

GBOLU M. JALLAH, Plaintiff-In-Error/Petitioner, v. **HER HONOUR C. AIMESA REEVES**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, March Term, A. D.

1988, and JAMES ARKU JALLAH, Defendants-In-Error/Respondents.

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

Heard: March 31, 1999. Decided: July 1, 1999.

1. The basis of error is that there is an adverse judgment against the applicant and he was not able to announce an appeal therefrom.
2. The basis for claiming or providing maintenance and support for a petitioner wife is that the marital bond still exists between them even if they live in a state of separation. Whenever that bond is broken, then there no longer exists any justification for the respondent to be required to support the petitioner.

Plaintiff's wife, filed an action of divorce for incompatibility of temper against the defendant in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, alleging that defendant had become unmindful of his marital vows and engaged in illicit conduct with plaintiff's niece. Trial was conducted and the jury returned a verdict of liable in favor of plaintiff. About a month later, plaintiff filed a petition for maintenance and support. In his returns, defendant contended that plaintiff was not entitled to any support from him because she was no longer his wife. The trial court heard and denied the petition, to which ruling, plaintiff excepted and announced an appeal to the Supreme Court. While the appeal was pending, plaintiff filed an application for a writ of error, contending that the judgment rendered in her favor should be reversed because she was not present for the trial. The Supreme Court consolidated both the error proceedings and the appeal in the maintenance and support case. Upon argument of the parties, and review of the records, the Supreme Court, noted that the plaintiff is bound by the judgment in the divorce proceedings, in that she sought and obtained the notice of assignment and appeared in court for trial and presented evidence in support of her complaint. The Court also held that the basis for claiming or providing maintenance and support for a petitioner wife is that the marital bonds still exist between them even if they live in a state of separation, and that whenever that bond is broken, then there no longer exists any justification for the respondent to be required to support the petitioner. Accordingly, the Supreme Court *denied* the application for the writ of error, *denied* the appeal in the petition for

maintenance and support, and left the final judgment declaring the parties two separate and distinct persons undisturbed and affirmed.

Roger K Martin of the Martin Law Offices appeared for plaintiff-in-error/petitioner/plaintiff. *Charles Abdullai and Momodu B. T. Jawandoh* of the Watch Law Chambers and Sherman & Sherman Law Firm respectively appeared for defendants-in-error/respondents/defendants.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

When this case was called for hearing, the Bench was informed of the pendency of two matters growing out of the same parent case; the first being an application for a writ of error in the divorce proceedings, and the second being an appeal growing out of petition for maintenance and support. The court decided to consolidate the two cases, such that both the error and the appeal were heard jointly. This opinion, therefore, is a consolidated ruling on both matters.

The two matters grow out of a marriage relationship, whereby the plaintiff and defendant were joined in holy wedlock on December 24, 1983 in Voinjama, Lofa County. The complaint alleged that in 1984 the defendant became unmindful of his marital vows and obligation and engaged in illicit conduct with Yassah Mulbah, the niece of his wife, the plaintiff. That despite interventions of family members of both plaintiff and defendant, this affair persisted to the extent that during the April 6, 1996 fighting in Monrovia, the defendant husband fled to Guinea with this girl, Yassah Mulbah and returned in June 1997, with her pregnant. The complaint further alleged that in August 1996, plaintiff opened a provision shop on her own for her maintenance and support; and that upon defendant's return from Guinea, he forcibly removed plaintiff from her own shop, beat her mercilessly and turned the shop over to the girl, Yassah Mulbah.

This led the plaintiff wife to file an action of divorce for incompatibility of temper. The defendant filed his answer obviously denying the allegation of the complaint, and pleadings rested. Trial was conducted and the jury returned a verdict of liable in favor of plaintiff. Then, about a month or so later, the plaintiff filed a petition for maintenance and support to which defendant filed his returns, basically contending that plaintiff (wife) was not entitled to any support from defendant (husband) because she was no longer his wife. Secondly, defendant contended that the amount demanded by plaintiff, US\$2,200.00, was excessive and unrealistic in view of his salary of L\$700.00 as an Assistant Minister of Education, R.L.

The trial court heard and denied the petition on the basis that the parties had already been divorced at the time the petition for maintenance and support was filed and as such defendant no longer had any obligation towards plaintiff. Being dissatisfied with the court's ruling, plaintiff excepted thereto and announced an appeal to the Supreme Court. This appeal was perfected and docketed.

At the same time, plaintiff filed an application for a writ of error contending that the judgment rendered in her favor should be reversed because she was not present for the trial and was not aware of the judgment in her favor. Defendant filed his returns praying this Court to confirm and affirm the judgment in favor of plaintiff since it was she who filed the action and caused it to be assigned for trial. Further, defendant contended that neither he nor his counsel was present at the trial and therefore plaintiff procured an *ex parte* trial and made perfect the imperfect judgment by producing two witnesses. Defendant contended further that the jury returned a unanimous verdict in favor of plaintiff, finding defendant liable and that after the expiration of the statutory period, the trial judge confirmed and affirmed the verdict and adjudged defendant liable thereby declaring plaintiff entitled to her divorce and dissolving and annulling the matrimonial ties between the parties.

When the parties appeared in this Court, the Bench decided to consolidate both the error proceedings and the appeal in the maintenance and support case, to avoid multiplicity of suits, to reduce cost and loss of time, and to bring speedy relief to the parties. Further, a decision in one case would either be dependent upon the other or have an effect on the outcome of the other. Simply put, a decision in the maintenance and support appeal is dependent upon how the Court rules on the error proceedings; conversely, a decision in the error proceedings would determine how the Court should rule in the maintenance and support case.

Based upon the above, the Court will review the error aspect first. Our error statute reads:

"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. "Civil Procedure Law, Rev. Code 1:6.24.1. " (Emphasis ours).

The basis for error is that there is an adverse judgment against the applicant and he was not able to announce an appeal therefrom. In the instant case, the plaintiff filed the divorce action and obtained a favorable judgment which she now seeks to have reversed; this seems inconsistent. One would have thought that she would be happy to have obtained the result for which she came to Court.

The plaintiff contends that the trial was conducted unknown to her but the records show that she and her counsel were present while defendant and his counsel were absent. This is borne out by not only the minutes of Court but also by the final judgment of the trial judge. If the defendant did not request the assignment and did not appear for the trial though notified, then who did?" The Supreme Court is generally an appellate tribunal and as such is confined to the transcribed records certified to it.

Plaintiff denied having participated in the trial but the minutes of court and the final judgment indicate that she did. In the absence of evidence to the contrary adduced in the trial court and born out by the records, the Supreme Court must presume the records to be correct and is not only restricted by it , but it must give credence to the certified transcribed records from the trial court. Therefore, this court is constrained to conclude that the plaintiff did seek and obtain the notice of assignment and did appear in court for the trial and presented evidence in support of her complaint; hence plaintiff is bound by or concluded by the judgment.

As a collateral issue, one would ask, what is the relief sought by plaintiff in her bid to have this judgment granting her prayer in her complaint reversed. In other words if the judgment is reversed and the plaintiff is ordered to remain married to defendant, would that not be counter productive? Is she asking to be reunited to the same man against whom she had filed for divorce? Therefore, this Court confirms and affirms the final judgment and declares it binding on the parties.

The second aspect of this ruling is the appeal in the maintenance and support case. The plaintiff/petitioner filed her petition demanding support and sustenance from the defendant. The defendant denied liability to the plaintiff on ground that they were no longer husband and wife.

The case file reveals that the court conducted the trial on April 17, 1998 and entered its final judgment in the divorce case on April 24, 1998; also, that the plaintiff filed her petition for maintenance and support on May 22, 1998, one month subsequent.

As defendant countered, when the petition was filed claiming support, the parties were no longer husband and wife.

The basis for claiming or providing maintenance and support for a petitioner wife is that the marital bonds still exist between them even if they live in a state of separation. Whenever that bond is broken, there no longer exists any justification for the respondent to be required to support the petitioner. Since this Court has earlier upheld the validity of the judgment divorcing the parties, this Court is therefore equally compelled to uphold the judgment which denied petitioner's right to recover maintenance and support from respondent. Accordingly, the appeal is dismissed as this Court holds that petitioner is not entitled by law to any support from respondent.

However, the Court observes that plaintiff/petitioner opened her shop for her own sustenance and survival while defendant/ respondent was seeking refuge in Guinea due to the April 6, 1996 crisis in Monrovia. Defendant did not show that he was the one who opened the shop for his wife, the plaintiff, or that he participated in its management and operation, or contributed to its continued running. Therefore, this Court holds the view that the shop belongs to the plaintiff and should be returned to her completely to ensure her survival and sustenance. The Court has already exonerated defendant from liability to provide support for plaintiffs and therefore cannot permit said defendant in preventing plaintiff from being able to support herself.

The defendant is ordered to vacate the shop or ensure the removal of anyone placed there or controlled by him directly or indirectly, and to surrender complete control, management and ownership over the shop to the plaintiff, and to refrain from going there or interfering in any manner with the management and control of the shop without the knowledge, will and consent of the plaintiff. During argument in this Court, defendant denied ever removing plaintiff from her shop or turning it over to his girlfriend, Yassah Mulbah, the plaintiffs own niece. If it is discovered that defendant misled or misinformed this Court on this subject, then he must not only be held in contempt but also made to account for and retribute to plaintiff all monies generated from that shop and expended by defendant or those placed there by him.

Wherefore, and in view of all the foregoing laws, facts and circumstances in this case, it is the considered opinion of this Court that the application for a writ of error, lacking any foundation in law, should be and the same is hereby denied and the proceedings dismissed, and the final judgment left undisturbed and affirmed, declaring the parties two separate and distinct persons. It is also the opinion of this

Court that the appeal in the maintenance and support case should be and the same is hereby denied and the judgment appealed from affirmed thereby denying petitioner any entitlement to support from respondent.

The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding therein to resume jurisdiction over the case and enforce both final judgments and also ordering the judge to investigate whether or not the defendant did remove plaintiff from her shop and turn it over to someone else. If defendant did, then the judge should compel defendant to account for and retribute to plaintiff all monies generated from the control, operation and management of the shop by defendant or his agent or designee and the trial judge must repossess plaintiff of her shop. Costs are disallowed. And it is hereby so ordered.

Judgment affirmed, error denied.