

KORPO KONAH, Plaintiff-In-Error, v. **HER HONOUR JULIA F. BARCLAY**
and **HER HONOUR C. AIMESA REEVES**, Resident and As-signed Probate
Judges, Monthly and Probate Court, Careysburg, Montserrado County, and
FREDERICK K. GOBEWOLE, et al., Defendants-In-Error.

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

Heard: November 20, 1989. Decided: January 9, 1990.

1. A court has no duty to deputize a lawyer to take a ruling on behalf of an adverse party who had prior and due notice to appear but fails to appear without prior excuse.
2. A condition for applying for a writ of error is that the plaintiff-in-error has for good reasons failed to announce an appeal; and un-excused absenteeism from the rendition of a final judgment is not a good reason.
3. The posting of bond on application for a writ of error is left to the sound discretion of the Chambers Justice.
4. The payment of accrued cost as a statutory requirement is mandatory on application for a writ of error.

Frederick K. Gobewole filed a bill of information for and on behalf of his son, Ballah B. Gobewole, before the Provisional Monthly and Probate Court in Careysburg District, to co-administer the intestate estate of the deceased mother of Ballah B. Gobewole. Plaintiff-in-error filed returns to the bill of information and a hearing was held. On the day of the ruling on the bill of information, neither plaintiff-in-error nor her counsel appeared despite the fact that counsel for plaintiff-in-error had due notice to do so. The probate judge rendered judgment granting the bill of information and made co-defendant-in-error, Frederick Gobewole, co-administrator of the intestate estate of the deceased mother of Ballah K. Gobewole. Thereafter, plaintiff-in-error filed a petition for a writ of error before the Justice in Chambers, alleging that she did not have her day in court because on the day of the ruling on the bill of information, the probate judge did not designate a counsel to except and announce an appeal on her behalf.

After hearing the petition for a writ of error, the Justice in Chambers denied the issuance of same and fined the counsel for plaintiff-in-error \$200.00. It was from this ruling that the plaintiff-in-error appealed to the Full Bench.

On appeal, the Supreme Court held that counsel for plaintiff-in-error was negligent in failing to appear in court at the rendition of judgment without prior excuse to justify his absence, even though he had prior notice. The ruling of the Chambers Justice denying the issuance of the writ of error was therefore *confirmed and affirmed*.

Francis Y. S. Garlawolu appeared for the plaintiff-in-error. *Boima K Morris* appeared for the defendants-in-error.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This is an appeal from a ruling of the Chambers Justice, His Honor James K. Belleh, denying a petition for a writ of error after appropriate hearing in the matter.

Plaintiff-in-error, Madam Korpo Konah filed a petition for a writ of error alleging denial of her day in court in the Provisional Monthly and Probate Court for Careysburg District, where she had made an appearance as respondent to a bill of information earlier filed against her in said court. She contended that as respondent to the bill of information, her counsel had filed returns and arguments had. Yet, she continued, on the day of the ruling she could not appear and judgment was rendered in the proceeding without designating counsel to except and announce an appeal on her behalf. She therefore concluded that this amounted to a denial of her day in court, and consequently a denial of her right to appeal, contrary to the Constitution and laws of this country.

Co-defendant-in-error, on the other hand, contended that the plaintiff-in-error had resorted to the writ of error merely to delay the enforcement of the judgment as she had neglected to appear after due notice to do so; hence, the court had no duty to deputize any lawyer to take such ruling for her. Additionally, he maintained that the plaintiff-in-error had failed to comply with a necessary statutory requirement; that is, as a prerequisite to issuance of the writ the plaintiff-in-error is required to pay all accrued costs.

After arguments on both sides, the Justice in Chambers ruled denying the writ as dilatory; and fined the counsel for plaintiff-in-error two hundred dollars (\$200.00) for

being too negligent in handling his client's case, and for wasting the time of the Court by applying for a writ of error without justification.

The matter having been argued before us also, and upon close study of the records of this appeal, we are convinced that the only issue here for our determination is:

Whether or not a writ of error will obtain in the circumstances of this case.

Our Civil Procedure Law provides that:

"A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment." Civil Procedure Law, Rev. Code 1:16.21(4).

It further lays down as a procedure for application and hearing on the writ as follows.

1. *Application.* A party against whom judgment has been taken, who 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. Such an application shall contain the following:

(a) An assignment of error, similar in form and content to a bill of exceptions, which should be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;

(b) A statement why an appeal was not taken;

(c) An allegation that the execution of the judgment has not been completed; and

(d) A certificate of counsellor of the Supreme Court, or any attorney of the circuit court if no counsellor residing in the jurisdiction where the trial was held, that in the opinion of such counsellor or attorney real errors are assigned. Civil Procedure Law, Rev. Code 1 :16.24(1)(a)-(d).

Additionally, this same statute provides rather unambiguously that:

"As a prerequisite to issuance of the writ, the person applying for the writ of error to be known as the plaintiff-in-error, shall be required to pay all accrued costs, and may

be required to file a bond in the manner prescribed in Section 51.10. Such a bond shall be conditional on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed." *Ibid.*

We will now proceed to consider whether or not plaintiff-in-error deserves this writ and if she does, whether or not she had pursued the requisite procedure in applying for same.

The Justice in Chambers held that the trial judge had no duty to deputize a lawyer to take the ruling for an un-excused absent party, who had prior notice of the ruling and was supposed to be present, and who had resorted to said writ merely for dilatory purposes. The Chambers Justice in fact fined her counsel for ethical reasons connected with his handling of the client's case. Hence, the Justice denied the writ and the plaintiff-in-error came on this appeal.

The most prominent contention of the plaintiff-in-error is that she was denied her day in court as the trial judge had neglected to designate counsel to receive judgment on her behalf, except to the ruling, and announce an appeal as required by law, and that the application was not made for purpose of mere delay.

Plaintiff-in-error, as respondent to a bill of information, had filed returns, and argued her side of the case, and after all arguments, both parties were duly notified to appear on a later date for judgment in the matter. However, on that day while defendant-in-error and his counsel were present; plaintiff-in-error and her counsel were absent without any excuse.

The judge rendered judgment in favour of defendant-in-error making him co-administrator of the intestate estate of the deceased mother of his son, who was a grandchild of the plaintiff-in-error, the other administrator of said estate.

We are of the opinion that counsel for plaintiff-in-error was negligent in failing to appear at the rendition of judgment, and with no prior excuse to justify the absence, although timely notified earlier to be present. In fact a court has no duty to deputize a lawyer to take a ruling on behalf of an un-excused party who had prior and due notice to appear *Liberia Overseas Venture Corporation (LOVCO) v. Yancy et al.* 30 LLR 228 (1982). It is therefore surprising that he, the unexcused absentee, can thereafter blame the court for denying his client her day in court. Indeed, we see no harm done to the plaintiff-in-error as a result of our appointment of defendant-in-error as

co-administrator, when the latter is admittedly the father of her grandchild, and has custody of the child. The statute on the writ of error cited *supra*, and which is emphasized here, provides that a party against whom judgment has been taken and "who has for good reasons failed to make a timely announcement of the taking of an appeal from such judgment.." may apply for the writ of error. Civil Procedure Law, Rev. Code 1:16.24.

It is therefore a condition to applying for the said writ that plaintiff-in-error shows good reasons for failure to announce an appeal. This Court cannot for that reason grant the writ of error unless it is certain that in fact plaintiff-in-error is justified in applying for it; and un-excused absenteeism from the rendition of a judgment is not a good justification.

The plaintiff-in-error in the present case has shown no cogent reason why she chose to apply for the writ, apart from the negligence of her own counsel, who was also absent even for the hearing of this application for the writ of error, although his client was the plaintiff-in-error. This is one reason why the Justice in Chambers fined the counsel.

The defendant-in-error further contended that the plaintiff-in-error had failed to pay accrued costs and failed to file a bond in applying for the writ as a statutory prerequisite. We hold that the posting of a bond on application for a writ of error is left to the discretion of the Chambers Justice. *Teenia v. Urey et al.*, 27 LLR 91 (1978). But certainly, the payment of accrued costs as a statutory prerequisite is mandatory, and the court "will not honor a writ of error unless the applicant has satisfied the statutory prerequisite of paying in the court below all accrued costs in the case out of which the error application grows." *Morris v. Reeves et al.*, 27 LLR 334 (1978).

The records in this case show that no bond was filed, nor accrued costs paid by plaintiff-in-error before proceeding on a writ of error. We consider this a fatal negligence by counsel for plaintiff-in-error. And from all we have said herein, we are of the opinion that plaintiff-in-error does not deserve the writ of error in this case. Hence, we affirm the ruling of the Justice in Chambers, including payment of the fine imposed on counsel for plaintiff-in-error.

Consequently, the trial court is mandated to resume jurisdiction over this case and enforce the judgment in the bill of information against which this writ of error is being sought. Costs against plaintiff-in-error. It is hereby so ordered.

Petition denied; ruling affirmed.

