

RULINGS IN CHAMBERS

GARTEH TELEH, Plaintiff-In-Error, *v.* HIS HONOUR **JAMES K. BELLEH**, Circuit Judge, Eight Judicial Circuit Court for Nimba County, Republic of Liberia, Presiding by assignment over the August Term of Court, A. D. 1983, and **JULIUS L. WENYEN SMITH** (Agent) of **C. JEANETTE SMITH**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR

1. A writ of error will be granted when an inferior tribunal denies a party-litigant his day in court.
2. At any time during a trial, a court, on motion of any party, may order a continuance or new trial in the interest of justice, on such terms as may be prescribed.

Plaintiff-in-error filed a petition for a writ of error, complaining that the trial judge had proceeded to try her case without serving notice on her and that he had proceeded to such trial without first disposing of the motion of continuance filed by her. The trial court judge had, on application of the co-defendant-in-error, entered judgment by default against the plaintiff-in-error.

The Justice in Chambers granted the petition, noting that the records certified to the Court were devoid of any notice of assignment for disposition of the motion for continuance or a ruling on the said motion. The Court also found that there were no records in the file showing that the Circuit Court Rules had been invoked by the co-defendant-in-error as would have provided the basis for the trial court entering a judgment by default. The Justice held that the trial court erred in not disposing of the motion of continuance before proceeding to the trial of the case. The Justice also opined that the writ of error will be granted where the records showed that the trial judge denied a litigant his or her day in court. The lack of any notice of assignment in the records evidenced the denial of the plaintiff-in-error of her day in court. Hence, the writ was ordered granted, the judgment set aside, and a new trial ordered, commencing with the disposition of the motion for continuance.

Appearances not indicated.

MORRIS, J., presiding in Chambers.

The plaintiff-in-error complained that the co-defendant-in-error judge had tried a case in which she was involved without providing her notice as required by law. She also contended

that the co-defendant-in-error judge never disposed of the motion for continuance filed by her counsel before proceeding to the trial of the case.

The defendants-in-error maintained that notices of assignment were served on both the plaintiff-in-error and her counsel but that they refused to sign for and receive their copies. Hence, the co-defendant-in-error applied to the court for the trial of the case, which application the judge correctly and legally granted since the law issues were already disposed of. With reference to the motion for continuance not being disposed of prior to the alleged trials the defendants-in-error contended in count three of their returns:

“3. Defendants-in-error say further that as to count 2 of the petition, with particular reference to the motion for continuance mentioned therein, the refusal of the plaintiff-in-error and her counsel to sign and receive the copies of said assignments was tantamount to a total abandonment of the motion for continuance. Defendants-in-error further submit that plaintiff-in-error should have appeared in court and raised whatever contentions she had against the trial of the case.”

The defendants-in-error also contended that the entire petition is a fit subject for dismissal because, contrary to the mandate of the statute, the petition is void of a prayer, in the absence of which neither the Court nor the defendants-in-error are placed in the position of knowing what plaintiff-in-error really seeks as remedy for the alleged irregularities committed by the co-defendant-in-error judge. Recourse to the petition, the Court observes that the plaintiff-in-error places her prayer in the first paragraph which we quote hereunder:

"GARTEH TOLEH, plaintiff-in-error, by and thru her counsels, respectfully pray this Honourable Court to grant unto her the issuance of a writ of error on and against the above named defendants-in-error for the following factual, legal and cogent reasons, to wit:"

This contention, to the mind of the court, standing alone, is not sufficient to warrant the dismissal of the petition.

I have carefully perused the records sent from the trial court, but I have not discovered any notice of assignment for the disposition of the motion for continuance and its resistance; nor is there any ruling on said motion for continuance. Instead, the judge simply mentioned in his charge to the jury that the motion was denied, but there are no records to support this allegation. There are also no records showing that Rule 7 of the Circuit Court's Rules, which deals with abandonment, was ever invoked. It is the feeling of this Court that a writ of error will be granted when an inferior tribunal denies a litigant his day in court. *Jallah et. al. v. Sheriff*, 25 LLR 226, (1976); *Gbae v. Geeby*, 14 LLR 147 (1960).

The motion for continuance should have been disposed of prior to the trial of the case. Our statute provides that at any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be prescribed. Civil Procedure Law, Rev. Code 1:26.3.

In view of the law and surrounding circumstances, it is our holding that the petition be and the same is hereby granted and the peremptory writ ordered issued setting aside the final judgment rendered in this case. The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case, and to proceed with the trial of the case commencing with the disposition of the motion for continuance after notice to both parties. Costs to abide by final determination. And it is so ordered.

Petition granted.