

TRI FISHERIES, INC., by and thru its Shareholders, represented by PRINCE ADVASADANOND and SOPHIE T. LOGAN, Plaintiff-In-Error, *v.* **HIS HONOUR M. WILKINS WRIGHT**, Resident Circuit Judge, Sixth Judicial Circuit, Montserrat County, and **MS. SHARON COOPER**, Attorney-In-Fact for HILDA KNIGHT-COOPER, Defendants-In-Error.

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

Heard: December 18, 1995. Decided: January 26, 1996.

1. The returns of the sheriff must be made promptly, and in every event within the time during which the person served must appear.
2. A defendant who has not been summoned properly in keeping with the statute cannot be said to have had his day in court, and the court cannot assume jurisdiction over any person who has been improperly summoned.
3. A defendant who has not been summoned at least fifteen days prior to the date of the opening of the term of court in which the action is filed, and to which the writ of summons is made returnable, is not under the jurisdiction of said court, and therefore cannot be bound by its judgment.
4. Counsellors who fail to appear for hearing of their matters upon receiving an assignment from the Supreme Court are subject to disciplinary penalties.

These error proceedings emanate from the final judgment rendered by the Civil Law Court in a cancellation proceedings instituted by Co-defendant- in-error Sharon Cooper. Plaintiff-in- error contends that the court lacked jurisdiction over it in that it was neither served with process nor with copy of the petition in the cancellation proceedings, and that the petition for cancellation was filed twenty-three (23) days after the official opening of the December Term of the Civil Law Court. Defendant-in-error contended in its returns to the writ that plaintiff in error was notified by a notice of assignment to appear for hearing of the cancellation proceedings, but failed to appear, and that judgment having being rendered, it is not entitled to a writ of error.

The Supreme Court, upon review of the records, found: (i) that the cancellation action was venued for the December term of the Civil Law Court, but it was filed 23 days after the said December Term had commenced; (ii) that the plaintiff-in- error was not served with any

process; (iii) that the returns of the sheriff to the notice of assignment was made two years after the date the plaintiff in error should have appeared. On the basis of these findings, the Supreme Court held that the trial court never acquired jurisdiction over the plaintiff-in-error or any of its representatives, and accordingly *reversed* the judgment of the trial court.

J. Emmanuel R. Berry, in association with *Jonathan Williams*, appeared for plaintiff-in-error. No one appeared for defendants-in-error.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

This proceeding in error is filed before the Supreme Court by Tri Fisheries, Inc., the plaintiff-in-error, so that this Court may review the final judgment rendered against it in a cancellation proceeding, instituted by defendant-in-error on the 8th day of January A. D. 1992, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its December 1991 term. Plaintiff-in-error, Sophie T. Logan, alleged in the petition and argued before us, that Sharon Cooper, attorney-in-fact for Hilda Knight Cooper, defendant-in-error, filed her petition for cancellation quite 23 days after the official opening of the December, A. D. 1991 Term of said Civil Law Court; further, that plaintiff-in-error was never served with process nor with a copy of the petition in the cancellation proceedings. Plaintiff-in-error therefore contended that the presiding judge who tried the action and ruled against the plaintiff-in-error, had acquired no jurisdiction over the person of plaintiff-in-error; and that the matter being improperly venued before the term over which he was assigned to preside, the judge could not legally try such matter. These are the errors which plaintiff-in-error believes the trial judge committed that warrants a reversal of his final judgment rendered against the plaintiff-in-error.

The defendants-in-error, in their returns filed to the petition, contended and argued that one of the representatives of plaintiff-in-error, in person of Prince Advasadanond, had no legal standing to represent the defendant company, Tri Fisheries Inc., because the said representative was a complete stranger since he was not a party to the cancellation suit filed by the defendant-in-error in the court below. Further, defendants-in-error contended that plaintiff-in-error was notified by a notice of assignment to appear for hearing of the cancellation proceedings but failed to appear, and that judgment having been made against it by default, it cannot seek a writ of error to prevent the enforcement of said judgment. Finally, defendants-in-error contended that the plaintiff-in-error has failed to establish any ground under the statute which entitles it to the remedy of a writ of error. Basically these are the contentions of the parties to this error proceeding. However, we do not consider it important or relevant in the determination of this error proceeding, to pass upon the objection made by defendant-in-error to one of the representatives of plaintiff-in-error. We

shall however deal with the other points raised in the returns of the defendants-in-error.

The statutory provision which permits a party to petition the Supreme Court for a writ of error is very clear and concise. The essential requirement in the provision of the law, is that any party against whom a judgment has been rendered, who has for good cause failed to make a timely announcement to the taking of an appeal of such judgment, may within six months after the rendition of judgment, file with the Clerk of the Supreme Court an application for leave for a review by the Court, of the judgment rendered against him by means of the proceeding called, writ of error. This Court has in a long line of cases determined what constitutes good cause for reviewing a final judgment rendered against any party in order to determine what errors, the court rendering the judgment, has committed. *Kontar v. Dennis*, 18 LLR 267 (1968); *Cole v. Industrial Building Contractors*, 17 LLR 476 (1966); *Jallah v. Sheriff*, 25 LLR 226 (1976); *Liberia American Insurance Corporation v. Wright and A. Hejazi Corporation*, 37 LLR 415 (1993).

This proceeding-in-error raises two fundamental issues which the Court has passed upon in several error proceedings filed before it to determine whether a final judgment rendered against a party should be enforced. These issues are: (1) whether or not the court rendering the judgment had acquired jurisdiction over the party; and (2) whether the party against whom judgment is made had an opportunity to present his side of the controversy or, as it is simply put, whether such party had his day in court.

The records certified before this Court revealed that the cancellation action was venued before the December A. D. 1991 term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County and that said action was filed on the 8th day of January, A. D. 1992. The December Term of the Civil Law Court opened on the 16th day of December, A. D. 1991. The procedure which the law provides for the calendaring of cases, states that upon the clerk of court receiving a returns showing that the defendant or defendants have been properly served with summons, the said clerk shall place the case on the jury or non-jury calendar for civil cases for the term of court next to open, except that if all defendants have not been served at least fifteen days before the opening of such term of court, the case shall be placed on the calendar for the term after the one next to open. Civil Procedure Law, Rev. Code 1:15.2

As stated earlier above, the cancellation proceeding was filed in the court below on 8th January, A. D. 1992, twenty-three (23) days after the official opening of the December, A. D. 1991 Term of the Civil Law Court. The entire record is void of any process which was served on the defendant in the cancellation proceeding. Further, the notice of assignment which commanded the appearance of the defendant in the cancellation proceeding to appear

for hearing, was issued on the 28th day of January, A. D. 1992. However, according to the sheriff's returns, said notice of assignment was allegedly served on defendant on the 23rd day of January, A. D. 1994. Clearly, the returns of the sheriff exemplifies gross irregularity in itself. The returns of the sheriff, according to our law, must be made promptly and in every event, within the time during which the person served must appear. This is a case where the party was cited to appear on the 28th day of January, A. D. 1992, but the sheriff's returns was made on January 23, 1994, two years after the date the party served should have appeared. Statutory regulations governing service of summons must be substantially complied with. A defendant who has not been summoned properly in keeping with the statute, cannot be said to have had his day in court, and the court cannot assume jurisdiction over any person who has been improperly summoned.

Plaintiff-in-error in these error proceedings received no summons at all, as the records show, and therefore it was not even obliged to file an answer. Our statute and a long line of cases decided by this Court clearly set out the point A defendant who has not been summoned at least fifteen days prior to the date of the opening of the term of court in which the action is filed, and to which the writ of summons is made returnable, is not under the jurisdiction of said court, and therefore cannot be bound by its judgment. *Id*, 1:3.42; *Yangab v. Melton* 12 LLR 128 (1954).

The entire proceeding in the cancellation action in the court below is replete with suspicion and errors. The records show that the trial court never acquired jurisdiction over the defendant company or any of its representatives; and the said company did not voluntarily surrender itself to the jurisdiction of the trial court. Accordingly, any judgment rendered against the plaintiff-in-error is null and void and has no legal effect.

In view of the foregoing, the said judgment rendered against plaintiff-in-error in the cancellation proceeding in the court below is hereby reversed, with costs against defendant-in-error. 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.

When this case was first called for hearing on December 11, 1995 at 9:16 a.m., after due notice of assignment was issued and served upon the lawyers representing the parties, this Court received a letter from Counsellor McFarland, counsel for defendant-in-error, to the effect that he was ill and had been rushed from his Caldwell Estate to Monrovia for treatment due to serious malaria attack. Counsellor McFarland also requested the Court in said letter to postpone the hearing of this case for the following week. Although no medical certificate was attached to said letter, the court granted the request of Counsellor McFarland

in reliance on his integrity as a Counsellor of the Supreme Court. The case was re-assigned for the 18th of December, 1995 at the hour of 9:00 a.m. When the case was called on the 18th, the court this time was handed an undated letter from Counsellor Mc-Farland which was received on the same date, December 18, 1995, at 9:15 a.m. informing the Court that he, Counsellor McFarland, was still ill and unable to attend at the hearing of this matter. This letter was accompanied by a medical certificate from the Monrovia Central Clinic on Clay Street, Monrovia, dated December 16, 1995. We shall quote the text of the certificate below:

“Monrovia Central Clinic

Clay Street, P. O. Box 10-4083

1000 Monrovia, 10 Liberia

Our Ref:

Tel:

Your Ref:

Date: Dec. 16, 1995

TO WHOM IT MAY CONCERN

THIS IS TO CERTIFY THAT COUNSELLOR FLAAWGAA R. McFARLAND HAS BEEN SICK AND SUFFERING FROM MALARIA SINCE MON-DAY, DECEMBER 11, 1995. HE HAS ACCOR-DINGLY BEEN ADVISED ON DOCTOR’S ORDERS, TO BED REST UNTIL FRIDAY, DECEM-BER 22, 1995; AND HENCE THIS CERTIFICATE OF CONFIRMATION.

SIGNED: Signature illegible

Dr. M. Kamara (MD)

Counsellor Emmanuel Berry, counsel for plaintiff-in-error, was asked by the Court to comment on said letter and certificate. In commenting, Counsellor Berry informed this Court that on the 17th day of December 1995, he had the occasion to meet Counsellor McFarland at Spriggs Payne Airfield, and Counsellor McFarland said to him that he was *en route* to Ghana on a business trip and would not be in court on the following day, December 18, 1995. Counsellor McFarland, according to Counsellor Berry, proposed that upon his return from Ghana, they should meet and compromise the matter which was before the Supreme Court. Counsellor Berry further stated that he was at the Airfield when he saw Counsellor McFarland embark upon the Air Avoire Aircraft bound for Abidjan, the Republic of Ivory Coast, and Ghana, and also saw the plane take off with Counsellor McFarland on board. This was on the 17th day of December, which was a Sunday. The notice of assignment for the hearing of this case was duly and timely served upon both Counsellors McFarland and Berry to appear at the Supreme Court on Monday, December 18, 1995. It is very clear to us that Counsellor McFarland intentionally and deliberately ignored the notice of assignment from this Court.

In *Davis v. Liberia American Swedish Company*, 14 LLR 535 (1961), this Court held that counsellors who fail to appear for hearing of their matters, upon receiving an assignment from the Supreme Court, are subject to disciplinary penalties. This Court is reluctant to discipline counsellors of the Supreme Court Bar because members of this Bar are regarded with high esteem and deserve to be respected not only by their colleagues and the public in general, but also by members of the Bench. However, when a lawyer of the Supreme Court Bar, appears to abandon his professional responsibilities to his client, and disregards the rules and orders of the Court by deceit and trickery, the Court will not hesitate to penalize this lawyer for such misconduct.

This Court condemns and abhors the conduct of Counsellor McFarland purporting to be ill, as evidenced by his undated letter received by this Court on December 18, 1995 at 9:15 a.m. Such conduct is highly contemptuous for which the said counsellor should be and he is hereby adjudged in contempt of the Supreme Court, and fined the amount of two thousand Liberian dollars (L\$2,000.00) to be paid in the Bureau of Internal Revenue within 48 hours from the date of this opinion. The Revenue Receipt for such payment shall be exhibited to the Clerk of the Supreme Court who shall record same in the record of this Court. And until the payment of the fine as herein directed, Counsellor McFarland is prohibited from practicing law, directly or indirectly, in this jurisdiction. And it is hereby so ordered.

Judgment reverse