

MOSES QUENNAH, for and on behalf of the **CHRISTIANA PENTECOSTAL CHURCH**, Plaintiff-In-Error, *v.* **HIS HONOUR GALIMAH D. BAYSAH**, Resident Circuit Judge, Ninth Judicial Circuit, and Elders and Bishop of the **BIBLEWAYS CHURCH OF SAMAY**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Decided November 5, 1984.

1. An appeal shall be taken at the time of rendition of judgment by oral announcement in court, such announcement being 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 that purpose.
2. In the absence of counsel or the party, the trial court must deputize another counsel to be present at the rendition of judgment for the purpose of announcing an appeal therefrom.
3. A writ of error may be granted when an inferior tribunal has denied to a litigant his day in court.

Plaintiff-in-error filed a petition for a writ of error against the defendants-in-error contending that the co-defendant-in-error judge who presided over the trial court had rendered judgment in the trial case without citing plaintiff-in-error and without deputizing an attorney to take the ruling for the purpose of announcing an appeal. The defendants-in-error did not deny the allegations set forth in the petition. In fact, the records in the case revealed that the notice of assignment was given to a person not an officer of the court for service on the plaintiff-in-error, and that this non-judicial officer testified that he never saw the plaintiff-in-error and therefore did not serve him with the precept.

The Chambers Justice held that under the circumstances, it was error for the trial judge not to have deputized a lawyer to take the judgment for plaintiff-in-error, for the purpose of announcing an appeal therefrom. The Chambers Justice quoted the statute which mandates a trial judge to appoint counsel to take the ruling in the absence of a party or his counsel, and opined that the writ of error will be granted when a party litigant has been denied his day in court. The Justice therefore ordered the writ issued, reversed the judgment and instructed that the case be retried.

Appearances not indicated

MORRIS, J., presiding in Chambers.

The main reason for filing this petition, according to the records, is because the respondent judge rendered final judgment without citing the plaintiff-in-error and without deputizing an attorney or a lawyer to take the ruling for plaintiff-in-error, as contained in count three of the amended petition. The defendants-in-error never denied that the plaintiff-in-error was not served with notice of assignment for the rendition of final judgment or that the judge did not appoint a lawyer to take the judgment for plaintiff-in-error. Additionally, the records reveals that the notice of assignment was given by the clerk of court to one Samuel Joe, who is not an officer of court, to serve on the petitioner. Samuel Joe testified that he never saw the petitioner and therefore did not serve the notice on him. (*See* sheet three of June 26, 1981, investigation conducted by court). This is the only pertinent issue for the determination of this case.

The Civil Procedure Law, Rev. Code 1 :51.6, governing the taking of an appeal, provides:

"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."

This Court held in *Goodrich, Inc. et. al. v. Bsaiibes et. al.*, 23 LLR 231 (1974):

"In the absence of counsel or the party, the trial court must deputize other counsel to be present at the rendition of judgment for the purpose of announcing an appeal therefrom."The Court also held in *Teewia v. Urey*, 27 LLR 91 (1978)

"A writ of error may be granted when an inferior tribunal has denied to a litigant his day in court."

In view of all we have narrated and the laws cited, it is our candid opinion and we so hold that the petition, being sound in law, ought to be and the same is hereby granted. The judgment of the court below is reversed and the peremptory writ ordered issued. The Clerk of this Court is ordered to send a mandate to the lower court, ordering the judge presiding therein to resume jurisdiction and dispose of the case, commencing with the trial. Costs of these proceedings to abide final determination of the case. And it is so ordered.

Petition granted.