that the plaintiffs-in-error had failed to satisfy certain statutory requirements which were prerequisites for issuing the writ of error. Among the requirements which the Court noted the plaintiffs-in-error had failed to meet were the failure to aver that the petition was not filed for the purpose of delay or harassment and the failure to attach a counsellor's certificate stating that in the opinion of the counsellor real errors were assigned.

The Court rejected the arguments advanced by the Chambers Justice that the errors committed by the co-respondent judge outweighed the errors of the plaintiffs-in-error, holding that the command of the statute was mandatory and that the Court had no authority to extrapolate the intent of the Legislature where the statute was plain, or to add to or take away from the said statute, no matter how unwise it may consider the statute to be. The petition was therefore denied.

Roland Barnes appeared for the appellants/defendants-in error. James Y. Gbarbea appeared for the appellees/plaintiffs-inerror.

MR. JUSTICE KOROMA delivered the opinion of the Court.

Edward Wesley instituted an action of summary proceeding against Glenweh Cooper and Mama Gleonder to recover possession of real property and rent. The defendants were allegedly not afforded their day in court by Justice of the Peace John P. Lansana who, in an attempt to enforce a default judgment, was summoned before His Honour H. Soe Bailey, presiding by assignment over the February, A. D. 1983 Term of the First Judicial. Circuit Court, Criminal "B". The writ of summons was issued on both the respondent justice of the peace and the plaintiff in the summary proceeding action. Allegedly, the denial of their day in court, from which the plaintiffs-in-error had filed a petition before the chambers of His Honour H. Soe Bailey, was compounded when the said plaintiffs-in-error were adjudged in

default, a final judgment entered against them, a bill of costs prepared, and a commitment issued, to be executed in the event of their failure to make immediate settlement of said bill of costs. The plaintiffs-in-error further alleged that \$62.00 was extorted from them as costs in a quasi-criminal case that was controlled and prosecuted by State.

The plaintiffs-in-error also alleged that in addition to the commission of these acts of irregularities, they were grossly denied their day in court and the due process of the law by His Honour H. Soe Bailey, the co-defendants-in-error judge. Not having had the opportunity to except to the several rulings and final judgment of His Honour H. Soe Bailey and to appeal therefrom, the plaintiffs-in-error applied to the Chambers of Mr. Justice Smith for a writ of error. The alternative writ was issued, the petition heard and granted and the peremptory writ ordered issued against the defendants-in-error, who excepted to the ruling and appealed to the Full Bench for review thereof.

In their brief, the defendants-in-error have raised two issues that are germane, in our opinion, to the final determination of this case. (1) Whether or not the plaintiffs-in-error are properly before this Court to warrant a judicial consideration of their petition for a writ of error? (2) Whether the provisions of our statute are subordinate to legal maxims.

In count six (6) of their returns, filed in response to the petition for a writ of error, the defendants-in-error contended that the plaintiffs-in-error had no standing before this Court to warrant a judicial consideration of their petition, in that the plaintiffs-in-error had failed to meet the mandatory requirements of the statute, as follows: (1) that plaintiffs-in-error had failed to aver or state that the application had not been made for the mere purpose of harassment and delay; (2) that the application failed to state why an appeal was not taken from the ruling or judgment of the lower court; and (3) that no certificate of a counsellor of the People's Supreme Court or of any attorney of the circuit court of trial jurisdiction accompanied the application, stating that in the opinion of such counsellor or attorney, real errors are assigned.

Recourse to the petition showed that a counsellor certificate, dated March 3, 1983 was in the file of the case, and to this effect the plaintiffs-in-error have referred us to the records of the case which they argued in their brief, speak for themselves. We have microscopically inspected the records in this case and have failed to see where they speak for themselves regarding the attack made by the defendants-in-error on the absence of a counsellor's certificate as the law requires. It is a well established rule in this jurisdiction that every allegation of fact set forth in a pleading, if not denied specifically or by necessary implication, shall be taken as admitted. *Cavalla River Company v. Pepple*, 3 LLR 436 (1960). The plaintiffs-in-error having been attacked in the returns by the defendants-in-error to the effect that no counsellor's certificate was filed along with the petition, it was legally incumbent upon the plaintiffs-in-error to have denied this allegation of fact in an answering affidavit or

by any other necessary implication as contemplated by law. Having failed to do so, this Court cannot but conclude that the plaintiffs-in-error have admitted the fact alleged by the defendants-in-error.

In court 6(D) of the petition, the plaintiffs-in-error did aver that because they were given no notice as to the trial and the rendition of judgment against them, they did not have the opportunity to appeal from said judgment and, hence, this petition for a writ of error. This averment is in compliance with the statutory requirement as to why an appeal was not taken. Therefore, the argument in the returns and brief of the defendants-in-error, regarding an alleged failure by the plaintiffs-in-error to state why an appeal was not taken from the judgment, is not sustained.

The defendants-in-error have strenuously contended in the returns and brief that the plaintiffs-in-error completely failed to aver in their petition that it had not been made for the mere purpose of harassment and delay. In resisting and arguing this point in their brief, the plaintiffs-in-error confirmed the omission of this averment in their petition. They, however, argued that the neglect was an omission of statutory wording which should not be permitted to defeat the ends of justice or to shield judges from facing justice to atone for their official misconduct. Further, they said that the soul and substance of the law which is reasoning should prevail over this omission, considering that it is a trivial technicality which does not go to the merits of the controversy.

This argument on the part of the plaintiffs-in-error brings us to the question of whether this Court has any authority to determine the legislative wisdom of a statute or extend or ignore the legislative intent in the construction of the statute. In the case *George v. Republic*, this Court, speaking through Mr. Justice Pierre, held that the Court had no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory, the Court said, where the statute in question specifies the only manner in which an act is to be performed. Mr. Justice Pierre concluded by saying, that the law does not give the Supreme Court the authority to add to or take away from what the Legislature has commanded unless the said command breaches provisions of the Constitution, and in such a case, the constitutional issue must be raised squarely, 14 LLR 158 (1960), text page 159.

In 1947, this Court, speaking through Mr. Justice Russell, stated unequivocally that the function of the courts is to interpret the law, and they are not concerned with whether legislation is wise or unwise. *Harris v. Harris and Williams*, 9 LLR 344 (1947).

At common law, this principle of complying with the statute or rule of court in the assignment of error is well expatiated and we quote from 5 C.J.S. the following: (1) "The necessity for an assignment of errors required by statute or rule of court is a matter of substance, and not a mere matter of form which can be waived or dispensed with by

agreement or conduct of the parties or their counsel. Compliance with court rules has been held to be jurisdictional and absolutely obligatory; so, compliance with a court rule requiring an appellant who does not include in his statement of facts or bill of exceptions the complete record of all proceedings and evidence in the cause to file a concise statement of the facts on which he intends to rely is jurisdictional and mandatory." 5 C.J.S., Appeal and Error, § 1218. Hence, it was not the matter of choice or waiver on the part of plaintiffs-in-error to have bypassed the statutory provision or categorize said provision as a "trivial technicality" in the assignment of error. In view of the above citations, we here opine that it is not the proper office of this Court to determine the wisdom of the statute controlling the procedure on application and hearing of writ of error; nor can this Court extrapolate or infer the intent of the Legislature beyond the specific wording of the said statute. Unless the legislative command is repugnant to and breaches constitutional provisions, this Court has no authority to add to or take away from what the Legislature has commanded. No modern tendency of law can be used to label any statutory provision as trivial technicality. The plaintiffs-in-error who argued in this respect are not competent to declare a provision of the statute trivial. It is a legal maxim that says:

frustra legis auxilium quaerit qui in legem comitti, which means "he seeks the aid of the law in vain who offends against the law." RADIN LAW DICTIONARY 400 (1955). The plaintiffs-in-error cannot benefit from the law when they offend it. They are not therefore properly before this Court.

This brings us to the treatment of the second point of contention, i.e. whether our statutory laws are subordinate or subject to legal maxims. A legal maxim is by definition a principle of law succinctly expressed and traditionally accepted.

Maxims are sometimes used by court merely as justifying conclusions otherwise reached. RADIN LAW DICTIONARY 204 (1955). Black's Law Dictionary defines maxims as attempted general statements of rules of law and are laws only to the extent of their application in adjudicated cases. BLACK'S LAW DICTIONARY 1130 (4th ed). A statute, on the other hand, is "an act of the Legislature declaring, commanding, or prohibiting something", or it is "the written will of the Legislature, solemnly expressed according to the forms necessary to constitute it the law of the State." *Ibid.*, at 1580.

From these definitions, the cardinal difference one must discern between a statute and a legal maxim is that the former is the fundamental element that controls adjudications between parties in law courts, whereas the latter may be used to merely justify adjudicated cases. When the statute commands or prohibits the performance of an act, no legal maxim can be invoked to nullify such command or prohibition, as to do so will amount to an attempt to render the statute silent on a point on which it is unequivocally vocal.

In the instant case, our colleague who heard and disposed of the error proceedings in Chambers based his ruling on the legal maxim that "where the wrongs of the parties are equal, the position of the defendant is preferred." In other words, the position of Glenweh Cooper and Mama Gleoder who were defendants in the court of Justice of the Peace John P. Lansana and against whom judgment was rendered, is preferred in the ruling of the Chambers Justice.

While ruling on the jurisdictional issue raised by the defendants-in-error, the Chambers Justice acknowledged the legal soundness of the argument of the defendants-in-error and the support therefor by the Civil Procedure Law, Rev. Code 1: 16.24(1)(a), and the cases *Harmon v. Republic*, 1 LLR 195 (1934) and *Brown Boveri Cie, AG v. Lewis et al.*, 26 LLR 170 (1977), but he maintained that the errors and irregularities committed against the plaintiffs-in-error by His Honour H. Soe Bailey in the disposition of the summary proceeding were so gross as to balance the jurisdictional issues raised by the defendants-in-error and give preference to the position of the plaintiffs-in-error who were defendants in the court of origin. Indeed when one considers how grossly the plaintiffs-in-error were denied their day in court, when they who had instituted the summary proceeding action were never notified as to the time of its disposition by His Honour H. Soe Bailey, and the further assessment of costs against the said plaintiffs-in-error in a quasi-criminal action, under threat of imprisonment upon failure to pay although no writ of execution was ever issued against them, one could hastily come to the conclusion that they do deserve redress. However, the method by which this redress must be obtained is what this Court cannot, under judicial prudence evade, but rather address itself to it squarely.

The issue raised by the defendants-in-error regarding the petition for a writ of error, well supported and settled by the statute and opinions of this Court, are purely jurisdictional issue or those which confer or render void the authority, capacity, power or right of the court to act. In the absence of a judicial resolution of a jurisdictional issue, the court is without judicial and legal authority, capacity, power or right to perform any of its judicial acts. In the instant case, to equate the wrong acts of the trial court with the statutory violation on the part of the plaintiffs-in-error in their application for a writ of error as equal wrongs, is tantamount to a neglect of the statutory provision by which alone jurisdiction is conferred upon this Court.

Consequently, the Court was without jurisdiction to act since the jurisdictional issues squarely raised by the defendants-in-error had not been resolved and the case had been decided upon the principle of a legal maxim. When our statute speaks, the common law is forever silent.

Therefore, and in view of the facts, circumstances and laws herein stated, it is our holding that the petition for a writ of error be and the same is hereby denied, the alternative writ

quashed and the ruling of the Chambers Justice reversed. Costs are assessed against the plaintiffs-in-error. The Clerk of this Court is hereby directed to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over the case and give effect to this judgment. And it is hereby so ordered.

Petition denied.