MARY GBEH, Plaintiff-In-Error, v. **HIS HONOUR CHARLES B. ZULU,** Resident Circuit Judge, Seventh Judicial Circuit, and **ANTHONY I. KHOURY**, Defendants-In-Error.

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

Heard: April 25, 1989. Decided: July 14, 1989.

1. It is not the pleasing duty of the Supreme Court to take disciplinary measures against any counsellor of the Supreme Court bar, because lawyers are gentlemen of the highest caliber and entitled to the greatest consideration in representing their clients. But when the lawyer becomes unmindful of his professional responsibility and disregards the order of the court, he will be penalized for such misconduct.

The plaintiff-in-error, Mary Gbeh, filed a bill in equity against Anthony I. Khoury for cancellation of a lease agreement for fraud. At the hearing of the case in the court below, Mary Gbeh claimed that she was denied her day in court by Codefendant-in-error Charles B. Zulu, Resident Judge of the Seventh Judicial Circuit Court, Grand Gedeh County. Plaintiff-in-error claimed that the co-defendant-in-error judge, His Honour Charles B. Zulu, without hearing the argument on the resistance filed by Mary Gbeh's legal counsel, passed upon a motion to rescind a ruling previously made in her favor canceling the lease agreement in her absence and in the absence of her legal counsel. Plaintiff-in-error also claimed that although an assignment had been issued and brought to her personally by the ministerial officer of the court, she refused to accept and sign it because she indicated that she was represented by a lawyer and that she could not represent herself as she did not know how to do so. Further, that although the court knew that she was represented by a lawyer, who had sent a request to the judge for the postponement of the hearing of the motion to rescind, yet the said judge proceeded to hear the movant's argument and ruled on the strength of said argument without appointing a lawyer to take the ruling for plaintiff in error's counsel. The plaintiff-in-error, Mary Gbeh, considered this act on the part of the co-defendant-in-error judge as arbitrary and/or a denial of her constitutional and statutory rights. She therefore fled to the Chambers Justice who granted her petition and ordered the issuance of the peremptory writ of error. From this ruling of the Justice in Chambers, the defendants-in-error appealed to the Supreme Court *en banc* for review and final determination.

The Court ruled that the records of the trial court did not support the argument that Plaintiff-in-error Mary Gbeh was present in court. The Supreme Court also ruled that the contention of counsel for defendants-in-error that Mary Gbeh was physically present in court but failed to except to the court's ruling and announce an appeal was a sheer fabrication on the part of a lawyer of the Supreme Court Bar, intentionally designed to mislead the Court and affect the administration of transparent justice. The Court therefore

strongly warned lawyers against such practice. The ruling of the Chambers Justice was 'accordingly affirmed with costs against the defendants-in-error.

David D. Ghala of Pan African Law Associates, in association with *Roger K. Martin* appeared for the plaintiff-in-error. *Johnnie N. Lewis* appeared for the defendants-in-error.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

Mary Gbeh, the plaintiff-in-error/appellee, filed a bill in equity for cancellation of a lease agreement for fraud against Anthony I. Khoury, co-defendant-in-error/appellant. The plaintiff-in-error claimed that she was arbitrarily denied her day in court by the co-defendant-in-error judge, His Honour Charles B. Zulu who, according to her, without hearing argument of her legal counsel's resistance to a motion to rescind, set aside a previous ruling made in her favor. She therefore applied to the Chambers Justice of the Supreme Court for a writ of error to redress the wrong meted out to her.

In the application for the writ, several salient issues of law were raised in the seven-count petition, count six of which claimed the attention of our distinguished colleague, Mr. Justice Azango, as follows:

"6. And also because petitioner further submits and maintains that co-respondent trial judge in complete violation of the petitioner's constitutional and statutory right, arbitrarily on the argument of Co-respondent Khoury's legal counsel heard the motion and ruled against the petitioner in her absence and without appointing or deputizing a lawyer to take the ruling for the petitioner who could have excepted to the ruling and appealed therefrom; neither did the court, as is required by the practice and procedure extant, note the exception of the Petitioner in order to enable the petitioner to appeal and seek review of the ruling to the appellate court. The petitioner feels herself not being afforded opportunity to be heard, but rather was denied her day in court which said act of the co-respondent trial judge the petitioner considers a reversible error . . . . "

In resisting the petition, particularly count six thereof, Co-Defendant-in-error Khoury filed an eleven-count returns, count ten of which we consider relevant and germane, and which we herewith quote for the benefit of this opinion.

"10. Co-defendant-in-error further submits as to count six (6) of the petition which averred that the trial court did not appoint a lawyer to take ruling on behalf of petitioner, then respondent in the court below, the said count six (6) of the petition is baseless and misleading, in that, Petitioner Mary Gbeh was physically present in court when the ruling granting the said motion was rendered and costs was awarded against petitioner, then respondent, who failed to except and pray for an appeal from the said ruling. Since Mary Gbeh was in court on the 26th and 27' h of September, A. D. 1988, there was no need for the judge to appoint lawyer on her behalf to receive the ruling, . . ."

In hearing this matter, the Justice in Chambers saw the following as the basic issue: "Whether or not the co-respondent judge erred when he proceeded with the hearing of the motion in the absence of counsel for petitioner."

At the call of this case before this bar, Counsellor Johnnie N. Lewis appeared for the defendants-in-error, and Counsellor David D. Gbala, in association with Counsellor Roger Martin, appeared for the appellee. Counsel for defendants-in-error requested leave of court to withdraw his appeal and prayed that the matter be remanded to the trial court in keeping with the ruling of Justice Azango, same being sound in law. Counsellor Gbala interposed no objection to the submission.

In his ruling, Justice Azango had this to say at page 5: "As to the contention of the defendants-in-error that Plaintiff-in-error Mary Gbeh was physically present in court when the motion was argued and ruled on, and therefore the trial judge did not err when he failed to appoint a lawyer to receive the said ruling, this Court is in complete disagreement with the defendants-in-error's contention, because Exhibit "3" last paragraph reads - "This Court further says that counsel for Plaintiff-in-error Mary Gbeh having received notice of assignment requested the court for time which was given, but still failed to appear". The court at no point made any reference to the presence of Plaintiff-n-error Mary Gbeh in court physically during the argument and ruling in the motion. Besides, the returns of the sheriff clearly shows that Plaintiff-in-error Mary Gbeh refused to sign for the notice of assignment on grounds that she had a lawyer. In addition, exhibit "E" states "this is to inform your Honourable Court my lawyer, Counsellor David D. Gbala never came. I send somebody directly to him today in order for him to come quickly. Because without him nothing I can do". This again shows that in addition to the request of petitioner's counsel to the trial judge to postpone the said trial, the petitioner herself did make similar appeal to the defendant-in-error judge; yet, he continued with the trial and ruled in the said case, an act this Court views erroneous."

The ruling concluded by granting the petition for the writ of error and ordered the Clerk of this Court to so inform the court below and instruct the judge therein to resume jurisdiction over the matter and dispose of same by commencing with the law issues.

Of course, the defendants-in-error announced an appeal to this Court *en bane,* despite the fact that he knew that he had deliberately misrepresented the facts that "Plaintiff-in-error Mary Gbeh was physically present in court when the court's ruling granting the said motion was rendered and costs was awarded against petitioner, then respondent, who failed to except and pray for an appeal from said court's ruling." (Emphasis supplied.) In other words, although Counsellor G. Genean Kaydea of the Progressive Law Firm knew of the absolute falsity of the averment just quoted, nevertheless, he made it in his returns to the writ of error

with the sole purpose of delaying this matter as long as he could. He certainly has achieved this aim.

This is obviously a judgment without opinion, but because of the unethical and unprofessional act calculated on the part of defendants-in-error's counsel to deceive our colleague to not order the issuance of the writ, we will say more than we would normally do in a judgment without opinion.

The question is, when did the co-defendants-in-error, now coappellant, realize that he had no case? He knew all along from the time he filed his returns on November 17, 1988, or before, that the statement of Judge Zulu to the effect that Plaintiff-in-error Mary Gbeh was physically present in court when the court's ruling granting the motion was rendered and that she failed to except and pray for an appeal from said ruling, was a sheer fabrication. In furtherance of their design to effect a miscarriage of justice, while arguing his resistance to the petition for the writ of error on December 19, 1988, Counsellor Kaydea prayed that the Chambers Justice deny and dismiss what he called plaintiff-in-error's baseless petition and to grant the returns of defendants-in-error.

We are convinced from the records certified to us that the only purpose for filing the returns with the averment that the plaintiff-in-error was present in the lower court, in the first place, and announcing an appeal from the ruling of the Chambers Justice, in the second place, was to delay the final determination of this matter. It is also our belief that had this case not been called on April 25, 1989 by this Court, the counsel for defendants-in-error would not have made the record he made.

In a case where a notice of assignment was served on a legal counsel who wrote on the notice of assignment a frivolous excuse and refused to appear, *Teewia et al v. Urey et al,* 27 LLR 91 (1978) at page 96, this Court, speaking through Mr. Justice Barnes, held: "It is not the pleasing duty of this Court to take disciplinary measures against any counsellor of this bar because lawyers are gentlemen of the highest caliber and entitled to the greatest consideration in representing their clients before this Court. But when the lawyer becomes unmindful of his professional responsibility and disregard the order of this Court, he or she will be penalized for such misconduct." Disregarding the orders of this Court and intentionally misleading it are one and the same.

We are in complete agreement with the position taken by the Justice in Chambers in granting the application for the writ and therefore affirm his ruling. Costs in these proceedings ruled against the defendants-in-error. And it is hereby so ordered.

Petition granted.