

KAMIL AJAMI and **HUSSIEN AJAMI**, Plaintiffs-In-Error, v. **E. S. KOROMA**,
Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and **E. G. SALEEBY**,
Defendants-In-Error.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE
ISSUANCE OF A WRIT OF ERROR.

Heard: December 16 & 21, 1982. Decided: February 4, 1983.

1. A judgment in a jury case shall not be announced until four (4) days after the verdict.
2. The proper procedure upon the failure of appellant to file its bill of exceptions within the period provided by statute, is for the appellee or prevailing party to file a motion to dismiss the appeal and enforce the judgment.
3. An appeal may be dismissed by the trial court on motion, for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear for the hearing of the appeal, to file an approved appeal bond, or to serve the notice of the completion of the appeal as required by statute.
4. A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to during the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court.

These proceedings grew out of an action of ejectment instituted by the co-defendant-in-error in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to recover the possession of a warehouse, rent due, and general damages. The plaintiffs-in-error appeared and filed an answer, but failed to serve a copy thereof on the co-defendant-in-error. Accordingly, Co-defendant-in-error Saleeby, filed a submission to the effect that

plaintiffs-in-error had failed to serve a copy his answer on co-defendant-in-error. To this submission, plaintiff-in-error failed to interpose a resistance. Subsequently, on the disposition of law issues, the answer was dismissed and plaintiffs-in-error ruled to a bare denial. After a regular trial, the jury returned a verdict in favour of co-defendant-in-error, which was affirmed by the court. Plaintiffs-in-error being absent, the court deputized an attorney to take the judgment for the plaintiffs-in-error. Exceptions were taken and an appeal announced to the Honourable the People's Supreme Tribunal.

Two days after the final judgment, the Government was overthrown in a coup d'etat, and the courts ceased to operate and did not resume operations until May 19, 1980, pursuant to PRC decree No. 3, issued April 24, 1980, and published on May 19, 1980. Two days after the opening of the Civil Law Court, co-defendant-in-error moved for execution to enforce the judgment for failure of the plaintiffs-in-error to file their bill of exceptions, which was granted. During the execution of the judgment, plaintiffs-in-error applied to the Justice in Chambers for a writ of error. From a ruling denying the petition, defendant appealed to the Full Bench.

Plaintiffs-in-error contend that due to the recent change of Government, and the promulgation of Decree No. 3 by the PRC Government, an additional period of 30 days was allowed in computing any period of time prescribed or allowed by statute, by order or Rule of Court, for act to be done, and that in matters of a judicial nature, the grace period hereinabove specified shall continue for a period not to exceed fifteen days after the Court or Tribunal was established. Plaintiffs-in-error contend that pursuant to this decree, the period for filing of their bill of exceptions had not expired when Counsellor Dunbar requested the court to resume jurisdiction and enforce its judgment.

The Supreme Court agreed with the plaintiffs-in-error, and held that PRC Decree No. 3, which re-established the courts after the military takeover, provided for a grace period for acts required to be done under the statute, and that this grace period had not expired by the time the Civil Law Court ordered the enforcement of the judgment. The Supreme Court also held that the procedure resorted to by defendants-in-error was not proper in that under the statute, upon plaintiffs-in-error failure to file his bill of exceptions, the proper procedure is to file a motion to dismiss the appeal, and not for enforcement of the judgment.

The Court also found that upon review of the records that the trial court's final judgment on the verdict was given on the third day after the jury verdict when under the law the four days allowed for rendition of a judgment in a jury case had not expired. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice, granted the petition, and ordered the Civil Law Court to resume jurisdiction and allow the plaintiffs-in-error to file their bill of exceptions and to have same approved nunc pro tunc.

Joseph Dennis of the P. Amos George Law Firm appeared for plaintiffs-in-error. Stephen B. Dunbar, Sr. appeared for defendants-in-error.

AD HOC JUSTICE THORPE delivered the opinion of the Court.

This petition for a writ of error grows out of an action of ejectment instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in which E.G. Saleeby, one of the defendants-in-error herein, is the plaintiff, and Kamil Ajami and Ali Hussien Ajami, plaintiffs-in-error, are the defendants.

A brief history of the case reveals that on the 17th day of November, 1978, during its December, A.D. 1978, Term, E.G. Saleeby instituted an action of ejectment against Kamil Ajami and Ali Hussien Ajami to recover a warehouse constructed on a parcel of land situated in the New Kru Town Area and the rent due in the amount of \$2,500.00 plus damages for the unlawful occupancy and use of said warehouse and land.

An answer was filed by the plaintiffs-in-error, by and thru their counsel, on the 27th day of November, A. D. 1978, but regrettably a copy of the answer was not served on Co-defendant-in-error Saleeby. Consequently, on December 22, 1978, Co-defendant-in-error Saleeby filed a submission that notwithstanding there was an answer in the case file as filed by the plaintiffs-in-error, the said answer had not been served on him (co-defendant-in-error). The submission was never resisted; whereupon, on the 17th day of August, 1979, upon due notice to both parties, the court in disposing of the law issues, dismissed plaintiffs-in-error's answer, ruled the case to trial on the facts contained in the complaint, leaving plaintiffs-in-error to rest their defense on a bare denial.

On the 7th day of April, 1980, during the March Term of said court, the case having been

duly assigned, trial by jury was conducted. The jury returned a verdict in favour of Co-defendant-in-error Saleeby, awarding him a total of \$11,560.00 as rental due plus damages. Final judgment of the court was rendered on the 10th day of April, A. D. 1980, which final judgment confirmed and affirmed the verdict of the jury. Plaintiffs-in-error being absent, the court deputized Attorney David Ross to take the said judgment for them. Exceptions were taken and appeal announced to the Honourable the People's Supreme Tribunal, sitting in its October Term, A. D. 1980, and granted by court.

Upon inspection of the records transmitted to us, we observed that plaintiffs-in-error did not perfect the appeal up and including the 23rd day of May, A. D. 1980. Thus, Co-defendant-in-error Saleeby moved for execution to enforce the judgment so rendered. It was at the service of the execution on plaintiffs-in-error on the 26th day of May, A.D. 1980, that they, through the P. Amos George Law Firm, filed a petition for a writ of error containing seven (7) counts, praying the Court to order the issuance of the alternative writ of error, to order their store reopened, and to permit them to file their bill of exceptions, since the time for the filing of their bill of exceptions had not expired. To this petition, the defendants-in-error filed a ten count returns.

Let us, for a brief moment, traverse the issues raised by both parties. Out of the seven-count petition, we have selected counts 1, 3 and 4 and the prayer to pass upon which read, as follows:

"1. Plaintiffs-in-error complain that during the absence of Co-plaintiff-in-error, Kamil Ajami, from the country in Lebanon where he had gone for only 14 days, co-defendant, E. G. Saleeby, instituted an action of ejectment against them to oust and evict Co-plaintiff Kamil from a certain warehouse held under rental. The writ was served on Co-defendant Ali Hussien Ajami, who was not authorized by co-defendant Kamil Ajami to receive summons on his behalf or even to sign checks in his absence; notwithstanding this illegal practice, the defendants on the 10th day of April, 1980, obtained a judgment against the plaintiff-in-error in the total amount of \$11,560.00.

3. And plaintiffs-in-error further complain that on the day of rendition of the illegal judgment against plaintiffs-in-error, the court appointed Attorney David Ross to take the judgment for plaintiffs-in-error. On the said 10th day of April, A. D. 1980, he excepted and

announced an appeal to the Honourable the People's Supreme Tribunal, sitting in its October Term. The appeal was granted by the court. On the morning of the 12th of April, the then existing Government was overthrown and the courts and all other operations were immediately ceased not until May 19, A. D. 1980 when the Civil Law Court was reopened for the transaction of business, and 10 days could not have expired, computing the time from the closure of the court and the reopening and the time of the granting of the execution prayed for, as will more fully appear by copies of the final judgment and minutes of court marked Exhibits "C" and "D" to form part of this petition.

4. And also because plaintiffs-in-error further complain that notwithstanding the closure of the courts, due to the change of Government, immediately upon the reopening of Court, execution was prayed for and granted and the Co-plaintiff-in-error Kamil Ajami's business was closed by the sheriff and plaintiff-in-error arrested and Co-plaintiff-in-error, Ali Hussien Ajami, incarcerated."

And their prayer:

"WHEREFORE, and in view of the foregoing, plaintiffs-in-error bring this complaint in error praying Your Honour to order issue the interlocutory writ of error, order their store reopened, and permit them to file their bill of exceptions, since the time for the filing of the bill of exceptions had not expired; and that Your Honour will order the minutes of court brought to your Chambers and review the records upon examination of facts set forth and contained in the petition, will order the peremptory writ of error issued."

Counts 6 and 7 of the defendant-in-error's returns say thus:

6. That as to count three of plaintiff-in-error, the same is designed to mislead this Honourable Court, in that, final judgment was handed down on the 10th day of April, A. D. 1980, and up to the 21st May, A. D. 1980, although exceptions were taken and an appeal announced, not even the first step, the filing of their bill of exceptions, had been taken after one month eleven days from the judgment, as can be seen from the minutes of the 21st day's sitting of the court, herewith made and marked exhibit "F". Defendants-in-error contend that the granting of the issuance of the bill of costs and the execution was made within the sound discretion of the trial judge and the pale of the law.

7. That as to count four of plaintiffs-in-error's petition, upon their refusal to comply with the costs and execution, they were ordered in keeping with law." As far as count 1 of the plaintiffs-in-errors' petition is concerned, the Court holds that plaintiffs-in-error were brought regularly under the jurisdiction of the court, trial was conducted, regularly, as in keeping with trial procedure under the statute. Civil Procedure Law, Rev. Code 1: 22.1-22.14. Co-defendant-in-error, His Honour E. S. Koroma, committed no error during this stage of the trial.

As to counts 3 and 4 of the petition, plaintiffs-in-error dwells on the fact that on April 10, 1980, judgment was rendered, exceptions noted and appeal granted. On April 12, 1980, the military coup took place, the Government was overthrown and the courts and all other operations ceased. The courts were re-established by the PRC Decree No. 3, issued April 24, 1980, and published May 20, 1980. According to plaintiffs-in-error, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, was re-opened on May 19, 1980. On May 21, 1980, Counsellor Stephen B. Dunbar, Sr., was permitted to spread on the minutes of court the following:

"Counsellor Stephen B. Dunbar, Sr. brings to the attention of this Honourable Court in re the case Saleeby v. Ajami et. al, action of ejectment, that the court's final judgment was handed down on the 10th day of April, A. D. 1980, to which exceptions were noted and an appeal announced to the Honourable the Supreme Court, sitting in its October Term, A. D. 1980. It has now been one month and eleven days since said ruling was handed down and the defendants have failed and neglected to comply with the requirements by even taking the first step of filing a bill of exceptions within 10 days as required by the law from the time the final judgment was handed down.

Counsel therefore requests Your Honour to order the Clerk to prepare a bill of costs to be served on the defendants, and in the event they fail and refuse to pay, that a writ of execution be issued and placed in the hands of the Sheriff for execution. And submits."

This is where plaintiffs-in-error contend not to have had their day in court, for the fact that the time to file their bill of exceptions had not expired when they were confronted with bill of costs and execution. It is true that the military coup did occur and the courts were closed

and later reopened. Let us see whether plaintiffs-in-error were deprived of their day in court. PRC Decree No. 3, Computation of Time, §1.6, reads as follows:

"GRACE PERIOD--Due to the recent change of Government, an additional period of 30 days is allowed in computing any period of time prescribed or allowed by Statute, by order or Rule of Court, by Rule or Regulation, or by other order, the day of the act, events, or default after which the designated period of time begins to run is to be included, provided, however, in matters of a judicial nature the grace period hereinabove specified shall continue for a period not to exceed fifteen days after the Court or Tribunal is established.

This Decree shall take effect immediately upon the signature of the Head of State of the Republic of Liberia."

According to this Section of Decree #3, the period for the filing of plaintiffs-in-errors' bill of exceptions had not expired when Counsellor Dunbar requested the court to resume jurisdiction and enforce its judgment on the 21st day of May, A. D. 1980.

And more than this, according to records certified to us, the verdict of the jury was given on the 7th day of April, 1980, while the court's final judgment was given on April 10, 1980, three days after the verdict of the jury, when under the law the four days allowed for rendition of judgment in a jury case had not expired. Civil Procedure Law, Rev. Code 1: 41.2.

"All judgments shall be announced in open court. The judgment in a jury case shall not be announced until four days after the verdict."

The four days did not expire before final judgment was given. And so after having lost jurisdiction by the granting of an appeal in the circuit court, in order to resume jurisdiction and enforce its judgment, the procedure set under dismissal of appeal for failure to proceed is as follows:

"An appeal may be dismissed by the trial court on motion, for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear for the hearing of the appeal,

to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." Ibid., 1: 51.16.

In accordance with this section of the law, the Court holds that in order to dismiss the appeal and enforce the judgment because of the defendants, now plaintiffs-in-errors' failure to perfect their appeal, a motion should have been filed, heard and passed upon. Thus, giving plaintiffs-in-error the opportunity to be heard. This procedure was ignored by the presiding judge, co-defendant-in-error .

The bill of exceptions, the first step toward taking an appeal. Because of its importance, we deem it expedient to quote the relevant law:

"A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other mat-ter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Ibid., 1: 51.7.

In view of the foregoing and the law cited, it is our opinion that the ruling of the Chambers Justice be, and the same is hereby reversed. The petition for a writ of error should be, and the same is hereby granted and the peremptory writ of error ordered issued, commanding the judge presiding in the Civil Law Court to resume jurisdiction over this case and allow the plaintiffs-in-error to file their bill of exceptions, and the same to be approved nunc pro tunc within 10 days from the date of the reading of the mandate. And it is hereby so ordered.

Petition granted.