LAMCO J. V. OPERATING COMPANY, represented by and thru its General Manager**, JOHN L. PERVOLA, Plaintiff-In-Error,** *v.* **HIS HONOUR HARPER S. BAILEY**, Assigned Circuit Judge, presiding over the November Term, A. D. 1984, Second Judicial Circuit Court, Grand Bassa County and ROBERT VONYEEGAR, Defendants-In-Error.

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

Heard: November 11, 1985. Decided: December 18, 1985.

1. Where notice of assignment on a corporate party is served upon its labor relations officer rather than on its superintendent of industrial relations, its operations manager, of its legal counsel, and such labor relations officer works in the labor relations office under the control of the superintendent of industrial relations, the service will be deemed to be good and in compliance with the statute. In such a case, the corporate party cannot thereafter assert that it was not served with notice to appear.
2. Where a motion for continuance is filed in one term for continuance of the case to another term, and the case is assigned for hearing in a subsequent term, the motion lapses by its own term and the trial court, when hearing the case does not err in not disposing of the motion as the motion is no longer pending before the court.
3. The essence of having a court appoint an attorney to take the judgment of the court on behalf of an absent party or its attorney is to fulfill the requirement of the statute, which grants to a party the mandatory right of appeal from every judgement, except that of the Supreme Court.
4. While it is mandatory for the trial court to appoint an attorney to take the judgment for a defaulting party, the purpose of that mandate is served where an attorney of the law firm representing the defaulting party is present in court at the call of the case, even if the attorney refuses to announce representation.
5. The court cannot do for a party that which the party can do for himself.
6. Whenever it is discovered that a remedial process is resorted to in order to delay and to deny the ends of justice, it will be promptly denied.

The plaintiff-in-error filed a petition for a writ of error, contending therein that the trial court had not notified it of the trial of the case, and that in its absence, judgment by default was entered against it; that the trial judge had proceeded with the trial of the case without first disposing of the motion for continuance filed by it; and that the trial court had failed to appoint an attorney to take the judgment for it and announce an appeal on its behalf. The Justice in Chambers denied the petition, quashed the alternative writ and assessed costs against the plaintiff-in-error. From this ruling, an appeal was taken to the full Bench.

The Supreme Court *en banc* agreed with the ruling of the Chambers Justice, holding that there were no merits to the contentions of the petition. The Court noted that the records showed that service of the notice of assignment for the hearing of the case was made upon the labor relations officer of the plaintiff-in-error company, but that the plaintiff-in-error had failed to appear for such hearing at the time designated by the court. The Court rejected the contention of the plaintiff-in-error that service should have been made upon its superintendent of industrial relations, its operations manager, or its legal counsel, rather than on its labor relations officer. It opined that as the industrial relations officer worked in the industrial relations office and under the control of the superintendent of industrial relations, the service upon him was good enough to constitute legal service upon the plaintiff-in-error, in conformity with the statute relating of precepts on a corporate party. The Court observed also that as the plaintiff-in-error maintained an office in Buchanan, Grand Bassa County, where the case was pending, it was the responsibility of the plaintiff-in-error to forward the assignment to its legal counsel in Monrovia, rather than expect the sheriff for Grand Bassa County to travel to Monrovia to serve the assignment on its counsel.

On the issue of the failure by the trial court to pass upon the motion for continuance, the Court opined that the motion had lapsed and hence obviated the need for the trial judge to pass on the same. The Court noted that the motion was filed in the August Term of the court for postponement of the case to the November term. The August term having expired and the hearing having been conducted at the November term, the motion had, by its own terms, expired. As such, the Court said, the motion was no longer before the trial court.

Lastly, addressing the contention that the trial judge had erred in not appointing an attorney to take the judgment and announce an appeal on behalf of the plaintiff-in-error, the Court observed that at the time of the rendition of the judgment, an attorney from the law firm representing the plaintiff-in-error was present in court, but he failed to announce representation for the plaintiff-in-error or to announce an appeal from the judgment in its behalf. The Court acknowledged that under the statute, a trial judge is obligated to appoint counsel to take the judgment on behalf of an absent party or its counsel and to announce an appeal therefrom. The Court opined, however, that the purpose of the mandate of the statute was served where an attorney of the law firm representing the plaintiff-in-error was present in court at the call of the case, even if he refused or failed to announce representation. Under such circumstances, it said, the defaulting party is precluded from asserting

that the trial judge acted contrary to law in not appointing an attorney to take the judgment on behalf of said defaulting party.

The Court therefore *affirmed* the ruling of the Chambers Justice denying the petition.

E. Winfred Smallwood and *David A. B. Jallah* of the Cooper and Togbah Law Office represented the appellant. *J. Laveli Supuwood* and *Francis Y. S. Garlawolo* represented the appellee.

MR. JUSTICE NYEPLU delivered the opinion of the Court.

On September 24, 1982, an indictment for property theft brought by the State against defendant-in-error at the instance of Lamco, plaintiff-in-error in this case, was quashed by the Circuit Court for the Second Judicial Circuit, Grand Bassa County. Subsequently, defendant-in-error brought action of damages for malicious prosecution against plaintiff-in-error in said Second Judicial Circuit, sitting in its May Term, A. D. 1984. Pleadings rested with the reply.

It is observed that this action of damages for malicious prosecution was delayed in the court below by numerous requests for continuance on the part of defendant-in-error. The sheriff's returns forwarded here certify that on December 12, 1984, an assignment was issued out of the office of the clerk for the Second Judicial Circuit for hearing of the case on December 13, 1984, and that the said assignment was served on plaintiff-in-error. However, plaintiff-in-error failed to appear and defend. Whereupon, the defendant-in-error invoked Rule 7 of the Circuit Courts Rules which was granted. Trial was had and the empaneled jury returned a verdict of liable against the plaintiff-in-error company, and awarded general damages to defendant-in-error to the value of $50,000.00. On December 19, 1984, the judge rendered final judgment affirming the verdict. It is alleged that at the time of the final judgment, only the defendant-in-error's counsel was present, and that the plaintiff-in-error was not represented. The judge did not appoint counsel to take the judgment, apparently because plaintiff-in-error was represented by the Cooper and Togba Law Office, whose attorney, by the name of Alexander Zoe, was allegedly present in court before, during and after rendition of the final judgment in the case. Attorney Alexander Zoe of the Cooper and Togba Law Office however refused to take exceptions to the judgment and announce an appeal for the client of his Law Office. Notwithstanding, the clerk of said court gave attorney Zoe the judgment, which he accepted for his Law Office.

Thereafter , the Cooper and Togba Law Office, representing plaintiff-in-error, instituted these error proceedings in the Chambers of Associate Justice Boima K. Morris, contending among other things, that it had not been notified of the proceedings and that therefore it had not had its day in court as required by law. Further, it maintained that even assuming that it was appropriate to have a default judgment, the plaintiff-in-error was still entitled to

have an attorney appointed by the court to take the judgment on behalf of plaintiff-in-error, as required in cases of default judgments. It also contended that the trial was conducted with haste and that an earlier motion for continuance had to first be disposed of before the trial of the merits of the cause.

Defendant-in-error, however, countered these by alleging that plaintiff-in-error had received sufficient notice to appear, as evidenced by the sheriff's returns which indicated that said notice of assignment was personally served on both defendant and plaintiff. Defendant-in-error further contended that his adversary had continuously excused itself from the proceedings and that as the motion for continuance had been filed in the August Term of the court, it could not be passed upon in the November Term, unless it was made anew. The defendant-in-error further produced an affidavit, sworn and subscribed to before an authorized Justice of the Peace for Grand Bassa County, by James Johnson, counsellor-at-law, one Attorney Findley, and the sheriff for Grand Bassa County as deponents. The affidavit states that the deponents were physically present in court, in the Second Judicial Circuit for Grand Bassa County, when the case was called for final judgment on December 19, 1984, and that prior to and at the rendition of the final judgment, Attorney Alexander Zoe, a member of the Cooper and Togba Law Office, was physically present in court but failed to announce representation, except to, and announce an appeal from said judgment. They held these statements to be true by their oaths. The said affidavit is quoted below:

"REPUBLIC OF LIBERIA) IN THE OFFICE OF THE JUSTICE OF
MONTSERRADO COUNTY) THE PEACE, FOR GRAND BASSA
COUNTY, R. L.

IN RE:

Robert Vonyeegar.....Plaintiff)

vs.)

) DAMAGES FOR MALICIOUS

LAMCO J. V. Operating Com-) PROSECUTION
pany, by and thru its Manager...)
.....Defendant)

A F F I D A V I T

PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace, in and for the County of Grand Bassa and Republic aforesaid, Counsellor James Johnson, Attorney Findley and the sheriff of the Second Judicial Circuit of Grand Bassa County, and jointly and severally depose upon oath in manner and form, to wit:

1. That they were physically present in the Court room of the 2nd Judicial Circuit of Grand Bassa County, when the above case was called for final judgment, on 19th December, 1984.
2. That prior to and at the rendition of final judgment, Attorney Alexander Zoe, member of the Togba and Cooper Law Firm, was physically present in court but

failed to announce representation, except to and announce appeal aforesaid from the final judgment; and that by their oath, they verily believe the above statement to be true and correct to the best of their knowledge and belief.

Sworn and subscribed before me in the City of Buchanan, this 9th day of February, A. D. 1985.

SGD: ILLEGIBLE
JUSTICE OF THE PEACE, GRAND BASSA COUNTY

/T/ JUSTICE OF THE PEACE, GRAND BASSA COUNTY
SGD: ILLEGIBLE
COUNSELLOR-AT-LAW
SGD: ILLEGIBLE
ATTORNEY-AT-LAW
ILLEGIBLE
SHERIFF FOR GRAND BASSA COUNTY, R. L.
AFFIANTS (DEPONENTS)

CERTIFIED, TRUE AND CORRECT COPY OF THE ORIGINAL.

CLERK"

Plaintiff-in-error also filed an answering affidavit sworn to by Counsellor E. Winfred Smallwood, who was not at the trial, maintaining that Alexander Zoe went to the Second Judicial Circuit on the afternoon of the day of the final judgment to file a bill of exceptions in another case, not named in said affidavit, and that therefore Attorney Zoe was not in court at the rendition of final judgment.

After reviewing the foregoing issues raised by the parties, the Justice in Chambers denied the petition for a writ of error, quashed the alternative writ, denied the peremptory writ, and assessed costs against plaintiff-in-error. The Clerk was ordered to send a mandate to the court below ordering the judge to resume jurisdiction of the case and enforce the judgment. Hence this appeal to the Supreme Court *en banc*.

From the records certified to this Court, the pertinent issues for our attention are the following:

1. Whether or not plaintiff-in-error, defendant below, was duly cited to appear?
2. Whether or not a default judgment was properly executed in the case; and whether the court would have proceeded without first disposing of the motion for continuance filed in the August Term?
3. Whether or not an attorney was required to be appointed by the court where an attorney of the law firm represen-ting the defaulting party was present in court at the rendition of final judgment?

This Court proceeds strictly by records certified to it by the lower court. According to

the records in this case, certified to this court the returns of the sheriff indicate that both defendant and plaintiff were duly cited to appear and to defend. The said sheriff's returns is hereby quoted for the benefit of this opinion:

SHERIFF'S RETURNS

"On the 12th day of December, A. D. 1984, bailiff Samuel Gorwor served his notice of assignment on the counsel for plaintiff and the defendant himself by giving them copies of this assignment; and now make this as my official returns to this Honourable Court. Dated this 12th day of December, A. D. 1984.

/SGD/ Robert Hodges, Jr.,
Robert Hodges, Jr.
G. B. Co. Sheriff

Certified, true and correct copy of the Original."

Yet, plaintiff-in-error maintains that its counsel and not itself should have been served with the notice of the trial, as provided in our Civil Procedure Law which states:

"Upon a party. If a party has not appeared by attorney or his attorney cannot be served, service shall be upon the party himself by one of the following methods:

a) By delivering the paper to the party personally;

b) By mailing the paper to the party at his known address by registered mail;

c) By leaving the paper at the residence of the party within the Republic with a person of suitable age and discretion; providing that the person to whom the paper is delivered is then residing therein." Civil Procedure Law, Rev. Code I: 8.3(4).

Plaintiff-in-error further maintained that the service of the notice of assignment was made on its labour relations officer in the industrial relations office when it should have been served on "the superintendent of industrial relations or the operations manager who is the most senior management official at Buchanan."

From the foregoing, we are of the conviction that the statute cited above is against the plaintiff-in-error, for even though its counsel resided in Monrovia, the said plaintiff-in-error had a major establishment in Buchanan, Grand Bassa County. It was therefore the business of said plaintiff-in-error to forward the notice of assignment to its counsel in Monrovia. One would not have expected the ministerial officer in Grand Bassa to proceed to No. 3 Buchanan Street in Monrovia to serve the notice of assignment on the Cooper and Togba Law Office, which represented the plaintiff-in-error. Since the plaintiff-in-error maintained that the notice should have been properly served on the superintendent of industrial relations or the operations manager, we are of the opinion that service of said notice of assignment on a labour relations officer who is under the control of the said superintendent of industrial relations, is still good service, and said corporation cannot thereafter turn around and be heard to say that it has not been served with notice to appear.

In order to determine whether or not the procedure for a default judgment was properly observed in the court below, we shall give below an analysis of the procedure followed when

it was found that the defendant would not after all attend the trial. According to the records in this case, a motion for continuance was filed in the August Term 1984 by plaintiff-in-error. Before the last notice of assignment was served on the parties herein, prior to the default judgment, several notices of assignments and reassignments had been made. However, for some reason the trial could not be had. The presiding judge was finally compelled to issue a strong warning to the effect that the assignment under review was the last, and that any party defaulting upon receipt of same would bear the consequences afforded by law.

Naturally, when plaintiff-in-error defaulted, Rule 7 of the Circuit Court Rules was invoked and granted, a trial was had and a regularly empaneled jury returned a verdict of liable against the plaintiff-in-error, with the amount demanded in the complaint, with costs, being awarded against said plaintiff-in-error. Five days thereafter, the court rendered its final judgment affirming the verdict. It should not be forgotten that the sheriff's returns indicated that both the defendant/plaintiff-in-error and plaintiff/ defendant-in-error were served notice to appear. Therefore, we are of the opinion that Rule 7 of the Circuit Court Rules was properly invoked, and that the trial was held in compliance with the provisions the Civil Procedure Law, Rev. Code 1: 42.2, regarding procedure, and Sec. 42.7, relating to notice.

Plaintiff-in-error next contended that an earlier motion for continuance filed in the August Term, 1984, had not been disposed of before the trial below. However, the motion was filed during the August Term of court, requesting continuance of the trial to the November Term 1984. The hearing in question was not had until the said November Term, 1984. The motion was at that time inoperative by virtue of the lapse of time, since the continuance to the November Term, 1984, prayed for in the motion, had opened before assignment and hearing of the case. The plaintiff-in-error's contention would have been considered only if the case had been called for hearing in the August Term, 1984, of the court.

Finally, we will consider whether or not the judge below was under an obligation, firstly, to appoint attorney to represent the defaulting party in a default judgment, and secondly, if so whether or not he can be said to have failed to appoint said attorney where an attorney of the law office representing the defaulting party is present in court at the call of the matter.

The essence of a court appointing attorney to represent a defaulting party at the rendition of final judgment is to fulfill the requirements of the statute which makes the granting of the right of appeal from every judgment mandatory, except that of the Supreme Court. The said statute makes no distinction between a final judgment by default and a final judgment under regular proceedings in which both parties are present. Civil Procedure Law, Rev. Code 1: 51.2. Therefore, since the right to appeal is only exercised in open court by announcement after the rendition of a final judgment the statute requires that in order that the right to an appeal is not lost to a defaulting party, an attorney be appointed by the court to represent said defaulting party, to move for a new trial, take exceptions to the final judgment, and to

announce an appeal on behalf of the defaulter. Civil Procedure Law, Rev. Code 1: 51.5, and 51.6.

However that may be, it is the opinion of this Court that while it is mandatory to appoint an attorney to represent a defaulting party at the rendition of a default judgment, the purpose of said mandate is served where an attorney of a law office representing said defaulting party is present in court at the call of the case, even though he refuses to announce representation. Said law office cannot thereafter successfully champion the defaulting party by asserting allegations of a failure by the trial judge to appoint an attorney to represent it contrary to law.

An answering affidavit sworn to by Counsellor Winfred Smallwood alleges that attorney Alexander Zoe was in Buchanan to file another case and was not in court, nor was he aware of the notice in this case when he was handed the final judgment by the clerk of court. However, the affidavit quoted *supra*, sworn to by Counsellor James Johnson, Attorney Findley and the sheriff for the Second Judicial Circuit, maintained that they were all physically present at the trial, and that prior to and at the rendition of final judgment, Attorney Alexander Zoe of the Cooper and Togba Law Firm was physically present in court but failed to announce representation, except to, and announce an appeal from the final judgment.

This Court is more prone to believe the affidavit herein quoted *supra*, and not the answering affidavit of Counsellor Winfred Smallwood who was in Monrovia at the time of the trial. The refusal of Attorney Alexander Zee to announce representation, take exceptions, move for a new trial, or announce an appeal might have been due to ignorance of trial procedure in such cases provided, rather than a deliberate attempt to test the efficacy of the provisions of our statute relating to appointing an attorney for the defaulting party at the rendition of a final judgment. However, if the latter was the intention of Attorney Zoe, i.e. to test the efficacy of our statute, then he failed to understand that the court cannot do for the parties that which they can do for themselves. *Blacklidge v. Blacklidge*, 1 LLR 371 (1901); *Shaheen v. OAC*, 13 LLR 278 (1958). Attorney Zoe, or any other reasonable person in his position, would not expect the court to appoint an attorney to take judgment for his law office while he is present in court, to the knowledge of officials of said court, including the judge. In fact, one can only surmise with reasonableness that attorney Zoe was not readily aware of what he was expected to do on behalf of his law office, and which Counsellor Smallwood would want to conceal. Attorney Zoe himself did not swear to an affidavit that he was not present in court at the time of the judgment; rather, it was Counsellor Smallwood, who was not in Buchanan that day, that swore to an affidavit stating that Attorney Zoe was not at the trial.

This court has repeatedly warned counsels to refrain from following dubious practices intended to defeat the ends of justice or to delay the trial of cases, even where material changes take place which work against the interest of such party litigants. Whenever it is

found out that remedial processes are resorted to in order to delay and to deny the ends of justice, as in the present case, they will be promptly denied.

We therefore affirm the ruling of the Justice in Chambers denying the writ of error to plaintiff-in-error, quashing the alternative writ, and denying the peremptory writ, with costs against the plaintiff-in-error.

The Clerk of this Court is therefore instructed to send a mandate to the court below ordering the presiding judge to resume jurisdiction in this matter, and enforce the judgment of the court. And it is hereby so ordered.

Petition for error denied.