

TOM GIGGER, Plaintiff-In-Error, *v.* **HIS HONOUR EUGENE L. HILTON**, Judge Presiding by Assignment, Civil Law Court, Sixth Judicial Circuit, September Term, A. D. 1983, and **KOFA SAYON THOMPSON**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 22, 1984. Decided: November 22, 1984.

1. An appeal can only be taken from a final judgment.
2. An error proceeding is a substitute for an appeal.
3. Error will be denied where there is no rendition of an enforceable final judgment of the trial court.

Plaintiff-in-error sought a writ of error against the trial judge for his refusal to render a final judgement in the case in the trial court, in obedience to a mandate from the Supreme Court. In an ejectment suit filed by plaintiff-in-error against co-defendant-in-error, Kofa Sayon Thompson, in the Civil Law Court for the Sixth Judicial Circuit, the heirs of King Peter sought to intervene, claiming ownership to the property in dispute. The intervention was prayed for after the trial court had, on application of the plaintiff-in-error, entered a default judgment in favor of plaintiff-in-error. The trial court denied the motion and proceeded with the trial of the case. Upon denial of the motion to intervene, and refusal by the trial judge to grant an appeal and approve intervenors' appeal bond, the intervenors proceeded by prohibition and mandamus to prevent the trial judge from enforcing the judgment, to have the Supreme Court review the trial judge's ruling, and to have the Court order the judge to grant the appeal prayed for by the intervenors.

The mandamus was granted by the Justice in Chambers and the trial judge was ordered to grant the appeal and approve the appeal bond *nunc pro tunc*, and further, that the intervenors be allowed to intervene in the ejectment suit. An appeal from this ruling was subsequently withdrawn by plaintiff-in-error, who instead filed a motion to dismiss the intervenors appeal, taken earlier, on the ground that the bond was not signed by the trial judge. The Supreme Court denied the motion to dismiss, holding that as the appeal from the ruling of the Chambers Justice had been withdrawn, the ruling was binding on the parties. A man-date was therefore sent to the trial court to proceed with the case.

Subsequently, a submission was filed with the Supreme Court but was denied. Instructions were again sent to the trial court to proceed with the case. The trial court, upon receipt of the Supreme Court mandate, attempted to have co-defendant-in-error, Kofa Thompson, dispossessed of the property. Whereupon information was again filed with the Supreme Court. The information having been granted and a mandate sent to the trial court, the court then ceased enforcement of the judgment. The plaintiff-in-error, not being present for this decision of the trial court, commenced the present error proceedings.

The Supreme Court denied the petition for the writ of error, holding that as no final judgment had been rendered from which an appeal could have been taken, error would not lie. The Court referred to the previous ruling of the Chambers Justice which instructed the trial court to allow the heirs of King Peter to intervene, which meant a recommencement of the trial. The Court determined therefore that in the interest of justice, the entire proceedings in the trial court be *abated* and the parties restored to the *status quo* without prejudice to either party.

Isaac Malobe appeared for plaintiff-in-error. *Johnson, Barnes and Keonig Law Firm* appeared for defendants-in-error

MR. JUSTICE YANGBE delivered the opinion of the Court.

Tom Gigger, plaintiff-in-error, filed an action of ejectment against Kofa Sayon Thompson, one of the defendants-in-error, to recover a piece of land lying in New Krutown. Default judgment was rendered in favor of plaintiff.

The heirs of King Peter, who were the grantors of the defendant, Kofa Thompson, sought to intervene in the ejectment suit. Their motion to intervene was denied by the trial judge. They then announced an appeal and thereafter submitted a bill of exceptions for the judge's approval. The trial judge refused to approve the bill of exceptions and appeal bond. Whereupon intervenors then moved by two remedial writs, one to compel the trial judge to approve the appeal bond and bill of exceptions and to allow the intervenors to intervene in the ejectment action, and the other to prohibit the trial court enforcing the judgment in the ejectment action. Chief Justice James A. A. Pierre, presiding in Chambers, ruled that as mandamus could cure the problems, he would dispense with the prohibition. In his ruling, Chief Justice Pierre held that the appeal bond and the bill of exceptions should be approved *nunc pro tunc* and that the heirs of King Peter should be allowed to intervene in the ejectment action. From this ruling plaintiff in the ejectment action announced an appeal to the full Bench. While the appeal was pending, the defendant-in-error filed information before the Supreme Court. *In re Information of Kofa Thompson*, 26 LLR 494 (1978)). Plaintiff-in-error

withdrew his appeal, previously taken from the Chambers Justice's ruling, and filed a motion to dismiss intervener's appeal, stating as reason that the appeal bond was unsigned. That motion was denied. (*See King Peter's Heirs v. Tom Gigger*, 27 LLR 287 (1978). In a judgment without opinion, the Supreme Court ruled on February 3, 1978, that counsel for plaintiff-in-error Tom Gigger, having withdrawn the appeal taken from the Chambers Justice's ruling in the mandamus proceedings, the parties were bound by that ruling. *In re Information of Kofa Thompson*, 26 LLR 494 (1978). A mandate was sent to the court below to resume jurisdiction over the cause out of which the mandamus grew and for the trial judge to approve the bill of exceptions *nunc pro tunc*. There the matter rested.

Thereafter, however, counsel for co-defendant-in-error filed a submission before the Supreme Court. The submission was denied on the ground that the matter had already been decided, as reported in 27 LLR 287.

When the instructions from this Court reached the trial judge, and an attempt was made to dispossess Mr. Kofa Thompson of the property, he filed information with the Supreme Court. In the information, the informant alleged that the judge was proceeding contrary to the Supreme Court's mandate, contending that in view of the mandate of the Supreme Court, no final judgment had been rendered, and that therefore there was nothing to be enforced. As a result of the information, which was granted, the trial court ceased enforcement of the judgment. The plaintiff-in-error not being present has filed these error proceedings.

There are two main points of contention in this case that we believe should be resolved in the best interest of the parties to the suit in the court below, as well as the intervenors. They are: Whether an enforceable final judgment was ever rendered by the trial court to warrant an application for a writ of error, and, if the bill of exceptions and the appeal bond were approved, at what level could the intervenors assert their rights? Certainly not in the Supreme Court, because the Supreme Court cannot initially entertain the production of evidence or conduct a jury trial. In all cases, except for a few exceptions which do not obtain in the instant case, the Supreme Court has only appellate jurisdiction. (*See LIB. CONST.*, 1847, art. 4, sec. 2.

An appeal can only be taken from a final judgment and an error proceeding is not a substitute for an appeal. However, there is no final judgment rendered by the trial court in this case from which an appeal could have been taken by either side. Therefore, error will not lie.

Granting that we can give effect to the ruling of Chambers Justice Pierre, which ruling

ordered the trial court to approve *non pro tunc* the bill of exceptions and the appeal bond, because this Court lacks original jurisdiction to try the case, same must be remanded to the trial court where the case must be acted upon. It is clear that the object of granting the mandamus was to afford the intervenors an opportunity to intervene.

Thus, in order to afford the intervenors an opportunity to protect their property and in the absence of any enforceable final judgment rendered in the court below, from which an appeal could have been taken or error proceeding instituted, the petition for error is denied. The entire proceedings are abated and the parties restored to *status quo* without prejudice to either party. Costs are disallowed. And it is so ordered.

Petition denied; trial court proceedings abated.