

GRASS ROOTS CINEMA LIMITED, by and thru its President, EISENHOWER YORK, Plaintiff-In-Error, EISENHOWER YORK, for himself, and **C. TIEDI WILES-YORK**, Plaintiffs-In-Error, *v.* **HIS HONOUR FRANCIS N. PUPO, SR.**, Judge, People's Debt Court, Montserrado County, and **CITIBANK, N. A.**, represented by its Vice President, **FRANCIS A. ROZARIO**, Defendants-In-Error.

APPEAL FROM THE CHAMBERS JUSTICE GRANTING A WRIT OF ERROR.

Heard: November 13, 1984. Decided: November 23, 1984.

1. Where counsel for a party litigant, having been duly notified of the time and place for hearing of his cause, fails to file a motion for continuance or to request a postponement of the hearing, his failure to appear for the hearing will be considered as an abandonment of the defenses raised in the pleadings.
2. The trial court has no obligation or duty to deputize a lawyer to take the judgment for a party, for the purpose of announcing an appeal, where the party, having been duly notified of the hearing, has deliberately failed to appear and has thus abandoned his case.
3. It is the duty of a lawyer to be punctual in his attendance at court and to be prompt and faithful in answering assignments received by him, notifying him of the time and place of the hearing of his client's case.
4. A party who abandons his case in court is not entitled to any further participation therein for which the court should recognized his rights.
5. One who is notified of the hearing of his case but fails to proceed to trial is considered as having deserted, surrendered, forsaken, ceded and relinquished his rights, never again to resume such rights or interest, and the court will therefore proceed according to law.

Plaintiffs-in-error, who had been sued in an action of debt in the Debt Court for Montserrado County, failed to appear for trial of the case even though a notice of

assignment had been duly served and returned served on one of their counsels. Consequently, counsel for co-defendant-in-error, Citibank, invoked Rule 7 of the Circuit Court Rules, which was granted by the trial court. Thereupon, the case was proceeded with and judgment was entered against the plaintiffs-in-error.

Thereafter, plaintiffs-in-error applied to the Justice in Chambers for a writ of error, contending that while their counsel was out of the country and without any notice to plaintiffs-in-error, the trial court had proceeded to hear the case and to render judgment against the plaintiffs-in-error. Plaintiffs-in-error also complained that the trial judge had failed to deputize a lawyer to except to the judgment and announce an appeal on their behalf.

The Justice in Chambers granted the petition for a writ of error, noting that as the counsel in whose name the assignment was prepared was out of the country, and that as the counsel upon whom the assignment was served was fully employed with a government agency, the trial court should have deputized a lawyer to take the ruling for plaintiffs-in-error. An appeal was then prosecuted to the full Bench for a final determination of the issues presented.

The Supreme Court *en banc* reversed the ruling of the Chambers Justice, holding that a notice of assignment had been duly served on one of counsel for plaintiffs-in-error but that the said counsel had failed and refused to attend the trial of the case. The Court opined that such failure to attend the trial, with no reasons being supplied for the absence and no motion for continuance or request for postponement being tendered, was tantamount to abandonment by plaintiffs-in-error of the defenses raised in the pleadings. The Court rejected plaintiffs-in-error contention that it was not served with the assignment, observing that the counsel upon whom service of the assignment had been made was shown to be counsel of record for plaintiffs-in-error. Under such circumstances, the Court said, plaintiffs-in-error are considered to have deserted, surrendered, forsaken, ceded, and relinquished their rights, never to again resume the same or to further participate in the trial. In such situation, the Court said, the trial court was correct in proceeding with the case. It opined further that the trial court had no duty or obligation to deputize an attorney to except to the judgment and announce an appeal for the plaintiffs-in-error. The right to deputize an attorney, it said, was lost when plaintiffs-in-error relinquished their right to appear and defend. The Court therefore *denied* the petition and *reversed* the Chambers Justice ruling granting the writ of

error.

H. Varney Sherman of the Maxwell and Maxwell Law Offices appeared for the defendants-in-error/appellants. *J. Emmanuel R. Berry* appeared for the plaintiffs-in-error/appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

The plaintiffs-in-error, Grass Roots Cinema, Ltd. et. al, were defendants in the action of debt by attachment filed before the Debt Court for Montserrat County by Citibank, N.A., represented by its Vice President, Francis A. Rozario. Pleadings rested and on March 28, 1984, upon regular notice of assignment duly issued and served for the disposition of law issues, Counsellor Margaret Massaquoi of the Maxwell & Maxwell Law Offices appeared for the plaintiff and Attorney Catherine Watson-Khasu of the Berry Law Office appeared for the defendant. After hearing the arguments of counsel *pro et con*, the trial judge ruled the case to trial on the factual issues involved.

On May 29, 1984, a notice of assignment was issued and served for the hearing of the case on June 15, 1984, at the hour of ten o'clock in the morning. However, at the call of the case, neither Attorney Khasu, who acknowledged the assignment for the Berry Law Office, nor any other counsel from said Law Office appeared for the defendants. Indeed, not even a representative from the defendant company was present. Counsel for the plaintiff therefore proceeded to make the following record:

"The plaintiff is represented by Maxwell and Maxwell and begs leave to inform court that despite the issuance and service of the notice of assignment on the defendant's counsel for the trial of this case and returns made for the hearing of this case at 10:00 this morning, neither the defendants nor their counsel is present in court. Wherefore, plaintiff's counsel invokes Rule Seven (7) of the Rules of Court and prays Your Honour to have the sheriff call the defendants three times at the door and if they fail to answer, to enter a default judgment in favor of the plaintiff and a plea of not liable in favor of the defendants and allow the plaintiff to make perfect the default judgment by presenting its side of the case and submits".

The court granted the application, stating as follows:

"The application of plaintiff's counsel as indicated above, being in accordance with the records in this case, same is hereby granted and the sheriff is accordingly ordered to call the defendants three times at the door. And it is hereby so ordered".

The sheriff having called the defendants three times at the door and reported that the defendants had failed to answer, the court ordered the entry of a plea of not liable in favor of the defendants and an imperfect judgment for the plaintiff. The plaintiff was then required to present its side of the case. Plaintiff thereupon proceeded to present evidence and to thereafter rest its case. The trial judge then rendered final judgment as follows:

"COURT'S FINAL JUDGMENT

"This Honourable Court is convinced based upon the evidence adduced at the trial of this case, both oral and written, that the defendants in these proceedings are justly indebted to the plaintiff in the sum of \$312,300.97. This amount represents principal, interest and attorney's fee. Predicated upon the conviction of this Honourable Court that the defendants are justly indebted to the plaintiff, as mentioned *supra*, said court is without any other choice but to adjudge the defendants liable to pay the plaintiff the amount of \$312,300.97, same being the amount sued for; said defendants are hereby ruled to costs of these proceedings. The clerk is therefore hereby ordered to prepare the necessary bill of costs to be placed in the hands of the sheriff for service on both plaintiff and defendants for taxing and approval. Thereafter, to be presented to the defendants for settlement of the said bill of costs. And it is hereby so ordered.

Given under my hand and Seal of this

Honourable Court this 15th day of

June, A. D. 1984.

/s/ Francis N. Pupo, Sr.

JUDGE, PEOPLE'S DEBT COURT, MONT. CO."

The defendants above, now plaintiffs-in-error, applied to the Chambers of this Court alleging substantially that while counsel for the plaintiffs-in-error was out of the country, without notice either to plaintiffs-in-error or their counsel, the court below proceeded to hear the case and to enter judgment without deputizing a lawyer to take the judgment on

behalf of the absent counsel, so as to afford the plaintiffs-in-error the opportunity to except to the judgment and announce an appeal. These were the principal contentions of the plaintiffs-in-error. The Justice in Chambers narrowed the issues to two points: the failure of the trial court to notify the defendants in the court below of the hearing of the case, and the failure to appoint a lawyer to take the judgment for counsel for the defendants so as to afford them the opportunity to announce an appeal.

The defendants-in-error filed returns, contending therein that the defendants below, plaintiffs-in-error herein, were notified by and through their counsel of the hearing of the case and that said counsel acknowledged the assignment; and that their failure to appear for the trial was an abandonment of plaintiffs-in-error's defense. Therefore, they were no longer entitled to participate in the case, and the court had no obligation to appoint a counsel to take the judgment on their behalf for the purpose of excepting to the judgment and announcing an appeal. These are the issues decisive of the matter.

On the issue of notice of assignment not being issued to notify the plaintiffs-in-error of the trial of the case, the Chambers Justice ruled as follows:

"The main contentions are that the plaintiffs-in-error never had their day in the lower court and the judge never deputized an attorney to take the judgment. We shall delve into the records to ascertain if these contentions are supported by the records or not. The notice of assignment, even though directed to Counsellor J. Emmanuel R. Berry, was signed by Attorney Catherine Watson-Khasu. The records also reveal that when this case was called for disposition of law issues on the 28th day of March, 1984, the defendants were represented by the Berry Law Firm, in person of Catherine Watson-Khasu. Therefore Attorney Catherine Watson-Khasu who signed the notice of assignment is an attorney of record. The contention that the defendants were not cited is not sustained . . ."

On the question of the trial judge's failure to deputize an attorney to take the court's final judgment for the absent counsel, so as to afford the plaintiffs-in-error the opportunity to announce an appeal, the Chambers Justice held that the legal authorities cited by counsel for the defendants-in-error were not applicable to the case at bar. He therefore ruled on the point as shown below, which portion of the ruling is the subject of this appeal to the full Bench. Here is what the Justice in Chambers said:

"In the case at bar, Counsellor Emmanuel Berry in whose name the notice of assignment was issued was in the State of Israel when this case was heard in his absence. He also argued that Attorney Catherine Watson-Khasu who signed the notice of assignment was requested by the Ministry of Foreign Affairs, where she is employed, to give full time service and therefore she was not with his Law Firm at the time the case was heard. We therefore strongly hold that the judge should have deputized for the lawyers who were not in court."

In order for us to determine whether or not the holding of the Chambers Justice on this point is supported by law and our practice and procedure, we must take recourse to the records on appeal to see whether or not there is any evidence that Attorney Khasu of the Berry Law Office, who appeared for the plaintiffs-in-error and argued the legal issues raised in the pleadings and who signed the notice of assignment for trial of the case on the 15th day of June, 1984, was no longer a partner of the Berry Law Office. We must also determine whether or not the said Attorney Khasu, after signing the notice of assignment, notified the court of her inability to attend upon the assignment she had signed because of her full-time engagement with the Ministry of Foreign Affairs. It is also necessary for us to take recourse to the records to see whether or not Counsellor Berry, prior to his departure from the country for the State of Israel, filed a motion for continuance of this case or notified the court of his trip abroad, and whether he requested postponement of this case or other cases in the debt court in which he was of counsel, pending his return to the country.

We have taken the pains to search the records and have found no evidence of a motion for continuance or notification to court of Counsellor Berry's leaving the country for the State of Israel; nor have we find any notice to the court indicating that Attorney Khasu was no longer affiliated with the Berry Law Office. There is also no showing why Attorney Khasu failed to appear at the trial pursuant to the notice of assignment acknowledged by her, or any request from her for postponement of the case, especially having received and signed the notice of assignment notifying her of the trial of the case in which she once appeared in court and argued the issues of law.

Under the circumstances, we are not in agreement with the holding of our distinguished colleague that an attorney should have been deputized for the absent counsel who received and signed the notice of assignment for the hearing of his client's case, but who deliberately

neglected and refused to appear for the trial. Because of the failure of the plaintiffs-in-error's counsel to appear for the trial, after having been duly notified by court, counsel for the defendants-in-error invoked Rule 7 of the Circuit Court Rules to allow defendant-in-error to state its side of the case. That application was granted. Rule 7 of the Circuit Court Rules reads thus:

"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order; either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and in its discretion. A failure to file a motion for continuance or to appear for trial after return by the sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon or, dismiss the case against the defendant, and rule the plaintiff to costs, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during that session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be the foremost concern of the judge assigned to preside over the term". (emphasis supplied) There being no motion for continuance or a request for postponement, and counsel for the plaintiffs-in-error having been duly notified of the time and place of the hearing of the case, and having failed to appear for the trial, were, in our view, a strong indication of the abandonment of every defense raised in the pleadings. The court therefore had no obligatory duty to deputize a lawyer to take the judgment for the party who had deliberately abandoned his defense. Rule 7 of the Circuit Court Rules was intended to cure the embarrassment and the unfavorable situation which party-litigants and their lawyers caused the courts in the past when they deliberately failed to honor and attend upon assignments issued and served on them for the hearing of their cases, as a result of which, cases were made to linger on the dockets of courts undetermined. It was realized that unless a rule was set to govern this unpleasant situation, the constitutional requirement of a speedy trial as it relates to civil cases, would continue to be an obstacle in the adjudication process. This in turn could lend aid to the critics of the Judiciary who cried "justice delayed is justice denied."

It is the duty of the lawyer to be punctual in his attendance at court and to be prompt and faithful in answering assignments received by him, notifying him of the time for the hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duty. See Rule 17 of the *CODE OF MORAL AND PROFESSIONAL ETHICS*, page 4 of the Book of Rules.

A party who abandons his case in court is not entitled to any further participation therein for which the court should recognize his rights. One who is notified of the hearing of his case but fails to proceed to trial is considered as having deserted, surrendered, forsaken or ceded. He has relinquished or given up never to again resume his rights or interest, and the court will proceed according to law. See *BLACK'S LAW DICTIONARY* (4th ed. 1951), *Abandonment*.

It having been shown that a notice of assignment for the hearing of the case was issued by court, served and returned served, and that Attorney Catherine Watson-Khasu of the Berry Law Office, of counsel of record, received and signed the notice of assignment, her failure to appear for trial was an abandonment of plaintiffs-in-error defense. Plaintiffs-in-error were therefore not entitled to a deputized counsel to take the judgment of the court for the purpose of announcing an appeal. The right to do so was lost when plaintiffs-in-error relinquished their right to appear and defend. (See for reliance the case *Basma & Sons Liberia Inc. v. Pupo and G. H. Daryani Co. Ltd.*, 32 LLR 67 (1984).

In view of the foregoing, it is our considered opinion that the ruling of the Chambers Justice should be, and the same is hereby reversed, with costs against the plaintiffs-in-error. And it is hereby so ordered.

Petition for error denied.