

REPUBLIC OF LIBERIA, by and thru the Ministry of Justice, Plaintiff-In-Error, v.
HIS HONOUR M. WILKINS WRIGHT, Resident Circuit Judge, and **MR. &**
MRS. PETER W. KABIA and **ALBERTHA KABIA**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: June 2, 1994. Decided: July 28, 1995.

1. A court may correct its records or judgment during term time.
2. A court may alter its judgment at any time before it is made final; but it should not be allowed to do so without notice to the parties.
3. Denial of a day in court cannot be claimed as a ground for the issuance of a writ of error, when counsel declines appearance after service of notice of assignment.
4. One of the requisites for granting error is that an appeal was not announced.
5. Exceptions to the judgment by a court-appointed attorney is a factor against the issuance of a writ of error.
6. A petition for the writ of error will be denied where it does not aver that the application was not made for the mere purpose of harassment and delay.

These error proceedings grow out of an action of damages for breach of deposit contract filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County by defendant-in-error against Meridien BIAO Bank for freezing their accounts. After law issues were disposed of, the Republic of Liberia filed a motion to intervene, along with an answer, claiming that Meridien Bank acted upon its orders to freeze the accounts of plaintiff, co-defendant in error, in the exercise of its police powers. The motion to intervene was granted. However, upon the disposition of the law issues, the trial judge, holding that the government cannot sustain its intervention because it has no interest to protect in the action of damages, ruled the Republic of Liberia to bare denial, and withdrew and revoked his ruling granting the motion to intervene. From this ruling, the court appointed counsel noted exceptions and announced an appeal to the Supreme Court. Instead of proceeding with the regular appeal, the Republic of Liberia petitioned the Supreme Court for a writ of error, contending among other things, that the trial court erred in revoking its initial ruling granting the motion to intervene and that it was denied its day in court.

The Supreme Court *denied* the petition, holding that the writ of error cannot lie in a case where an appeal was announced and that the court may alter its judgment at any time before it is made final upon notice to the parties. The Court also held that the petition was defective, in that the plaintiff-in-error did not aver in the application that the application was not made for the mere purpose of harassment and delay.

Ministry of Justice appeared for plaintiff-in-error. *Marcus R. Jones* appeared for defendants-in-error

MR. JUSTICE HNE delivered the opinion of the Court.

The co-defendants-in-error, Mr. & Mrs. Peter W. Kabia and Albertha Kabia filed an action of damages for breach of deposit contract against the Meridien BIAO Bank (Liberia) Ltd. on December 7, 1992. The complaint was followed by an answer by the bank and a reply by the co-defendants-in-error. The bank's answer was a one-count general denial. After the law issues were disposed of and the case ruled to trial by the respondent trial judge, the plaintiff-in-error, the Republic of Liberia, by and thru the Ministry of Justice, appeared on the day of assignment of the case for jury trial and informed the court that the Government had a vested interest in the case and requested the court for time to be permitted to file a motion to intervene as well as an answer. The Court granted the permission and the Government filed a motion to intervene and an answer. Co-defendants-in-error filed a reply to the Government's answer.

In its answer, the intervenor took the position that an action of damages will not lie against Meridian Bank in that the Bank acted upon its orders to freeze the accounts of the co-defendants-in-error; that the money in the said account were proceeds of funds stolen by Albertha Kabia; and that the funds belonged to the Government but came into Kabia's possession from her participation in a scheme/racket while an employee of the National Bank of Liberia. The intervenor said it issued the orders in exercise of its police power.

The court, on April 1, 1993, ruled granting the motion to intervene. On 20th May, 1993, the court disposed of the law issues contained in the Government's answer and the reply thereto. In his ruling, the trial judge held that the Government could not sustain its intervention because it had no interest to protect in the action of damages since punitive damages cannot be enforced against the government. The trial judge, in so holding, relied on the Private Wrongs Law, Rev. Code 28:1.3. He said further

that the intervention of the Government would serve no useful purpose, especially in light of the principle pronounced by the Supreme Court in the case *Abi Jaoudi v. Monrovia Tobacco Corporation*, 36 LLR 156 (1989). Accordingly, he ruled the plaintiff-in-error, Republic of Liberia, to a bare denial and withdrew and revoked his ruling of 1' April, 1993 granting the motion to intervene. The court appointed Counsellor T. C. Gould to take the ruling for the government since no one was in court to represent the government, even though they signed the notice of assignment which scheduled the ruling for that day. Counsellor Gould took exceptions and announced an appeal.

The Government has come to the Supreme Court for a writ of error on a 15-count petition. However, the Court considers the averments in counts 6, 7, 8, and 11 thereof as germane to the determination of these error proceedings:

"6. Your plaintiff-in-error says that to its surprise and chagrin, on the 20th day of May, A. D. 1993, 9th day's jury session, March Term, A. D. 1993, co-defendant-in-error, Judge Wright, having ruled granting plaintiff-in-error the right to intervene previously, ruled on the law issues raised in the intervener's answer and plaintiff's reply, dismissing intervener's answer and erroneously ruling that his previous ruling on intervener's motion to intervene was thereby revoked and withdrawn and made null and void. Plaintiff-in-error announced an appeal.

7. Your plaintiff-in-error says that it was deprived of its 'day in court' because on the day of the ruling on the law issues raised in the intervenor's answer and plaintiff's reply in the court below, the Deputy Minister of Justice for Economic Affairs, Hon Pei Edwin Gausi and the Acting Solicitor General, Hon. John L. Greaves, were the designated officials of the Government of Liberia to attend court and receive the ruling on behalf of the intervenor in the court below. But unfortunately, due to matters of State and more so, in the interest of national security, the officials of the government were halted while in their vehicles, driving to the Temple of Justice and immediately summoned to stop all other activities and proceed straight to the Executive Mansion for a national security meeting, involving issues to be arrested immediately, given the present state of affairs in the Republic of Liberia. A copy of an affidavit signed by Hon. Tiawan S. Gongloe, a member of the Liberian National Bar Association and Executive Assistant to the President of the Interim Government of National Unity (IGNU), evidencing that he had summoned these officials upon orders of the President of the Interim Government of National Unity on that day and date, is hereto attached and marked Exhibit "E/7".

8. Your plaintiff-in-error says that because of the emergency attached to the summons from the Executive Mansion, they were unable to find any other official of the Ministry of Justice to appear to take the said ruling and/or to have informed the court of these inquisitions; given the manner in which they were informed and presented with the issues and the importance attached thereto, which concerns national security, including the lives and properties of all of the people residing in territories controlled by the Interim Government of National Unity. The judge having overruled all of the points advanced in the intervenor's answer, he ruled the Government to a bare denial and revoked his ruling granting the motion to intervene. He found that after consideration of the law issues laid in the answer, that there is no interest to be protected by the Government and that the intervention would thus serve no useful purpose. It is settled law that a court may correct its records or judgment during term time. A court may alter its judgment at any time before it is made final. But it should not be allowed without notice to the parties. *Yangah v. Melton*, 12 LLR 178, 181 (1954).

11. Your plaintiff-in-error says that it was deprived of its day in court, because on the day of the ruling, when it was impossible for lawyers from the Ministry of Justice to be present in court, the court appointed Counsellor Theophilus C. Gould to take the ruling on behalf of the Ministry of Justice and transmit it to the said Ministry within the shortest possible time. But Counsellor Gould, being a party of interest in the money which is the subject of the controversy amongst the parties, (in that he represents one of the defendants accused of the theft of money from the National Bank of Liberia in the criminal trial, which is presently on certiorari before this Honourable Court, and involves employees of the National Bank of Liberia, including co-defendants-in-error, Mr. and Mrs. Peter W. Kabia and Albertha Kabia, in person of Mariah Mends-Cole et al), received the said ruling and deliberately failed to transmit same to plaintiff-in-error within statutory time, so as to afford plaintiff-in-error the opportunity to take advantage of the statutes in such cases made and provided. Copy of sheet four for the 49 th day's jury session, March Term A. D. 1993, Thursday, May 20, 1993 of the Civil Law Court, Sixth Judicial Circuit, evidencing the appointment of Counsellor Gould, is hereto attached and marked exhibit 'E/8.'

The defendants-in-error filed a 12-count returns. Counts 4,7, and 12 which we think are material to our determination, cover the following:

"4. Also because as to counts 7 and 8 of the petition, the averments therein raised, are not grounds for the granting of error, in that the largest law firm in any country,

including Liberia, is its Ministry of Justice; that it can never be short of lawyers to attend upon assignments duly served and no amount of excuse can ever be accepted for its neglect in attending upon assignments noticed by it as in this case, except for the defence of *force majeure*, which is not the situation in this case..."

"7. Also because as to counts 11 and 12, the unfounded petition alleging that Counsellor Gould, being a party of interest, allegedly failed to transmit said ruling within statutory time since it was impossible for any government lawyer from the Ministry of Justice to be present in court without stating the alleged impossibility, and the case or cause of the alleged impossibility of all government lawyers, (the largest law firm in Liberia), is baseless. Besides the fact that such allegations are untrue, Counsellor Gould is not a party to the action of damages, but he did inform court of his involvement in the criminal aspect. Defendants-in-error submit that plaintiff-in-error has failed to show that the court appointed counsellor, in person of Counsellor Gould, did not note or announce any exceptions on its behalf, which is the main reason why the court must appoint a deputy under the law. Defendants--in-error submit that Counsellor Gould satisfied the legal requirement, as spread upon the records of court. Therefore, whether or not Counsellor Gould was a party of indirect interest, the legal requirement has been met. Defendants-in-error further submit that plaintiff-in-error's contention that all of its lawyers were strangely indisposed and it was impossible for any of them to have attended the assignment is baseless; what did they do the next day? Could they not have gone to the court to ascertain from the judge what transpired the day before in their case and obtain copies of the minutes of court? Defendants-in-error submit that there is no basis for the issuance of the writ of error..."

"12. And finally, because under the Civil Procedure Law, Rev. Code 1:16.24 (1), it is mandatorily required that the petitioner must aver that the application was not made for the mere purpose of embarrassment and delay and because of this omission in the averments of the affidavit, said writ or error cannot lie. *Mulbah v. Dennis*, 22 LLR 46, 48 (1973); *Rule IV, Part 7, Supreme Court Rules Revised*, 1972; *Goodrich v. Bsaiibes, et al.*, 23 LLR 251(1974); and where such averments are not made at all, the writ will not be granted..." The records show that a notice of assignment dated 13TH May, 1993, assigned the case for ruling on law issues raised in intervenor's answer and the reply for May 20, 1993. The notice of assignment was signed for the Ministry of Justice by Assistant Minister of Justice, Charles Ayomanor, on May 18, 1993. The notice is clear on what the Court was to consider: the law issues on the intervenor's answer and plaintiff's reply. It follows that if the answer could not sustain the intervention, the judge would and could have revoked, withdrawn and made null and void the ruling

on the motion to intervene, which had been previously disposed of and had not been recalled for re-hearing. Further, the ruling on the motion to intervene was not the subject of the controversy at that time between the parties, especially since the instant ruling was only on the law issues raised in the intervenor's answer and the plaintiff's reply.

The notice of assignment of May 18, 1993, signed for by Assistant Minister of Justice, Charles Ayomanor, does not indicate that the granting of the intervention would be considered in disposing of the law issues in the intervenor's answer and so in our opinion, that notice of assignment served the legal requirement of notice mandated in *Yangab v Melton*, cited *supra*, especially so when one of the reliefs prayed for in the defendants-in-error's reply is for the Judge to rescind the said ruling.

The next contention of the plaintiff-in-error is that it did not have its day in court. That the plaintiff-in-error was cited to attend the trial of the law issues in its answer and the plaintiff's reply is established by the records. As stated earlier herein above, the notice of assignment was signed for the Ministry of Justice by Assistant Minister of Justice Charles Ayomanor. When the case was called for hearing, however, no one appeared for the Government. It is contended that the failure to attend court for the disposition of the law issues should be excused because the Deputy Minister of Justice for Economic Affairs and the Acting Solicitor General had to attend an urgent and unexpected security meeting at the Executive Mansion. We are not impressed by this excuse. The Ministry of Justice is staffed by several lawyers, including Assistant Minister Charles Ayomanor, who signed the notice of assignment, and the County Attorney, among others. The Ministry of Justice cannot say that it did not have its day in court when it neglected to respond to the notice of assignment which it signed and acknowledged. Denial of day in court cannot be claimed as grounds of issuance of a writ of error when counsel declines appearance after service of notice of assignment. *Mulbah v. Dennis* 22 LLR 46, 50, (1973).

The court deputized an attorney to take the ruling for the plaintiff-in-error who announced exceptions and an appeal in its favour. Plaintiff-in-error alleges that the court-appointed counsel, Counsellor T. C. Gould, did not transmit a copy of the ruling to it timely for it to file its bill of exceptions. Plaintiff-in-error was on notice, nevertheless, that a proceeding was to be held on May 20, 1993, yet it did not go to the court on the following day to inquire what transpired. It waited instead until the 21st day of September, 1993, four (4) months after the trial court's ruling to seek a writ of error from the Supreme Court. There is no attempt to show when it received the copy of the ruling.

One of the requisites for granting error is that an appeal was not announced. In this case, an appeal was announced which could have been prosecuted and perfected with the exercise of reasonable diligence. The plaintiff-in-error cannot say it was to file its bill of exceptions within ten (10) days after the appeal was announced by the court appointed counsel and only found out four (4) months later and then apply for error. Exceptions to a judgment by a court appointed attorney is a factor against issuance of a writ of error. *Dennis v. Mulbah*, 22 LLR 46 (1973). It was incumbent upon the plaintiff-in-error, having actually received the notice of assignment, to proceed to court immediately and if the case had been called and ruling given to note its exception to the ruling and announce his intention to appeal to the Supreme Court of Liberia. *Id.*, at pp. 50.

In count 12 of their returns, the defendants-in-error contended that the petition for the writ of error was defective, in that it did not aver that the application was not made for the mere purpose of harassment and delay. Recourse to the petition shows that this averment is absent. This averment is mandatorily required by our statute. Several decisions of this Court have withheld the granting of the writ of error where this requirement of the statute is not complied with.

In view of the facts and circumstances of the case, and the law controlling as cited herein above, the petition for writ of error is hereby denied.

The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction and proceed with the jury trial of the underlying case, for which he has ruled the case to trial. And it is hereby so ordered.

Petition denied.