

**REYNALD MITCHELL, Appellant, v. THE INTESTATE ESTATE OF THE  
LATE ROBERT F. JOHNSON, Appellee.**

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

Heard: May 3, 1999. Decided: June 3.1999.

1. A party against whom a judgment has been rendered, 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.
2. At the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given the witnesses.
3. The failure of a party to interpose an answer to the complaint of a plaintiff shall be deemed general denial of all the allegations in the complaint.
4. The defendant in a general denial may cross examine witnesses of a plaintiff during trial and also introduce evidence in support of his denial without introducing evidence in support of any affirmative matter.
5. Failure of a plaintiff in error proceedings to file an answer to the complaint of the plaintiff does not prevent the trial court from serving the plaintiff-in-error with a notice for the hearing of the case so as to afford him the opportunity to appear and cross-examine plaintiff's witnesses and to introduce evidence in support of his denial.
6. An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose.
7. The trial court shall appoint a lawyer to receive the final judgment for a party who fails to contest a case, and is absent from court at the time of the rendition of the judgment, for the purpose of affording him an opportunity to announce an appeal.

These error proceedings emanate from an action of ejectment instituted by co-defendant-in-error, Miatta Johnson, administratrix of the intestate estate of the Late Robert Johnson against plaintiff-in-error, Reynald Mitchell, in the Eleventh Judicial

Circuit for Bomi County before His Honour, Thomas B. Williams, then assigned circuit judge. The plaintiff-in-error was duly summoned, but failed to file an answer to the complaint, and also refused to receive and sign for a notice of assignment for the hearing of the case. Hence, at the call of the case, a default judgment was prayed for by the defendant -in-error, which was granted by the trial judge. A trial was conducted, at the end of which the empaneled jury brought a verdict in favor of plaintiff/co-defendant-in-error, awarding her the possession of the 200 acres of farm land as well as \$10,000.00 as damages for wrongful withholding of the subject property.

From a judgment confirming the verdict of the empaneled jury, plaintiff-in-error applied to the Supreme Court for a writ of error, claiming among other things that: the judge erred when he failed to appoint a deputy counsel at the time of rendition of judgment in the case, as a consequence of which, he was denied the right to appeal; that the proceedings in the court below was irregular and illegal because the trial judge *sua sponte* empaneled a jury to determine this case without any application made by the plaintiff for a special jury since the jury session of the court below was adjourned; and finally that the judge's charge to the jury was prejudicial in that, he instructed the jury to bring a verdict for the plaintiff awarding her the sum of \$10,000.00 as damages as requested by plaintiff's counsel, and for the failure of the plaintiff-in-error to appear and answer the complaint of the co-defendant in error herein. The Chamber Justice heard and denied the issuance of the writ of error on grounds that the plaintiff -in-error had knowledge of the summons and notice of assignment but failed to appear. The plaintiff-in-error excepted to this ruling and appealed to the Court *en banc*.

Upon review of the records, the Supreme Court found that trial judge inflamed the mind and invaded the province of the trial jury, when he determined the damages to be awarded to the plaintiff and when he asked the jury to bring a verdict holding the defendant liable for unlawfully and wrongfully withholding the subject property in litigation. The Supreme Court also held that it was irregular for the trial judge to render his final judgment without notice to the plaintiff-in-error and without a court appointed counsel to take the final judgment. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice, and remanded the case to the trial court to proceed with the trial in keeping with law.

*Farmere Stubblefield* of the Stubblefield & Associates appeared for appellant. *C. Alexander B. Zoe* of the C. Alexander B. Zoe Law Firm appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

Our Civil Procedure Law, Rev. Code 1:16.24(1), provides that " 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." This Court upon a petition for a writ of error, therefore reviews a final judgment of a subordinate court from which there is no appeal taken at the time of rendition of judgment. Ibid, 1:16.21.

The co-defendant-in-error, Miatta Johnson, administratrix of the intestate estate of the late Robert Johnson, instituted an action of ejectment on May 5, 1989, against plaintiff-in-error, Roland Mitchell, in the Eleventh Judicial Circuit for Bomi County in its May term before his honor before His Honour, Thomas B. Williams, then assigned circuit judge. The plaintiff-in-error herein was duly summoned, but failed to file an answer to the complaint of the plaintiff. This fact is not in dispute. The trial judge assigned this case on the 13<sup>th</sup> day of June, A. D. 1989 for hearing on the 16<sup>th</sup> day of June, A. D. 1989, 2<sup>nd</sup> day chambers sessions of the court. The sheriff's returns of the notice of assignment indicates that it was served on the defendant but he refused to receive and sign same. The service of the aforesaid notice of assignment is disputed by plaintiff-in-error. A default judgment was prayed for at the call of this case which was granted by the trial judge. A trial jury was empaneled upon request by counsel for plaintiff, which subsequent to a trial, brought a verdict in favor of the plaintiff awarding her the possession of the 200 acres of farm land in Bomi County as well as \$10,000.00 as damages for wrongful withholding of the subject property. The trial judge did not appoint a deputy counsel at the time of rendition of judgment in the case. Hence, there was no appeal taken from said judgment.

This court upon application for a writ of error by the defendant, granted an alternative writ for the review of the judgment of the trial court. Mr. Justice Kpomakpor presiding over the October Term, A.D. 1989 of this Court heard and denied the issuance of the writ of error, on grounds that the plaintiff-in-error had knowledge of the summons and the notice of assignment but failed to appear. The Plaintiff-in-error excepted to this ruling and appealed to this court *en banc*.

Plaintiff-in-error contends that the trial judge denied him of his day in court when he failed to serve him a notice of assignment for the hearing of this case on the 16<sup>th</sup> day of June, A. D. 1989, and to serve him a notice of assignment for the rendition of final judgment on the 21<sup>st</sup> day of June, A. D. 1989. Counsel for plaintiff-in-error strongly

argues before this court that a writ of error will lie for the failure of the trial judge to appoint a counsel to take the ruling of a trial court so as to afford him the opportunity to take an appeal from said judgment. The plaintiff-in-error further argues that the proceedings in the court below was irregular and illegal because the trial judge *sua sponte* empaneled a jury to determine this case without any application made by the plaintiff for a special jury since the jury session on of the court below was adjourned. Finally, it is maintained by plaintiff-in-error that the judge's charge to the jury was prejudicial, in that, he instructed the jury to bring a verdict for the plaintiff awarding her the sum of \$10,000.00 as damages as requested by plaintiff's counsel and for the failure of the plaintiff-in-error to appear and answer the complaint of the plaintiff, codefendant in error herein. The plaintiff-in-error prays this Honourable Court to reverse the ruling of the Chambers Justice.

The defendant-in-error contend that the plaintiff-in-error was served with a notice of assignment for the hearing of this case but he failed to appear, and that his failure to file an answer renders the entire action *ex parte* thereby placing co- defendant-in-error under no obligation to even serve plaintiff-in-error with a notice of assignment for the hearing of this case. Defendants-in-error also strongly maintain that the plaintiff-in-error was not entitled to a notice for trial of this case and final judgment thereof for his to contest the claim of the plaintiff. It is contended by the defendants-in-error that a special jury was empaneled by the trial court to try this case, and that the judge's charge to the trial jury was not prejudicial but predicated upon the evidence adduced by co-defendant-in-error, Miatta Johnson. The defendants-in-error pray this Court to affirm the ruling of the Chambers Justice and the trial court to enforce its final judgment in the action of ejectment.

The questions presented to this Court for the appellate determination of his case are:

1. Whether or not the plaintiff-in-error had established grounds to entitle him to the issuance of the writ of error.
2. Whether or not the judge's charge to the jury is prejudicial to the right and interest of the plaintiff-in-error.

We will decide the issues in this case as stated herein supra in the reverse order. As to the issue of the judge's charge to the jury being prejudicial, this Court observes from the records in this case that the trial judge instructed the jury as follows: "Mr. foreman, ladies and gentlemen of the empaneled and trial jury, you may proceed to your room of deliberation and bring a verdict for the plaintiff awarding damages of

\$10,000.00 as is requested by the counsel on behalf of the plaintiff and for the failure of the defendant to appear and answer the complaint of the plaintiff which was served upon him by the sheriff of this court. And you are therefore so charged. You may now proceed to your room of deliberation and bring a verdict. So ordered." See minutes of the second day's chamber's session, Friday, June 16, 1989, sheets six and seven.

Our Civil Procedure Law provides for the summary of evidence by judges of our subordinate courts in a litigation so as to enable the jury to determine and decide the weight and credibility of the factual issues in litigation. "At the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given to the witnesses." Civil Procedure Law, Rev. Code 1: 22.10. An inspection of the judge's charge to the jury clearly shows that the trial judge determined the damages to be awarded to the plaintiff in the court below and also inflamed the mind of the jury to bring a verdict holding the defendant in the court below liable for unlawfully and wrongfully withholding the subject property in litigation. The trial judge therefore invaded the province of the trial jury which is indeed prejudicial to the right and interest of the plaintiff-in-error .

We shall now decide the issue which relates to the establishment of grounds to entitle plaintiff-in-error to the issuance of a writ of error. It is an elementary principle of law, procedure and practice in our jurisdiction, that the failure of a plaintiff to interpose an answer to the complaint of a plaintiff shall be deemed general denial of all the allegations in the complaint. A defendant in such a case may cross examine witnesses of a plaintiff during trial and also introduce evidence in support of his denial. This denial is without introducing evidence in support of any affirmative matter. Ibid 1:9.12. We are therefore in disagreement with the contention of the defendant-in-error that the plaintiff-in-error was not entitled to a notice for trial of this case due to his failure to contest the complaint of the plaintiff. The assertion of defendant-in-error as contained in count three of their returns in these proceedings surely negates their averment that the Plaintiff in-error was served with a notice for hearing but he refused to receive and sign same. The fact that the plaintiff-in-error failed to file an answer to the complaint of the plaintiff did not prevent the trial court to serve the plaintiff-in-error with a notice for the hearing of this case so as to afford him the opportunity to appear and cross-examine plaintiff's witnesses and to introduce evidence in support of his denial. The defendant in a general denial will not introduce evidence in support of any affirmative matter. This court also observes the hasty

manner in which the trial judge proceeded and disposed of this case involving real property, in which action a hearing is mandatory pursuant to law. *Ibid.*, 1: 42.2.

This Court also disagrees with the contentions of the defendant-in-error that the plaintiff in the court below was under no obligation to serve the plaintiff-in-error a notice for final judgment and to appoint a lawyer to receive the final judgment because of his failure to contest this case. The Civil procedure Law provides that "an appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." *Ibid.* 1:51.6. The object of this statutory provision providing the appointment of a deputy attorney in the absence of a party or attorney representing such a party, is to afford an opportunity to such a party to announce an appeal in open court at the time of rendition of final judgment. It was therefore irregular for the trial judge to ignore this statutory provision when he rendered his final judgment without notice to the plaintiff-in-error and without an appointment of a court appointed counsel to take the final judgment. The failure of the trial court to serve the plaintiff-in-error with notice for trial and final judgment as well as its failure to appoint a deputy attorney to take the final judgment, constitutes sufficient and legal grounds for the application for a writ of error. The plaintiff-in-error, therefore, has established sufficient grounds before this court for the issuance of the writ of error. This Court recognizes its holdings in the cases cited by the defendants-in-error, but the facts and circumstances in those cases and the case at bar are not analogous.

Wherefore, and in view of the foregoing, it is the candid opinion of this court that the ruling of the Chambers Justice should be, and the same is hereby reversed, the petition granted and the peremptory writ ordered issued vacating the final judgment of the trial court. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and proceed with the trial in keeping with law. Costs are ruled against the defendants-in-error. And it is hereby so ordered.

*Petition granted; ruling reversed.*