ELIZABETH EMMANUEL, Plaintiff-In-Error*, v.* **HIS HONOR EUGENE L. HILTON,** Assigned Judge Presiding, People's Civil Law Court for Montserrado County, sitting in its September Term, A. D. 1983, and **MARY Y. LEWIS,** Defendants-In-Error.

Heard: May 29, 1984. Decided: June 29, 1984.

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

1. The mere filing of an indictment, information, complaint or petition in court does not confer on the court jurisdiction over the party defendant.

2. Although the court, from the caption, may determine its own jurisdiction of the subject matter to bring the defendant or respondent under its jurisdiction by means of precepts, it is the warrant of arrest in criminal cases, the writ of summons in civil cases, or the alternative writ or citation in special proceedings, duly issued by the clerk under the seal of court, served on the party and returned served by the sheriff or marshal or their deputies, that brings the parties under the jurisdiction of the court.

3. The notice of completion of appeal issued by the clerk, upon application of the appellant, served on the appellee and returned served by the ministerial officer of the trial court, places the appellee under the jurisdiction of the Supreme Court.

4. In a special proceeding, the issuance and service of an alternative writ or citation upon the respondents or defendants-in-error, places the parties under the jurisdiction of this Court.

5. Jurisdiction is not acquired by our courts or the Chambers Justice, by the payment of accrued costs.

6. When the writ is issued upon the order of the Chambers Justice, served and returned served, the Court acquires jurisdiction, and the proceedings cannot be quashed for want of jurisdiction because the Chambers Justice inadvertently overlooked the statutory command to demand the payment of accrued costs.

7. The Justice's order for the issuance of an alternative writ of error must contain the following clause: "Upon the payment of all accrued costs and all fees in connection with the filing of the attached petition for the writ of error, you are commanded to issue the alternative writ of error". Such an order, obtained from the Justice in Chambers by the petitioning party, shall be filed along with the petition and any and all exhibits thereto.

Co-defendant-in-error, Mary Lewis, instituted an action of summary proceedings to recover possession of real property. When the magistrate ruled against defendant, Elizabeth Emmanuel, she excepted to the judgment and appealed to the Civil Law Court, Sixth Judicial Circuit, and Montserrado County. When the appeal was assigned for hearing, counsel for defendant, now plaintiff-in-error, wrote the presiding judge requesting a postponement and reassignment of the matter. The letter is said to have been received by the trial judge, and forms a part of the appeal record. Notwithstanding, on the strength of a previously filed motion, the trial judge proceeded to dismiss the appeal of plaintiff-in-error in the absence of her counsel and herself. Plaintiff-in-error thereafter filed a petition for a writ of error, contending that she did not have her day in court. In their returns, the defendants-in-error contended that the plaintiff-in-error had failed to pay accrued costs and, therefore, the Court was deprived of jurisdiction to hear the petition. Whereupon, the Chambers Justice denied the petition and quashed the alternative writ.

The Court *en banc* determined that the non-payment of accrued costs was not a jurisdictional issue, and therefore *reversed* the ruling of the Chambers Justice and ordered the trial court to resume jurisdiction over the matter.

George S. T. Tulay appeared for plaintiff-in-error/appellant. *Joseph W. Andrews* appeared for defendants-in-error/appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This error proceeding is on appeal before the Court *en banc* from the ruling of the Justice presiding in Chambers. It grew out of an action of summary proceedings to recover possession of real property instituted by the appellee, Mary Y. Lewis, against the appellant, Elizabeth Emmanuel, in the New Kru Town Magisterial Court, Monrovia, Liberia.

According to the record, the action for summary proceedings was heard by the magistrate, resulting in a judgment against the defendant, plaintiff-in-error before this forum. She excepted to the judgment and appealed to the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County. When the appeal was assigned for hearing, appellant's counsel Joseph A. Sallie wrote a letter to the judge, then presiding, for an excuse due to the death of a relative in Nimba County. In the letter, he in-formed the judge that he would be back in Monrovia on Friday, September 30, 1983, and therefore requested for reassignment. The said letter, which was written on September 28, 1983, is said to have been received by the trial judge, as confirmed by the record on appeal. Yet the trial judge proceeded with the hearing of the case in the absence of appellant and her counsel. The record further reveals that prior to the assignment; the appellee had filed a motion to dismiss the appeal before the

Civil Law Court for failure on part of the appellant to perfect her appeal from the magisterial court within fifteen days in keeping with law. In the absence of the appellant's counsel, the trial judge heard the motion, granted it and mandated the trial magistrate to resume jurisdiction and enforce his judgment. It is from this point that appellant filed a petition in the Chambers of this Court, praying for the issuance of a writ of error, and contending therein that she did not have her day in court. The petition was duly filed and the Justice presiding in Chambers ordered the alternative writ issued. It was issued, served and returned serve, and the defendants-in-error filed returns thereto.

In the returns of the defendants-in-error, the principal contention raised and argued, and for which the Justice in Chambers eventually denied the petition and quashed the writ, is that the plaintiff-in-error had failed to pay accrued costs, the non- payment of which deprived the Supreme Court of jurisdiction to hear and decree the petition for a writ of error.

For the benefit of this opinion, we quote a relevant portion of the ruling of the Chambers Justice as follows:

"The non-payment of accrued costs raised a jurisdiction issue over the parties in error proceeding and the Court is bound to decide its own jurisdiction, especially when severely raised, before proceeding to consider and pass upon other issues of fact and law. For any act of a court beyond the jurisdiction conferred upon it by law is void . . . . Further, to render a judgment binding, a court must have jurisdiction of the parties and the subject matter . . . . In the instant case, this Court exceeded the jurisdictional ground raised by the defendants-in-error as legally cogent and could not proceed without dismissing the petition for want of jurisdiction.

Wherefore and in view of the foregoing, the tentative writ of error issued from this Court is hereby quashed, and the petition denied with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. And it is hereby so ordered".

Plaintiff-in-error being dissatisfied with this ruling of the Chambers Justice, excepted thereto and appealed to the Court en *banc* on only one issue which, in our opinion, has been squarely raised for the first time before this forum. By what means does the Supreme Court acquire jurisdiction over the parties and of the subject matter in error proceedings? Is it by payment of the accrued costs by the plaintiff-in-error, or is it by the issuance and service of the alternative writ?

Defendants-in-error argued that the payment of the accrued costs, which is the condition

precedent to the issuance of the writ, is what gives the Court jurisdiction, and the non-payment thereof deprives the Court of jurisdiction to entertain the petition. The Justice in Chambers sustained this argument of the defendants-in-error, relying on the principle of law enunciated by this Court in the case *Hill* v. *Republic*, 2 LLR 517 (1925), which reads as follows:

"Where want of jurisdiction over the cause appears upon the records, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceeding; for any act of a court beyond the jurisdiction conferred upon it by law is null and void".

This principle of law raised by the learned Justice is inapplicable to the case at bar. In that case the Court was talking about jurisdiction of the cause or jurisdiction over the subject matter. It cannot be suggested that the Justice was contemplating subject matter jurisdiction because only the Supreme Court has jurisdiction over error proceedings, and the exercise of such jurisdiction is in aid of its appellate jurisdiction and power. Judiciary Law, Rev. Code, 17: 2.9(1). We cannot therefore concede the applicability of the Justice's legal support of his ruling, as it does not even squarely decide the issue of the payment of costs as prerequisite to acquiring jurisdiction.

The second reliance of the learned Justice in his ruling as cited by him is found in *Compagnie des Cables Sud-Americaine (French Cable Company)* v. *Johnson,* 11 LLR 264 (1952), which held as follows: "To render a judgment binding, a court must have jurisdiction of the parties and of the subject matter". This is a case in which the appellee sued the appellant in the Labor Court, Montserrado County, for violation of the Minimum Wage Act. Judgment was rendered in favor of the appellee, and on appeal to the Supreme Court, the judgment was reversed. This Court held that the labour court's jurisdiction does not extend to persons whose earnings exceed $100.00, and the salary of the appellant being above $100.00 the labor court's judgment was void *ab initio*. Here again the principle relied upon by the learned Justice is inapplicable to the instant case.

The trial magistrate has jurisdiction to hear and decide summary proceedings to recover possession of real property where title is not in issue. Civil Procedure Law, Rev. Code 1: 62.21. Under our statute on appeals, as well as under the New Judiciary Law, all appeals in civil actions in Montserrado County are exclusively under the purview of the Sixth Judicial Circuit Court. *See* Judiciary Law, Rev. Code, 17:3.4. Therefore, as between the magisterial court and the circuit court there seems to be no question of jurisdiction of the person or the subject matter.

In their argument before us, counsels for both the plaintiff-in-error and the defendants-in-error relied on the Civil Procedure Law, Rev. Code 1: 16.24(1)(a) to (d)(2)--*Procedure on Application and Hearing of Writ of Error*. And for the benefit of this opinion, we will quote the statute, which reads as follows:

"1. *Application*. A party against whom judgment has been taken, who has for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after its rendition file with the clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error. Such an application shall contain the following:

(a) An assignment of error, similar in form and content to a bill of exceptions, which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;

(b) A statement why an appeal was not taken;

(c) An allegation that execution of the judgment has not been completed; and

(d) A certificate of a Counsellor of the Supreme Court, or of any attorney of the Circuit Court, if no Counsellor resides in the jurisdiction where the trial was held, that in the opinion of such Counsellor or attorney real errors are assigned.

<u>As a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff- in- error, shall be required to pay all accrued costs, and may be required to file a bond in the manner prescribed in section 5.8 of the Civil Procedure Law.</u> Such bond shall be conditioned on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed.

2. *Issuance of service*. The Supreme Court or an as-signed Justice shall grant or deny the application. As soon as an application for a writ of error is granted, the clerk of the Supreme Court shall issue the writ, a copy of which, together with a copy of the assignment of error, shall be served by the marshal on the party in whose favor the judgment is granted and on the judge who rendered the judgment in the lower court. Such parties shall be known as the defendants-in-error" (emphasis ours).

The question as to whether the payment of accrued costs is what gives the Court jurisdiction of the cause and of the person, or whether it is the issuance, service and returns of the alternative writ of error that gives the superior court jurisdiction, was not settled by the

ruling of the Justice in Chambers, a relevant portion of which is quoted *supra.* To put it the other way, generally, is it the finding of an indictment by the grand jury and/or the information of the prosecuting attorney of the state, or in a civil action is it the filing of a complaint or a petition to court, that gives the court jurisdiction over the parties and of the subject matter? Our answer to this question is "no". The mere filing of an indictment, information, complaint or petition to court does not confer on the court jurisdiction over the party defendant or party respondent. Although the court, from the caption, may determine its own jurisdiction of the subject matter to bring the defendant or respondent under its jurisdiction by means of precept, it is the warrant of arrest in criminal cases, or a writ of summons in civil cases, and in special proceedings the alternative writ or citation duly issued by the clerk under the seal of court, served on the party and returned served by the sheriff or marshal or their deputies, that brings the parties under the jurisdiction of the court. The court, having acquired jurisdiction by such means, is bound to hear and decide the case, except there is a material defect in the precept and as to its proper service, which may result in the dismissal of the proceeding when raised, without prejudice. For authority, see Civil Procedure Law, Rev. Code 1:3.1 thru 3.63; see also Civil Procedure Law, Rev. Code 1:10.1 thru 10.19, *Arrest, Summons and Notice to Appear.* In the case of appeals, the notice of completion of appeal issued by the clerk, upon application of the appellant, served on the appellee and returned served by the ministerial officer of the trial court, places the appellee under the jurisdiction of the Supreme Court. In a special proceeding, the issuance and service of an alternative writ or citation upon the respondents or defendants-in-error, places the parties under the jurisdiction of this Court. This is how jurisdiction is acquired by our courts of justice, respectively and not by the payment of accrued costs before the determination of the proceeding. We shall say more on this later.

To support our holding, here is what this Court said forty-eight (48) years ago in the case *Brownell* v. *Brownell*, with Mr. Justice Dossen speaking on the question of the Court's jurisdiction over the parties and of the subject matter, reported in 5 LLR 76, 77-78 (1936):

"In the said count of said motion we observe that the question of jurisdiction as raised by appellee has frequently been before this Court for years; hence we will not enter into an exhaustive comment on same. The jurisdiction of courts over suitors is obtained by means of a writ, which is a mandatory precept, issued usually in the name of the sovereign or state, directed to the ministerial officer who must not only serve it but make returns to the fact that it has been served; therefore courts of justice are bound *ex officio* to notice the writ as the foundation of its jurisdiction over parties, and for want of jurisdiction may entertain and sustain a motion to dismiss."

Also in the case *Morris* v. *Republic,* reported in 4 LLR 125 (1934), this Court held on the

question of jurisdiction that:

"The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellee under the jurisdiction of the appellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction"

In the proceeding at bar, plaintiff-in-error filed her petition in compliance with statute quoted *supra*, which required her to make an application containing assignment of the errors alleged to have been committed, verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay; a statement of why an appeal was not taken; that execution of the judgment has not been completed; and to attach to the application a certificate of a counsellor of the Supreme Court, or of any attorney of the circuit court, if no counsellor resides in the jurisdiction where the trial was held, that in the opinion of such counsellor or attorney real errors are assigned. This is what the statute commands the plaintiff-in-error to do in order to give validity to his application for consideration by the Chambers Justice, even before he orders the issuance of the alternative writ or citation.

It is further directed by the statute, and this direction is to the court to which the app1ication for a writ of error is made, that: "As a prerequisite to issuance of the writ (which is the duty of the clerk upon order of the Justice in Chambers), the person applying for the writ of error, to be known as the plaintiff in-error, shall be required to pay all accrued costs, and may be required to file a bond . . . " Civil Procedure Law, Rev. Code 1: 16.24(1). According to this requirement of the statute, the writ cannot be issued or ordered issued except the accrued costs is paid by the plaintiff-in-error. However, if he is not required or demanded to pay the accrued costs, which must have been assessed by the trial court, and the Justice undertakes to order the issuance of the writ and same was issued, served and returned served, the Court has thereby acquired jurisdiction and the proceedings cannot be quashed for want of jurisdiction, especially when the Chambers Justice inadvertently overlooked the statutory command to demand the payment of accrued costs from the plaintiff-in-error before taking the jurisdictional step to order the issuance and service of the alternative writ of error.

Counsel for plaintiff-in-error argued that the petition having met the statutory requirements, the Justice accordingly accepted same and ordered the alternative writ issued, served and returned served without requiring the plaintiff-in-error to pay accrued costs or file a bond, a duty imposed upon her by 1aw and which she would have done if demanded by the Justice. Since this was not done prior to the issuance of the alternative writ, upon orders of the

Justice, it must be assumed that the Justice had inadvertently overlooked this statutory requirement and, therefore, the inadvertence or failure to demand accrued costs will not prejudice any party to this action.

This argument of counsel for plaintiff-in-error is legally sound, because the issuance of a writ is not the statutory duty of the party plaintiff, but that of the clerk of court. In case of a remedial writ, the issuance of it depends upon the payment of accrued costs, if and when the plaintiff-in-error or petitioner is assessed and asked to pay. But if he was not required to pay same and the writ was issued upon orders of the presiding Justice, and it was served and returned served, the requirement for payment of accrued costs will not deprive the Court of jurisdiction, and it is therefore bound to hear the proceeding and decide thereon. The precondition statute is upon the issuance of the writ and not upon the filing of the petition. If the writ is issued without requiring the payment of costs, the failure or the violation is not traceable to the petitioning party. However, if he is required to pay the accrued costs and he fails to do so, the writ cannot be issued and the petition remains unattended. If the Legislature intended to make the payment of accrued costs a condition precedent to the filing of petition for a writ of error, subsection (e) to section 16.24(1) would have been added to read thus: the payment of accrued costs shall be a prerequisite to the filing of a petition for a writ of error.

For instance, in appealing to this Court from the judgment of the trial court, the statute requires that:

"The appellant shall present a bill of exceptions signed by him to the trial judge..." and not the appellant shall be required. *See* Civil Procedure Law, Rev. Code 1:51.7.

On the question of bond, the statute commands the following:

"Every appellant shall give an appeal bond in an amount to be fixed by the court..." and not every appellant shall be required to gave an appeal bond. *See* Civil Procedure Law, Rev. Code 1:51.8.

As to the issuance of notice of the completion of the appeal, the statute commands as follows:

". . . The clerk of the trial court on application of the appellant shall issue a notice of completion of appeal, <u>a copy of which shall be served by the appellant on the appellee</u> . . . ." (emphasis ours). *See* Civil Procedure Law, Rev. Code 1: 51.9.

These are the mandatory requirements imposed on the party coming to the Supreme Court. But where the Court itself is mandatorily required to see that certain things are done before it acts, and elects to act without making the demand, the party-litigant cannot suffer as a result of the failure of the Court to act.

In order to settle permanently the question of accrued costs in error proceeding, the statute should be strictly complied with, that is to say, the Justice's order for the issuance of an alternative writ of error must contain the following clause: "Upon the payment of all accrued costs and all fees in connection with the filing of the attached petition for the writ of error, you are commanded to issue the alternative writ of error". Such an order as obtained from the Justice in Chambers by the petitioning party shall be filed along with the petition and any and all exhibits thereto.

Since it has been shown that the co-defendant-in-error, the judge, dismissed the appeal in the absence of the plaintiff-in-error and her counsel despite a valid written request for postponement due to the death of a relative, and without appointing a lawyer to take the court's judgment in keeping with practice hoary with age in this jurisdiction, it is our opinion that the plaintiff-in-error did not have her day in court, and this is a legal ground under our statute and a long line of opinions of this Court for granting a writ of error.

In view of the foregoing, the ruling of the Justice in Chambers is hereby reversed, and the Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction and hear the appeal upon a written assignment duly issued, served and return served. And it is hereby so ordered.

Petition granted.