

JAMES MONTGOMERY, Appellant, v. **HIS HONOUR SEBRON J. HALL**, Assigned Circuit Judge Presiding, Civil Law Court, Sixth Judicial Circuit, Montserrado County, **JOHN Y. ROBERTSON**, Magistrate, Paynesville, and **GABRIEL JOHNSON**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: June 4, 1997. Decided: July 22, 1997.

1. On motion, and upon terms that are just for the promotion of substantial justice, the trial court may relieve a party or his legal representative from a final judgment for mistake, inadvertence, surprise, or excusable neglect.
2. The granting by a trial judge of a motion for relief from judgment due to excusable neglect is justified where both parties in litigation are claiming ownership to real property.
3. A motion for relief from judgment is addressed to the sound discretion of the trial court and its action will not be disturbed on appeal unless there is a clear showing that the trial court abused its judicial discretion.
4. A judge may modify or rescind a ruling or judgment made by him in the term in which he is sitting, but only upon notice to the parties.

The appellant appealed from a ruling of the trial judge reversing a previous ruling which dismissed the appellee's petition for summary proceedings against the magistrate. The appellant had instituted an action of summary proceedings to recover possession of real property in the magisterial court for the City of Monrovia. Venue had been changed to Paynesville where the appellant had obtained judgment by de-fault against the appellee even though his counsel had written the court praying for continuance due to his engagement in the Civil Law Court for Montserrado County. Growing out of this ruling, the appellee had petitioned the Circuit Court for the Sixth Judicial Circuit, Montserrado County for summary proceedings against the magistrate. When the appellee did not appear for hearing of the petition, judgment was rendered dismissing the same and ordering the magisterial court to enforce the judgment.

Subsequently, the appellee moved the Circuit Court for relief from judgment, stating excusable neglect as the basis therefor and asserting that he did not have his day in the magisterial court and that he would be deprived of his property if the ruling of the magisterial court was upheld. The circuit court judge granted the motion, rescinded the ruling previously made, and ordered the magistrate to retry the case *de novo*. It was from this ruling that an appeal was taken to the Supreme Court, the appellant contending that the trial court had lost jurisdiction of the case once he had sent a mandate down to the magisterial court and that therefore he could not entertain any further proceedings or order that the magistrate conduct a new trial.

The Supreme Court upheld the ruling of the trial court judge, noting that it was within the sound discretion of the trial court to decide where to grant or deny a motion for relief from judgment as long as the ruling granting relief was made by the trial within term time and there was no judicial abuse of the discretion of the court. The Supreme Court observed that in the absence of any abuse, it could not reverse the decision of the trial judge, reasoning that as property was involved, substantial justice required that the parties have their day in court. It therefore *affirmed* the ruling of the trial court and ordered that the magisterial court try *de novo* the action of summary proceedings to recover the possession of real property.

J. D. Baryogar Junius appeared for the appellant. *D. Wiefuah A. Sayeh* appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case is before us on an appeal from an interlocutory ruling of Judge Sebron J. Hall, then assigned at the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, at its March Term, A. D. 1995, in which he rescinded his previous ruling which earlier dismissed appellee's petition for summary proceedings against Magistrate John Y. Robertson of the Paynesville Magisterial Court.

The appellant herein, plaintiff in the court below, James Montgomery, instituted an action of summary proceedings to recover possession of real property against the appellee at the Monrovia City Court in 1990. A change of venue to the Paynesville Magisterial Court was granted upon motion by the appellee, but the case was not disposed of due to the 1990 hostilities in Liberia.

It is alleged that following the cessation of hostilities, appellant proceeded to the Paynesville Magisterial Court and obtained a default judgment against the appellee, despite appellee counsel's letter for continuance due to his engagement in a jury trial at the Civil Law Court on the same day of the hearing, November 1, 1994. On November 14, 1994, counsel for appellee instituted summary proceedings against the magistrate before His Honour Sebron J. Hall, then assigned at the Civil Law Court at that time. The records revealed that the summary proceedings were assigned for hearing on the 7th day of April, A. D. 1995, but counsel for petitioner/appellee contended that he did not appear due to excusable neglect. The trial was had and a mandate subsequently sent down to the magisterial court to resume jurisdiction and enforce his earlier default judgment.

On the 4th day of May, A. D. 1995, counsel for petitioner/ appellee filed a four-count motion for relief from judgment for the trial judge to rescind his ruling dismissing his summary proceedings against the magistrate for the sole reason that he did not have his day in court and would be deprived of his land and house without due process of law. On the 19th day of May, A. D. 1995, the trial judge heard the motion to rescind his ruling and granted same, thereby ordering the magistrate to resume jurisdiction and try the case *de novo*. The

appellant/ respondent excepted to this ruling and prayed for an appeal to this Court for appellate review upon a four-count bill of exceptions.

Appellant contended that the appellee had his day in court, in that appellee was cited by the trial judge for the hearing of the summary proceedings against the magistrate but that his counsel failed to appear. Further, appellant argued that the trial judge erred in rescinding his previous ruling since he had lost jurisdiction over the case upon the issuance of his mandate to the Paynesville Magisterial Court ordering the magistrate to resume jurisdiction and enforce his default judgment in the summary proceedings to recover the possession of real property.

Moreover, appellant contended that the trial judge erred in rescinding his previous ruling long after the Magisterial Court of Paynesville had resumed jurisdiction and had begun the enforcement of the judgment so ordered by the trial judge, and that the judge could not make any decision or take any action to prohibit the enforcement of a mandate that originated from his court.

Appellee, on the other hand, strongly contended that he did not appear on the 7th day of April, A. D. 1995, for the hearing of the summary proceeding against the magistrate due to excusable neglect. Appellee also argued that the trial court did not commit a reversible error, in that the court, upon motion, may relieve a party or his legal representative from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Appellee further avers that a judge may rescind his ruling or judgment during term time, and that Judge Sebron J. Hall was still presiding over the March Term of the Civil Law Court, A. D. 1995, when the motion was filed, assigned, heard and granted.

Appellee vehemently contended also that the trial judge committed no reversible error when he granted the motion to rescind his ruling as there was an issue of title, which title both appellee and appellant claimed ownership thereof. Appellee contended that the enforcement of the default judgment by the Magisterial Court of Paynesville would deprive appellee of his home and property which does not belong to the appellant.

The decisive issue before this Court for the determination of this case is whether or not the trial judge committed a reversible error when he granted the motion for relief from judgment, in contemplation of our statute?

However, we shall decide other issues raised in the pleadings by appellant's counsel before deciding the afore-stated issue in the case. Appellant alleged that the trial judge had lost jurisdiction upon the issuance of his mandate to the Magisterial Court of Paynesville to enforce its default judgment in the summary proceedings to recover the possession of real property, and that therefore the trial judge could not make any decision or take any action in the matter. Recourse to the records certified to us revealed that the appellant, on April 28,

1995 instituted summary proceedings against the acting magistrate of Paynesville, in person of B. S. Tamba, before Judge Sebron J. Hall, because of his refusal and neglect to enforce the mandate. A writ of summons was duly issued on the same date commanding Magistrate Tamba's appearance on May 11, 1995, at 2:00 p. m., with instruction to stay further proceedings until hearing of the summary proceedings. The summons was served on the defendant magistrate on May 1, 1995, as per Bailiff Joseph Jallah's returns, and received at 2:30 p. m. by Magistrate Tamba, as per his acknowledgment thereof.

The records are devoid of any evidence as to the disposition and outcome of appellant's complaint of April 28, 1995, up to and including the 4th day of May, A. D. 1995, when the motion for relief from judgment was filed, subsequently assigned, heard and granted. We disagree with the contentions of appellant that the trial judge had lost jurisdiction and could not make any decision or take any action upon the issuance of his mandate, in that appellant's own complaint of April 28, 1997 to the trial judge, 21 days after his mandate, was a clear indication that he had not lost appellate jurisdiction over the matter until his mandate was fully and duly executed by the Magisterial Court of Paynesville. Further, the trial judge resumed appellate jurisdiction over the case as of April 28, 1995, as shown by a writ of summons commanding the magistrate to appear on May 1, 1995, and to stay further proceedings until a hearing had been conducted.

We shall now decide the issue in this case, which is whether or not the trial judge committed a reversible error when he granted the motion for relief from judgment due to excusable neglect. The answer to this question is in the negative. Section 41.7 (2)(a) of the Civil Procedure Law, Rev. Code 1, provides that:

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment for mistake, inadvertence, surprise, or excusable neglect."

The relevant portion of the quoted law permits such a relief to be granted by a trial judge on a motion, upon such terms as are just for the promotion of substantial justice. The granting of the motion for relief from judgment due to excusable neglect is a clear justification in rescinding his ruling, especially where both parties in the litigation are claiming ownership of a real property. This court had held that "a motion for relief from judgment is addressed to the sound legal discretion of the court and its action will not be disturbed on appeal unless there is a clear showing that the trial court has abused its discretion". *Bovericie v. Lewis*, 26 LLR 170, Syl. 5 (1970). We still hold that the granting of such relief by a trial court is within the sound discretion of a court granting or denying such relief and will not be disturbed on appeal unless an abuse of such discretion is established by an appealing party. From the records certified to us, we have found no abuse of judicial discretion by the trial judge in the summary proceedings against the magistrate that would warrant disturbing his decision. In

the case *Raymond International (Liberia) Ltd v. Dennis*, 25 LLR 131 (1976), this Court held that "a judge may modify or rescind a ruling or judgment in the term in which he is sitting, but only upon notice to the parties".

The records before us show that the motion for relief from judgment was filed on the 4th day of May, A. D. 1995. The said motion was heard on the 19th day of May, A. D. 1995 and was granted on the rd day of June A. D. 1995. We are indeed convinced that the trial judge rescinded his judgment within term time in which he was sitting, and that the rescission was properly done when he duly served notice on the parties and afforded them the opportunity to participate in the litigation. Further, it is within the sound judicial discretion of a trial court to grant or refuse an application to open, modify, or vacate a judgment rendered by the said court. *Jackson et al. v. Irons et al.*, 21 LLR 328 (1972).

The rescission by the trial judge of his judgment and his subsequent ruling or judgment ordering the Paynesville Magisterial Court to hear *de novo* the summary proceedings to recover the possession of real property is sound in law as its object is to determine the substantive rights of both parties, but which does not in any way prejudice the interests and rights of any of the parties to the litigation. It indeed promotes the just determination of the subject matter in contemplation of section 1.4 of our Civil Procedure Law, Rev. Code 1. A ruling or judgment granting a relief to those whose rights are directly affected by a judgment, as in the instant case, will not be disturbed on appeal in the absence of any abuse of a judicial discretion in the supreme interest of substantial justice. Hence, as the ruling or judgment of the trial court granting a motion for relief from judgment was sound in law, same should not be disturbed on appeal. The Magisterial Court of Paynesville is hereby ordered to resume jurisdiction and hear the subject case *de novo*.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the ruling appealed from should be and the same is affirmed and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. And it is hereby so ordered.

Judgment affirmed.