

PACIFIC TALON LIMITED, Plaintiff-In-Error, v. **F. ROSS JOHNSON et al.**,
and **HIS HONOUR ALEXANDER C. ZOE**, Assigned Circuit Judge, Sixth
Judicial Circuit, Montserrado County, June Term, 1992, Defendants-In-Error.

JUDGMENT WITHOUT OPINION

Decided: July 23, 1993.

Upon the call of this case, the plaintiff-in-error was represented by Sherman & Sherman, through Counsellor H. Varney G. Sherman, and the defendants-in-error were represented by the Henries Law Firm, through Counsellor George E. Henries. Counsel for the defendants-in-error called the Court's attention to the filing of a motion by the defendants-in-error to dismiss the appeal. The Court then granted leave to both counsels to argue the motion to dismiss and the resistance thereto.

The motion to dismiss essentially stated that the defendants-in-error had not been brought under the jurisdiction of the Court because the writ of error was improperly served, in that the marshal of this Court served the said writ upon the counsel for the defendants-in-error instead of the defendants in-error themselves. The counsel argued further that the statute requires that service of a writ of error should be made on party. For reliance, he cited the Court to the Civil Procedure Law, Rev. Code 1:16.24 (2), which reads as follows: "Section 16.24. *Procedure on Application and Hearing of Writ of Error.*

"2. Issuance of Service. The Supreme Court or any assigned Justice shall grant or deny the application. As soon as an application for a writ of error is granted, the Clerk of the Supreme Court shall issue the writ, a copy of which, together with a copy of the assignment of error, shall be served by the marshal on the party in whose favor the judgment is granted and on the judge who rendered the judgment in the lower court. Such parties shall be known as the defendants-in-error."

Counsel for defendants-in-error argued further that a writ of error is not of the nature of papers which can be served upon an attorney under section 8.3(3) of the Civil Procedure Law, Rev. Code 1. The said section provides as follows:

"Section 8.3 (3) Service of papers".

3. Upon an attorney. Except as otherwise required by law or order of court, papers required to be served upon a party in a pending action shall be served upon his

attorney by one of the following methods:

- (a) By delivering the paper to the attorney personally;
- (b) By mailing the paper to the attorney by registered mail at the address designated by him for that purpose or, if none is designated, at his last known address;
- (c) If the office of the attorney is open, by leaving the paper with a person in charge;
- (d) By leaving the paper at the residence of the attorney 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. Service upon an attorney shall not be made at his residence unless service at his office cannot be made. Receipt of the paper may be proved by a receipt by the party to whom the paper was delivered."

The records show that the writ was served on the counsel for the defendants-in-error in person, through Counsellor Salia Sirleaf, a counsellor-at-law of the Henries Law Firm.

In arguing the resistance to the motion, counsel for plaintiff-in-error contended that the defendants-in-error being foreign non-domiciliaries of Liberia, their addresses were unknown since the same are obviously absent from the caption of the case in violation of our statutory provision with respect to written directions; that in the alternative, it would have been impractical to expect the plaintiff-in-error to proceed to a foreign jurisdiction to effect personal service of the writ of error upon each of the defendants-in-error at their different addresses contrary to the spirit of section 1.4 of our civil procedure law, which intends the promotion of "just, speedy, and inexpensive determination of every action." Further, since the Henries Law Firm has prosecuted the underlying action against the plaintiff-in-error as respondent in the trial court, thus counsel of record in the case, as such it became an agent of the defendants-in-error upon whom personal service can be made for the defendants-in-error within the contemplation of section 16.24 (2) of the civil procedure law as to the service of a writ of error. Section 16.24(4) of the Civil Procedure Law, Rev. Code 1, on writ of error provides the followings:

"4. Hearing and judgment. The assignment of error shall be dealt with in the same manner as a bill of exceptions, and the hearing on the writ shall be upon certified copies of the record transmitted by the trial court. The Supreme Court hearing a matter on writ of error may grant such judgment as it may grant on an appeal. If the

judgment is affirmed, the court may, in addition to costs, award the defendants-in-error their reasonable disbursements made in connection with the hearing of the writ."

It is our view that since a writ of error is in the nature of an appeal, its issuance reinstated the underlying action and impresses such action with a status of pendency as in cases of appeal. Consequently, section 1: 8.3(3) of the Civil Procedure Law, Rev. Code 1, would be applicable for the service of the writ upon the defendants-in-error. The service of the writ upon the attorney of record, as was done in this case, to our mind, would be tantamount to personal service upon the defendants in-error. We are therefore of the view that the service of the writ by the marshal upon the Henries Law Firm, counsel of record of the defendants-in-error, constitutes personal service of the writ upon the defendants-in-error within the contemplation of both section 16.24(2) and section 8.3(3) of the Civil Procedure Law. It therefore hereby adjudged that the motion to dismiss be, and the same is hereby denied. Costs to abide final determination of the error proceedings. And it is hereby so ordered.

NOTE: His Honour James G. Bull, Chief Justice, Supreme Court of Liberia, being ill, was absent and did not participate in the hearing of the motion; hence, did not sign this judgment.