

SUBORZU GIBSON, Petitioner, *v.* **HIS HONOUR C. BENEDICT KENNEDY, SR.**,
Resident Circuit Judge, Tenth Judicial Circuit Court, Lofa County, and **KNOWAI**,
Respondents.

PETITION FOR A WRIT OF ERROR FROM THE CIRCUIT COURT FOR THE
TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Decided November 13, 1984.

1. Statutory provisions governing remedial processes, including the petition for a writ of error, must be strictly adhered to, or the petition will be denied and relief refused.
2. A petition for a writ of error may be dismissed as materially defective where the parties are wrongly described as petitioners and respondents instead of plaintiffs and defendants in error, or where the affidavit submitted with the petition fails to state that the petition was not made for the purpose of harassment and delay, or the counsellor certificate attached to the petition fails to state that in the opinion of the counsellors real errors are assigned.

A petition for a writ of error was filed by the plaintiff-in-error, plaintiff in the trial court, against the presiding judge, alleging that the case had been disposed of without the plaintiff being accorded his day in court. In their returns, the defendants-in-error prayed for the dismissal of the petition, alleging that there was no counsellor certificate attached to the petition and that the petition had wrongly denominated the parties as petitioner and respondents rather than plaintiff-in-error and defendants-in-error.

The Chamber Justice agreed with the contention of the defendants-in-error, holding that the omission of the counsellor's certificate and the wrong designation of the parties were such material defects as warranted the dismissal of the petition. The Justice held that the statutory provisions governing remedial processes are to be strictly adhered to, and that where there is a failure to strictly comply with the requirements of the statute, the Court will refuse relief to the petitioning party. The Chambers Justice therefore dismissed the petition without prejudice.

Appearances not indicated

MORRIS, J., presiding in chambers

This error proceeding was instituted by the plaintiff-in-error, plaintiff in the lower court,

against the defendant in the lower court and the presiding judge. The six count petition was resisted by a five count returns. In count one of the returns it is contended that there is no counsellor certificate attached to the petition as is mandatorily required by statute. Recourse to the petition and the file in this case, we observe that there is no counsellor certificate attached to the petition. The counsel for respondents also argued before us that the petition should be dismissed because the parties have been wrongly designated as petitioner and respondents instead of plaintiff-in-error and defendants-in-error.

It has been consistently held in numerous opinions of this Court that the statutory provisions governing remedial process must be strictly adhered to otherwise said petition will be denied. In *Weeks et. al. v. Mends-Cole*, 13 LLR 525 (1960) this Court held that "an application for a writ of error may be dismissed as materially defective where the parties are wrongly described therein as petitioners and respondents instead of plaintiffs and defendants-in-error, and the affidavit submitted therewith fails to state that the application was not made for purposes of embarrassment and delay, and the counsellor's certificate attached thereto fails to state that, in the opinion of counsel, real errors were assigned." This Court also held in *Borbor et. al. v. Gallatey et. al.* 25LLR 124 (1976) that "the requirements for a writ of error imposed by statute must be strictly complied with or the Supreme Court will refuse relief."

In view of the foregoing, it is the opinion of this Court that the petition be and the same is hereby dismissed without prejudice. Costs disallowed. And it is so ordered.

Petition dismissed without prejudice.