

CHARLES WULAH, Petitioner, v. **HIS HONOUR M. WILKINS WRIGHT**,
Resident Circuit Judge, Sixth Judicial Circuit, Montserrado County, and **THE**
CHURCH OF THE LIVING GOD, by and thru its Deacon, N. WHYNEY,
Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING
THE PETITION FOR A WRIT OF PROHIBITION.

Heard: April 13, 1993. Decided: July 23, 1993.

1. Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of the justice of the peace or magistrate. The Court of a justice of the peace or magistrate shall have jurisdiction only in cases in which the amount of the judgment demanded does not exceed three hundred dollars.
2. Summary Proceedings to recover possession of real property is not a special proceeding within the meaning of Revised Code 1: 16.
3. Any independent application to a court for relief shall be prosecuted in the form of an action, except where the prosecution in the form of a special proceeding is authorized.
4. If a court obtains jurisdiction over the parties, an application for relief shall not be dismissed because said application is not brought as an action or special proceeding or motion, whichever may be proper, but the court shall make whatever order is required for its proper prosecution.
5. Ten days is the required time allowed by statute for the filing of responsive pleadings, including those in special proceeding, except for a writ of habeas corpus
6. Summary means that the issue must be disposed of speedily, without delay; that the time usually allowed for pleadings does not apply; that the strict rules of evidence do not prevail; that the ordinary formal procedure prevailing in the trial of a case at law is dispensed with.
7. Prohibition will lie where the ruling of the trial judge constitutes an abuse of jurisdiction.

Appellant filed an action of ejectment in the Magisterial Court in New Kru Town. The judge dismissed the case for lack of jurisdiction over the subject matter since title to real property was at issue. Thereafter, appellant instituted summary proceedings to recover possession of real property in the civil law court. The writ of summons was issued on January 31, 1992 for hearing to be held on February 5, 1992. The precepts was served on February 3, 1992 and appellee did not file an answer until February 10, 1992. In the meantime, the judge conducted the hearing on February 5, 1992 and entered a default judgment against the appellee. When appellee went to file his answer and discovered the default judgment, he filed a motion to rescind the judgment which was denied on the basis that the hearing was a special proceedings. Appellee then petitioned the Chambers Justice for a writ of prohibition and it was granted. Appellant thereupon appealed to the Full Bench where the Chambers Justice's ruling was affirmed on the ground that the hearing was not a special proceeding since title was at issue. The Court further observed that even if it were a special proceeding, the ten-day standard used for responsive pleading has been adopted by the Court for special proceeding as well. Accordingly, the petition for the writ of prohibition was *granted*.

The Dugbor Law Firm appeared for the petitioner. *Moses Kron Yangbe* appeared for the respondents.

MR. JUSTICE HNE delivered the opinion of the Court.

This case first commenced at the magisterial court in New Kru Town, Bushrod Island when the respondent, the Church of the Living God, sued the petitioner in an action of ejectment on January 8, 1992. That action was dismissed by the Magistrate because title was involved, placing the case beyond his jurisdiction.

Subsequently, on January 30, 1992, the said respondent sued the petitioner in the civil law court, this time in summary proceedings to recover possession of real property. The corespondent judge ordered a writ of summons issued against the petitioner on the 31st January 1992 with the appearance date fixed for February 5, 1992. The writ was served on the petitioner, then defendant, on 3rd February 1992. On 10th February, 1992, the petitioner filed an answer proferting his title deed for the property which is the subject of the suit. The judge, by that time, had rendered a default judgment against the appellee on the 5th day of February, 1992, the day on which the writ of summons commanded him to appear. When his counsel went to file the answer and observed that the judge had already entered a default judgment, he wrote the judge giving him notice that he would file a motion to rescind the default

judgment and requested the judge to suspend enforcement of the judgment. We feel, however, that the counsel for appellee should have exercised diligence by ensuring his client's appearance on the day stated in the writ to make an appropriate application for relief. The counsel's failure in this respect exposes him to a reprimand by this Court.

That motion to rescind the default judgment was filed and, upon hearing thereof, it was denied by the judge. Before the enforcement of the judgment the appellee applied to the Chambers Justice for a writ of prohibition. An alternative writ was issued. After hearing the petition for prohibition the Chambers Justice, Mr. Justice Morris, granted the same on grounds that title was involved, and that after the judge came to know this by way of the motion to rescind, he should have granted that motion. The respondent has appealed to the full bench from the ruling of the Chambers Justice.

Our statute provides that:

"Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or justice of the peace or magisterial court. The court of a justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars." Civil Procedure Law, Rev. Code 1: 62.21.

This provision of our civil procedure code, to our mind, concerns itself with the right of possession and not title.

The appellant tells us that this case is a special proceeding and that the date of appearance and hearing is as specified in the citation issued by the clerk of court upon the orders of the Judge. He relied on the Civil Procedure Law, Rev. Code 1: 16.3 and 76.4(1) and (2). Under our statute, special proceedings consist of the following:

- (a) Writs of certiorari, mandamus, prohibition and error
- (b) Writ of quo warranto
- (c) Habeas corpus
- (d) Condemnation proceedings

(e) Special proceedings concerning mentally disabled and legally incompetent persons

We do not think that summary proceedings to recover possession of real property is a special proceeding within the meaning of special proceedings under chapter 16 of our civil code. Next, it is our consideration that even though the date of appearance in special proceedings is fixed in a citation upon orders of the judge, the standard of ten(10) days given for answer, returns and/or appearance has been adopted for special proceedings by this Court under chapter 16, except in cases of habeas corpus which is a constitutional writ and is usually attended by exigent circumstances.

The appellee advanced the position that the case being a special proceeding as claimed by the appellant, it should have been commenced with a petition instead of a complaint. We have already said that the case is not a special proceeding as contemplated by chapter 16 of our civil procedure law; and even if it were, it is not dismissible by reason of being commenced by a petition or complaint as this is a matter of mere form.

"Any independent application to a court for relief shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized. Except where otherwise required by statute or rule of court, procedure in special proceedings shall be the same as in actions.

If a court has obtained jurisdiction over the parties, an application for relief shall not be dismissed because not brought as an action or special proceeding or motion, whichever may be proper, but the court shall make whatever order is required for its proper prosecution". Civil Procedure Law, Rev. Code 1: 1.2. (1)(2), *Action and Special Proceedings*.

Commencement of the present case by a complaint is therefore permissible, a petition being the same as a complaint under our law.

Further, the appellee wishes us to make a determination that:

1. The judge having allowed him less than ten(10) days to appear, and rendered default judgment against him before ten(10) days is contrary to our statute.
2. The circumstances for which summary proceedings are required under section 62.21 of the Civil Procedure Law are those affecting tenants where no title is

involved.

3. The judge's denial of the appellee's motion to rescind after seeing from such motion that title is involved in the case is against the law.

As to item # 1 above, we have already stated in this opinion that ten(10) days should be the required appearance date. In declaring this we are not unmindful of the definition of "summary" as enunciated in the case *Peakeh v. Nimrod*, 2 LLR 102 (1913) and reaffirmed in *Doe v. Sinkor Bakery*, 25 LLR 292 (1976). ° Summary" is stated to mean that " the issue must be disposed of speedily, without delay; that the time usually allowed for pleadings does not apply; that the strict rules of evidence do not prevail; and that the ordinary formal procedure prevailing in the trial of a case at law is dispensed with. *Peakeh v. Nimrod* was a habeas corpus proceeding. The factual setting was an exigent one which does not admit of the ten day standard for returns or appearance as stated earlier in this opinion. *Doe v. Sinkor Bakery* was a labour case. The ten days requirement for returns, answer or appearance already obtains in our practice as to labour cases.

We have therefore elected to adopt the standard of ten (10) days provided under our civil statute for answer and/or appearance to be better promotive of the rights and interests of party litigants in our courts, subject to the qualification stated above concerning habeas corpus proceedings.

We agree with the appellee's contention that summary proceedings as outlined in section 62.12 are premised upon circumstances where only possession is in issue, as in cases of landlord and tenant when there is absent any indicia of title. Where the tenant has a valid lease agreement, that would raise a question of title in which event section 62.21 would not lend itself. An action of ejectment would then be the proper course to pursue. This responds to issue # 2 above.

Regarding point # 3 , we are in accord with the Chambers Justice when he held that the judge should have granted the motion to rescind when he saw from that motion that title is involved, which accordingly takes the case out of section 62.21.

The judge's denial of the motion compromises the property right of the appellee, which is a fundamental substantive right that cannot be curtailed by the mere procedural approach of the co-appellant's failure to appear on 5th February, 1992, a period of merely two(2) days after the writ of summons was served on him, even

though the writ was issued on 31st January, 1992. His denial of the motion and his subsequent attempt to enforce his judgment against the appellee constitutes an abuse of jurisdiction for which prohibition should issue.

The ruling of Mr. Justice Morris granting the writ of prohibition is therefore hereby affirmed, with costs against the appellant. The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over the case and give effect to this opinion. And it is hereby so ordered.

Petition granted.