**MARMADEE KROMAH,** Plaintiff-In-Error**,** *v.* **HIS HONOUR J. HENRIC PEARSON,** Assigned Circuit Judge, Tenth Judicial Circuit, Lofa County, **A. KELIWALLA MONIBA, LAWRENCE MONIBA, and SAMUEL SAMOLU,** Defendants-In-Error.

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

Heard: April 22, 1985. Decided: June 20, 1985.

1. Where a trial judge proceeds contrary to rules which ought to be observed at all times, the remedy available is prohibition which prevents a tribunal possessing judicial or quasi judicial powers from exercising jurisdiction over matters not within its cognizance. The remedy is not a petition for a writ of error.
2. In all cases of contested wills, the objections and other issues, of whatever nature should, under the statute, be sent to the circuit court to be tried by a jury upon its merits, and by it rejected, set aside, quashed or approved.
3. If at the commencement of a trial the judge proceeds *ultra virus* other than as laid down by statute, it is incumbent upon the aggrieved party to move by prohibition against the trial judge to restrain and prohibit him from proceeding further with the case.
4. A party who neglects to do what is required of him under the law is estopped and precluded from seeking relief by way of a writ of error, especially if he admits participation in the trial.
5. Where a party to a suit is notified by summons to appear, and the party appeared and participated in a regular trial, growing out of which a judgment is rendered against him, the only remedy available is an appeal from the judgment.
6. Any party against whom a judgment or decree is rendered by an inferior court is entitled, under the statute law of Liberia, to appeal as of right.
7. Where a party for good reason fails to take an appeal from a judgment, decree or decision, as provided by law, the Justice presiding in Chambers may grant to such party a writ of error against the judgment, decree or decision of which he complains, at any time within six months from the date thereof, provided that execution thereof is not fully satisfied.
8. A party applying for a writ of error must be designated in the petition as plaintiff-in-error, and the party in whose favor the judgment, decree or decision is entered must be designated as defendant-in-error.
9. The jurisdiction of the Supreme Court is principally appellate. Hence the principal elements of its jurisdiction is that of review of the action of a lower court.

The plaintiff-in-error filed a petition for a writ of error, contending that the trial judge

had erred (a) in proceeding with a contested will case without first disposing of the issues of law and summarizing the factual issues which were to be tried by a jury, and (b) in conducting a trial of a contested will with-out an empaneled jury. The records show that the plaintiff-in-error's counsel had participated in the trial of the case up to the point of final arguments, but was not notified to appear on the day final judgment was rendered, hence the petition for a writ of error, which was denied by the Justice in Chambers, and from which an appeal was taken to the full Bench.

The Supreme Court upheld the ruling of the Justice in Chambers, stating that if the plaintiff-in-error felt that during the conduct of the trial, the trial judge was proceeding contrary to rules which ought to be observed at all times, the remedy for the plaintiff-in-error was a petition for prohibition rather than a petition for a writ of error. The Court opined that the plaintiff-in-error, having neglected to take action at the time of the error said to have been committed by the trial judge, he was precluded from seeking relief by a writ error.

The Court further observed that as the plaintiff-in-error had been summoned and had appeared and participated in the trial in which judgment was rendered against him, the only remedy available to him thereafter was an appeal which he was entitled to as a matter of right. The filing of a petition for a writ of error rather than seeking review of the case by a regular appeal, the Court said, was a contravention of the law. The Court therefore *affirmed* the denial of the petition for a writ of error.

*Robert G. W. Azango* appeared for the plaintiff-in-error. *S. Edward Carlor* appeared for the defendants-in-error.

MR. JUSTICE NYEPLU delivered the opinion of the Court.

This appeal grows out of the ruling of our distinguished Colleague, His Honour Associate Justice Boima K. Morris, who while presiding in Chambers, heard the petition of the petitioner and denied the alternative writ requested. The case is before us for our review and determination on the following issues contained in the brief filed by the plaintiff-in-error:

1. Was the trial judge in the court below justified in proceeding with the trial of the contested Will case, with-out first disposing of the issues of law and summarizing the issues of fact to be tried by a jury?

2. Was the learned judge legally justified in conduc-ting a contested Will trial without an empaneled jury ?

3. Did the learned Justice in Chambers correctly construe and interpret the error statutes concomitantly with the extenuating circumstances as appear from the records in these proceedings ?

In seeking our review, the plaintiff-in-error/appellant filed a thirteen-count brief.

However, from our careful analysis of the brief, only count one is pertinent and relevant to all the issues raised by appellant. The said count one (1) of the brief states:

> "1. Because appellant submits that reference to the Chambers Justice's ruling, he maintains and confirms the position taken in his petition for the writ of error and respectfully says that the learned Justice inadvertently overlooked, misconstrued and misinterpreted the five points of the error statute and therefore has erroneously ruled in the manner he has done, for which the said ruling should be reversed, together with the judgment of His Honour J. Henrique Pearson, to all intents and purposes in that:
>
> a) Error will lie to review a judgment of an inferior court from which an appeal was not announced on rendition of judgment and, for good reason, the party against whom judgment had been taken had failed to make a timely announcement of the taking of an appeal from such judgment.

In the instant case, although Counsellor Roye T. Ford participated in the trial up to the point of argument, he was not notified to appear on the day on which finial judgment was rendered.

In discussing count (1) one of plaintiff-in-error's brief, the Court says that if the trial judge had proceeded contrary to rules which ought to be observed at all times, the remedy available to plaintiff in error at that stage of the trial was prohibition because it prevents a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matter not within its cognizance.

In this connection, this Court in deciding the issues of a contested will, said the following in the case *Roberts v. Roberts:* "In all cases of contested wills, the objections and all other issues of whatever nature should, under the statute, be sent to the Court of Quarter Sessions (now the Circuit Court) to be tried by a jury upon its merits, and by it rejected, set aside, quashed, or approved". 7 LLR 358 (1942).

It follows therefore that if, at the commencement of the trial, the judge proceeded *ultra virus* other than what is laid down by the statute, it was incumbent upon the plaintiff-in-error to move against the trial judge on writ of prohibition before the Chambers Justice, which inevitably would have restrained and inhibited him from proceeding further with the case. The plaintiff-in-error having neglected to do what was required of him under the law and in such circumstances, he is estopped and forever precluded from seeking relief by writ of error, especially after having admitted that he participated in the trial.

The defendant-in-error filed his brief containing seven counts, wherein he raised three pertinent issues which we quote in its sequence:

> "1. Whether error will lie when a party who has notice to appear and who appears in person and by counsel, but fails to appeal from a judgment rendered against him.
>
> 2. Whether error will lie when a petitioner has departed from the statute in filing a petition and;
>
> 3. Whether error can be used as a substitute for an appeal where judgment was

rendered in the presence of the plaintiff-in-error but he failed to appeal therefrom.

Having outlined the three issues raised by defendants-in-error, we will now proceed to discuss them and apply the appli-cable laws which the circumstances warrant.

With regard to issue one contained in the defendants-in-error's brief, the Court says that where a party-defendant to a suit is notified by summons to appear and he appears and unquestionably participates in a regular trial growing out of which a judgment is rendered against him, the only remedy available to him is the right of an appeal. This principle was scrupulously laid down by this Court in the case *Bracewell and Harmon v. Massaquoi* as follows: "Any party against whom a judgment or decree is rendered by an inferior court is entitled to an appeal as of right under the statute laws of this Republic. 7 LLR 390 (1942).

With regard to issue two, raised by the defendants-in-error, Rule 7, which provides for writ of error, states at Part 8, as follows:

Application for -

> "Where a party has for good reasons failed to take an appeal as provided by law, there may be granted to such party by the Justice presiding in Chambers, a writ of error from any judgment, decree or decision of any judge or court, at any time within six months from the date thereof, provided that execution thereon is not fully satisfied. The party in whose favor such judgment, decree or decision has been rendered shall be named as defendant-in-error, and shall be served with a copy of the writ of error. Such writ of error shall act as a stay of proceedings; and the plaintiff-in-error shall be required by the Justice granting the writ to pay all accrued costs and may be required to file a bond in such amount, and with such surety or sureties as he may name, condition-al upon paying such damages, if any should be sus-tained by the defendant, in the event that the judgment, decree or decision complained against should be affirmed. The court may, in addition to costs, award the defendant-in-error his reasonable disbursements made in connection with such writ of error".

This Rule of the Supreme Court is the replica of the statute controlling the method and filing of writ of error, contained in the Civil Procedure Law, Rev. Code 1: 16.24. It follows there-fore that the party applying for the writ must be designated in the petition as plaintiff-in-error and the party in whose favour the judgment, decree or decision is entered designated as defendant-in-error. Interestingly, plaintiff-in-error named him-self in the petition as petitioner and named the defendants-in-error as respondents. This strange naming of the parties adapted by counsel for plaintiff-in-error, behooves us to won-der whether Counsellor Azango, one of the oldest practitioners of this Bar and one whose presence, as a former Associate Justice graced this Bench, and of whom much is expected, was really serious in defending plaintiff-in-error. His attitude and poor performance and representation can only be construed as a farewell to the practice, or did he intend to test the integrity of our colleague, the Chambers Justice, or the entire Bench for that matter. What did he really seek to achieve when the statute is plain on how parties in error should be designated. How be it,

suffice to say that whatever his intention must have been, when he chose to file a petition for a writ of error instead of pursuing a regular appeal, after participating in what he called an irregular trial, he, for the plaintiff-in-error, contra-vened and absolutely circumvented the prerequisites provided by the rule of this Court and the statute. We fail to conceive the logic why counsel for plaintiff-in-error acted in repugnance to the Rule of Court which he once enforced and the statute which he once construed and interpreted. In this context, we must advice that lawyers refrain from being preposterous in their dealings, and presumptuous when coming before this Court.

With regard to issue three (3), this Court said in the case *Elias Brothers and Murdoch v. Kuto* that: "(1) Laches and neglect are always discountenanced by a court of equity, which is never active in relief against stale demands, or where the party has slept upon his rights. (2) The jurisdiction of the Supreme Court is principally appellate, and hence the essential element of its jurisdiction is that of review of the action of a lower court". 5 LLR 23, 42 (1935).

Here again, we have to remark that Counsellor Azango, having participated in the reportedly irregular trial without taking exceptions or seeking the proper remedial process which would have averted the rendition of the alleged irregular judgment, it was improper for counsel for plaintiff-in-error to try to cure this defect by his oscillated tactics and to benefit therefrom.

Having addressed ourselves to the issues raised by both parties, and the four issues set out in the ruling of the Chambers Justice, it is the holding of this Court that the ruling of the Chambers Justice, being sound in law, same should not be disturbed.

Wherefore, and in view of all that have been said, the ruling of the Chambers Justice should be, and the same is hereby confirmed and affirmed. The plaintiff-in-error is ruled to costs of these proceedings. And it is so ordered.

*Petition denied.*