A. BAH and A. BAH BUSINESS of Red Light, represented by its Managing Proprietor, A. BAH, Plaintiffs-In-Error, *v.* **HIS HONOUR WYNSTON O. HENRIES**, Resident Circuit Judge, Sixth Judicial Circuit, MAGISTRATE CHARLES HOWARD, of the Paynesville Magisterial Court, and A. N. CHARIF, Self-styled Attorney-In-fact of MILAD R. HAGE, Defendants-In-Error.

MOTION TO DISMISS APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, AND PETITION FOR A WRIT OF ERROR.

Heard: May 16, 2002. Decided: June 14, 2002.

1. A petition for a writ of error is in the nature of an appeal.
2. A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment.
3. A party against whom judgment has been taken who for good reason failed to make a timely announcement of the taking of an appeal from such judgment may, within six months after its rendition, file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error.
4. The application for a writ of error shall contain the following: (a) an assignment of error, similar in form and content to a bill of exceptions; (b) a statement why the appeal was not taken; (c) an allegation that the execution of the judgment has not been completed; and (d) a certificate of a counsellor of the Supreme Court that in the opinion of such counsellor real errors are assigned.
5. As a prerequisite to issuance of the writ of error, the person applying for the writ shall be required to pay all accrued costs.
6. The Supreme Court or an Assigned Justice, who may be the Chief Justice or the Justice in chambers, shall grant or deny the application for a writ of error.
7. The assignment of error in an error proceeding shall be dealt with in the same manner as a bill of exceptions, and the hearing of the writ shall be upon certified copies of the records transmitted by the trial court.
8. The Supreme Court hearing a matter on a writ of error may grant such judgment as it may grant on an appeal.

9. In error proceedings, as on appeal, the Supreme Court is guided by the records of the trial court made in the ordinary course of business, as opposed to the unofficial representation of the plaintiff-in-error, unless a challenge is made to the validity and truthfulness of the records.
10. A judge may have jurisdiction simultaneously over two courts and his acts performed during that period are valid as far as both jurisdictions are concerned.
11. The resident judge of a circuit share concurrent jurisdiction with an assigned judge presiding over that circuit.
12. A resident judge is always available to conduct the affairs of the court of which he is resident.
13. The requirement for the payment of accrued costs as a prerequisite to the issuance of a writ of error is mandatory and must be complied with by the plaintiff-in-error.
14. A Justice in Chambers may refuse to grant the application for a writ of error if in his opinion the statutory requirements for issuance of the writ have not been met, or where the grounds for granting are not sufficient.
15. The plaintiff-in-error may appeal to the Court *en banc* for review of the ruling denying the granting of the application as a matter of right.
16. It is not an error or a violation of the law for a plaintiff-in-error to venue the application or petition for a writ of error before the Chambers Justice, as the Rules of Court give the Chambers Justice the right to order the writ issued and to have the case docketed.
17. The Supreme Court does not have the authority to investigate or take evidence for the first time on appeal.
18. A lawyer commits a violation of the Supreme Court orders in not maintaining a visible office for the purpose of service of papers and to submit to the office of the Clerk of the Supreme Court the full address of said office, inclusive of the telephone numbers, which failures constitute a contempt of court.
19. Where a lawyer works out of his home or residence rather than an official business office location, service of precept on his wife is effective if she agrees to accept the precept from the court officer.
20. By using his home or residence for office purposes, a lawyer opens up and leaves his family vulnerable to intrusion into their privacy and to being served with process or papers.
21. There is no substitute for an appeal where there is adequate remedy through the appeal process.
22. The appeal statute is clear and should be strictly observed.
23. When judgment has been rendered and an appeal has been announced and granted, the appeal process goes into play and the next steps are to file a bill of exceptions within ten days of the judgment and an appeal bond within sixty days.

The plaintiffs-in-error sought out a writ of error from the Supreme Court, contending that the trial court judge had, in the absence of the plaintiffs-in-error and their counsel, made a ruling dismissing the plaintiffs-in-error summary proceedings against the stipendiary magistrate who had entered a default judgment against the plaintiffs-in-error in a summary proceed-ings to recover possession of real property. The plaintiffs-in-error, lessees of the owner of a certain property, had been sued in the magisterial court by the Co-defendant-in-error, A. N. Charif, the attorney-in-fact of the lessor, because of the refusal of the lessees to make payment of rents to the attorney-in-fact based on instructions from the lessor not to make such payment to the attorney-in-fact. The lessor had given the directive and had revoked the power of attorney because of the failure of the attorney-in-fact to apply the rents received from tenants of the lessor against obligations of the lessors as had been directed by the lessor. The magisterial court had entered judgment against the plaintiffs-in-error when the said counsel had failed to appear in court to defend against the action and the returns of the bailiff indicating that counsel for the plaintiffs-in-error had refused to signed the notice of assign-ment. Counsel for the plaintiffs-in-error, who is a Jehovah Witness and who worships on Saturdays, had refused to sign the assignment sought to be served on him whilst he was in Church.

Following arguments in the circuit court of the complaint filed against the magistrate, a notice of assignment was issued but its service was refused by counsel for the plaintiffs-in-error because the assignment failed to indicate the purpose of the assignment. Thereafter the purpose was indicated but when the assignment was sought to be served at the residence of the counsel for plaintiffs-in-error, his wife informed the bailiff that the counsel had traveled and that she could not receive the assignment or sign for the same. Hence, the trial court, on the date assigned for of the hearing, entered judgment dismissing the proceedings. The court designated or deputized a counsel to receive the judgment, which counsel excepted thereto and announced an appeal therefrom on behalf of the plaintiffs-in-error. However, five days after the judg-ment, and without filing a bill of exceptions, the plaintiffs-in-error filed application for a writ of error, contending, amongst other things that the trial court judge had entered judgment after his term had expired and he had been assigned to another jurisdiction, and that therefore the judgment was void.

The defendants-in-error contended that the error proceed-ing was not cognizable before the Court because the plaintiffs-in-error had failed to pay accrued costs as provided for by law.

The Court rejected the plaintiffs-in-error contention that the trial judge was out of term time, noting that it was guided by the records of the trial court and not that of the parties, and that those records showed that the term of the court had not expired. The Court noted also that it was permissible for a judge to hold jurisdiction over two courts at the same time, and that that fact did not render decisions made by him in the courts invalid. The Court

pointed out further that the trial judge was the resident judge of the court and that as such he always retained jurisdiction even when another judge has been assigned to the court.

In addition, the Court opined that in an ordinary situation error would not lie since an appeal had been announced by a deputized attorney for the plaintiffs-in-error and the applica-tion for the writ of error had been filed five days after the trial court's judgment and even while the time for filing the bill of exceptions had still not expired but, the Court added, the circumstances in the case were not ordinary. The Court noted that the lawyer who had been deputized to take the ruling of the trial court had executed an affidavit denying that he had ever been deputized to take such ruling and that he did not in fact take any ruling in the case. The Court reasoned that as it could not take evidence regarding who was telling the truth, it had determined to give the plaintiffs-in-error the benefit of the doubt.

The Court pointed out further that while counsel for the plaintiffs-in-error had maintained his offices in his residence, in violation of the Court's Rules, and had thereby rendered his family vulnerable to the service of precepts and himself in contempt of the court, the failure of the counsel's wife to accept the assignment could not be held against him, rendered the service incomplete, and was ground for disregarding the service. The Court stated that it could not hold that counsel for the plaintiffs-in-error had notice of the assignment since the assignment had earlier been rejected by the said counsel for being defective and service had been attempted several days later when the corrections had been made and when the counsel was out of town. This factor, the Court said, coupled with the fact that the deputizing of a counsel to take the ruling of the trial court was disputed, constituted good cause for the plaintiffs-in-error not taking an appeal from the said ruling.

The Court also determined not to dismiss the error proceedings as prayed for by the defendants-in-error because of the failure of the plaintiffs-in-error to pay the required mandatory accrued costs, noting that the certificate evidencing the nonpayment of the costs was issued by the marshal of the Supreme Court rather than the clerk or sheriff of the trial court.

Accordingly, the Court *reversed* the judgment of the trial court, noting that it was taking the decision in order that the many irregularities committed in the trial court could be corrected.

J. D. Baryogar Junius of Legal Clinic and *J. Emmanuel R. Berry* appeared for plaintiffs-in-error. *Cyril Jones* of Jones and Jones Law Firm appeared for defendants-in-error.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

The records before this Court revealed that in November 1994, Mr. Milad R. Hage took out a loan of $25, 000.00 from the International Trust Company of Liberia (ITC), now the International Bank of Liberia (IBL), to be repaid within six (6) months (i.e. from November

1994 to April 1995). To secure the loan, Mr. M. R. Hage offered his store complex located at Red Light, Paynesville and Mr. A. N. Charif, as co-maker, offered Charif Pharmacy.

Mr. Hage defaulted in settling the loan amount within the agreed six-month period and paid only $10,000.00, which the Bank applied toward accrued interest. The Bank then sued Mr. Hage and Charif Pharmacy in an action of debt.

While the debt case was in progress, Mr. Hage executed a power of attorney on August 16, 2000, in favor of Mr. A. N. Charif, authorizing the latter, as agent, to collect the rentals from the tenants of Mr. Hage, who occupied the store complex to pay off the ITC loan and other debts. When full settlement of the debt did not seem likely, Mr. Hage sold one of his stores at Red Light and paid ITC Bank the $25,000.00 he had borrowed.

As rentals from the tenants became due, Mr. Hage demanded payment from his tenants but they presented him with receipts showing that Mr. A. N. Charif had collected the said rentals, some even in advance. Mr. M. R. Hage therefore cancelled the power of attorney to Mr. A. N. Charif and notified his tenants that they should not pay any further rents to Mr. A. N. Charif, since the latter no longer had authority to collect or receive rents from them. The instrument of cancellation was probated on September 27, 2001 and duly registered on the same date.

On November 19, 2001, Mr. Hage entered into a lease agreement with A. Bah Store, represented by its proprietor, Mr. A. Bah, for a period of 4 years, effective December 1, 2001, up to and including November 30, 2005. This lease was probated November 20, 2001 and duly registered.

Mr. A. N. Charif, as agent of Mr. M. R. Hage demanded rental payment from Mr. A. Bah. Mr. A. Bah refused to make the payment to Mr. Charif. This led Mr. A. N. Charif, on Wednesday, December 5, 2001, to go to the Paynesville Magisterial Court, as agent of Mr. M. R. Hage, and to institute summary proceedings to recover possession of real property against A. Bah and A. Bah Business. Mr. Bah and A. Bah Business promptly took the writ of summons to Mr. Hage, the lessor who, in the lease, had promised to warrant and defend the lease during its life.

Mr. Hage requested his retained lawyer, Counsellor J. Emmanuel R. Berry, to represent Mr. A. Bah and A. Bah Business. Accordingly, the said counsel wrote the magistrate on the next day, Thursday, December 6, 2001, the date set for the trial, requesting one week's adjournment until Thursday, December 13, 2001, due to his engagement in the Civil Law Court. On Saturday, December 8, 2001, a new notice of assignment was presented to Counsellor Berry while he was worshiping at his Church, the Seventh Day Adventist Church in Paynesville. He refused to be served in Church. Thereafter, the bailiff made his returns to the effect that the assignment was served on Counsellor Berry and that he had refused to accept it. Hence, on December 10, 2001, when the case was called for trial, and in view of the bailiff's returns, the magistrate proceeded with an *ex-parte* trial. The court ordered the immediate eviction of A. Bah and A. Bah Business.

According to the records in the case file, a complaint for summary proceedings against the conduct of the magistrate was filed in the Civil Law Court on December 11, 2001. In response to the citation and the petition, the co-respondent magistrate and Mr. A. N. Charif filed returns, along with a motion to dismiss. Mr. A. Bah and A. Bah Business filed resistance to the motion, following which the presiding judge, His Honour Wynston O. Henries, on January 28, 2002, heard arguments on the motion and the resistance and reserved ruling pending a notice of assignment. On February 21, 2002, Judge Henries issued a notice of assignment for ruling on February 27, 2002. The sheriff's returns indicate that when the assignment was taken to Counsellor Berry on February 2lst he refused to accept it because it did not indicate what was to be done (i.e. "For Ruling"). The notice of assignment was therefore returned to the clerk's office, the word "Ruling" was typed in, and it was taken back to be served on Counsellor Berry. This time the counsel's wife told the bailiff that the counsellor was en route to Bassa and that she could not sign for and receive the assignment.

According to the records, Judge Henries proceeded to hand down his ruling as per the aforesaid notice of assignment on February 27, 2002. In the ruling, he granted the motion to dismiss, denied the petition, and dismissed the entire action. Since Counsellor Berry was not present, the court appointed Attorney Samuel R. Clark to take the ruling on his behalf. The court appointed counsel excepted to the ruling and announced an appeal therefrom to the Supreme Court, sitting in its March Term, A. D. 2002.

On March 4, 2002, the plaintiffs-in-error, petitioners in the summary proceedings below, Mr. A. Bah and A. Bah Business, by and thru their counsel, filed an application for a writ of error before the Chambers Justice, who forwarded the same to the full bench of the Supreme Court for disposition. The writ was issued and the defendants-in-error, respondents below, filed returns on April 9, 2002, along with a motion to dismiss. The Supreme Court ordered that the motion to dismiss and the petition for the writ of error be consolidated.

Both parties raised a number of issues, many of which went to the merits of the case, starting from the relationship to the subsequent dispute between Mr. M. R. Hage and Mr. A. N. Charif, to the execution of the lease agreement with A. Bah without the knowledge of A. N. Charif who was the agent, to the revocation of the power of attorney by M. R. Hage without informing A.N. Charif thereof, to the institution of the suit by A. N. Charif as agent for Mr. Hage, to Mr. Hage coming to the defense of A. Bah, to the conduct of the trial, commencing from the issuance and service of the writ of summons and notice of assignment, to the trial in the magisterial court and the summary proceedings in the Civil Law Court.

This is however a petition for a writ of error, which is a form of appeal. Even though in error proceedings the appellate court is reviewing the entire proceedings below, yet the first thing it must do is determine the jurisdiction of the Court to hear this case on a writ of error, and if it deems it appropriate to do, then to go on and delve into the substantive issues

raised in the case. In this connection, we take recourse to the returns and the motion to dismiss filed by the defendants-in-error and the issues raised in their brief. Out of the six counts, therein contained, we deem the last four worthy of our consideration at this juncture. We hereunder quote the issues raised in the said counts.

"3. Whether this Court has jurisdiction in error proceedings when the accrued costs have not been paid and delivered to the defendants-in-error?

4. Whether or not error should be venued before the Justice presiding in Chambers or the entire Supreme Court, to take jurisdiction over the matter?

5. Whether or not error will lie where exceptions are taken to the judgment by the court appointed attorney but prior to the time the party loses his right of statutory appeal, that is, the ten (10) days within which to file his bill of exceptions, specifically on the fifth day, he prepares a petition for a writ of error?

6. Whether or not a counsel who has knowledge of an assignment but fails to appear after raising technical issues, even though the assignment was returned to his known place of business and refused, is deemed to have been deprived of his day in court to protect the interest of his client?

To answer these questions, we first set out the legal basis for error, i.e. conditions which must exist for error to lie. "A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment." Civil Procedure Law, Rev. Code 1:16.21(4).

The statute goes further to provide:

"1. *Application.* A party against whom judgment has been taken, who for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after its rendition file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error. Such an application shall contain the following:

(a) An assignment of error, similar in form and content to a bill of exceptions;

(b) A statement why the appeal was not taken;

(c) An allegation that the execution of the judgment has not been completed; and

(d) A certificate of a counsellor of the Supreme Court that in the opinion of such counsellor real errors are assigned".

As a prerequisite to issuance of the writ, the person applying for the writ of error ....shall be required to pay all accrued costs."

2. *Issuance of service.* The Supreme Court or an assigned justice shall grant or deny the application. As soon as an application is granted, the Clerk of the Supreme Court shall issue the writ..."

4. *Hearing and judgment.* The assignment of error shall be dealt with in the same manner as a bill of exceptions, and the hearing on the writ shall be upon certified copies of the records transmitted by the trial court. The Supreme Court hearing a matter on a writ of

error may grant such judgment as it may grant on an appeal." Civil Procedure Law, Rev. Code 1:16.24, I LCLR 148-149.

Before discussing the four issues identified, *supra,* in light of the controlling statute, we need to first address the one basic issue raised by the plaintiffs-in-error, and which relates to the validity of the judgment.

Plaintiffs-in-error have accused Judge Wynston O. Henries of acting illegally in hearing a case in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, reserving ruling until he had gone out of jurisdiction, and upon being assigned to the Criminal Assizes "B" of the First Judicial Circuit, then proceeding to make the ruling in the civil case while presiding over and sitting in the criminal court. This, the plaintiffs-in-error asserted, rendered the judgment void.

Our statute on writ of error, quoted hereinabove, states that the Supreme Court hears a writ of error upon the certified records from the trial court. See Civil Procedure Law, Rev. Code 1:16.24(4). According to the plaintiffs-in-error, Judge Henries had heard arguments on the motion to dismiss and the resistance thereto on January 28, 2002, same being the 28th day's jury sitting of the December Term of the court, and had at the time reserved his ruling, subject to a notice of assign-ment. There appears to be conflict between the parties as to the calculation of days of a term of court and its chambers session.

The plaintiffs-in-error reasoned and calculated that the December Term 2001, of the Civil Law Court, commenced on December 17th and ended Wednesday, February 13, 2002, and that the ten (10) days post-trial chambers session commenced on Thursday, February l4th and ended Monday, February 25, 2002. They alleged that during the entire period, Judge Henries issued no notice of assignment for his ruling, and that no ruling was made in keeping with the court's minutes of January 28, 2002. Additionally, they said, the trial judge having received a mandate to hold over the February 2002 Term of Criminal Court B, which opened on February 12, 2002, proceeded to that court, *"thereby adjourning the Civil Law Court sine die on February 25, 2002."*(Emphasis supplied).

According to the certified records from the Civil Law Court, Judge Henries gave his ruling on the motion to dismiss on Wednesday, February 27, 2002, which was the 9th day chambers sessions. In addition, the defendants-in-error obtained a certificate from the clerk of the Civil Law Court confirming that Judge Henries adjourned the December Term *sine die* on February 15, 2002 and also that Wednesday, February 27, 2002 was the 9th day chambers session.

Let us put into proper perspective the confusion between the parties as to calculation of days, as there appears to be some misunderstanding. Generally, the term of court has three parts: (a) *the pre-trial chambers session---i.e., ten days before the opening date of the term of court; (b) the trial session when the jury is sitting---i.e., 42 days, and (c) the post-trial chambers session---i.e., 10 days after the jury session.*

In computing the days in both the pre and post-trial chambers sessions, only Mondays to

Fridays are considered working days, whereas during the trial session when the jury is sitting, only Sundays and legal holidays are excluded; that is, they work Mondays thru Saturdays. It is only when the 42 days jury trial session or sitting ends that the judge adjourns the term *sine die* and goes into the post trial chambers session for the next ten working days excluding Saturdays, Sundays and holidays. See Rules 28 and 29, Circuit Court Rules as amended and revised January 1999.

According to the certificate issued by the clerk of the Civil Law Court, Judge Henries adjourned the December Term *sine die* on Friday, February 15th, whereas plaintiffs-in-error are contending that the term ended Wednesday, February 13th and that the chambers session commenced on Thursday, February 14th. The clerk's certificate also indicates that the date, February 27th, was the 9th day's chambers sitting. On appeal, as is also with error proceedings, the Supreme Court is guided by the records of the trial court, certified to this Court. Therefore, we hereby give credence to the records of the Civil Law Court which were made in the ordinary course of the court's business as opposed to the unofficial calculation made by the plaintiffs-in-error. This is our holding, unless and until a challenge to the validity and truthfulness of the records is made.

Before leaving this issue, one more thing needs to be men-tioned, and that is, Judge Wynston O. Henries was assigned to the December Term 2001 of the Civil Law Court, Sixth Judicial Circuit, which he adjourned *sine die* on February 15th. Also, he was assigned over the February Term of Criminal Court "B", First Judicial Circuit, which he opened on February 12th. Hence, even by the very calculation and contention of plaintiffs-in-error that the December Term of the Civil Law Court ended on February 13th and the chambers session ran from February 14th to 25th, Judge Henries had jurisdiction over both the Civil Law Court and Criminal Court "B" simultaneously during those eleven days and his acts in both courts for that period were valid as far as jurisdiction is concerned.

More importantly, it must be remembered that Judge Wynston O. Henries is the Resident Judge of the Sixth Judicial Circuit Court for Montserrado County and shares concurrent jurisdiction with an assigned judge presiding over that circuit. Beyond that, and as resident judge, he is always available to conduct the affairs of that court. Judiciary Law, Rev. Code 17:3.10. Therefore, even assuming that the plain-tiffs-in-error's calculation is correct and that the December Term ended on February 25th, the next term was the March term, which did not commence until 15 days before the opening date of the court, which was the third Monday in March. The third Monday in March 2002 was the 18th day of March. Keeping in mind that the next assigned judge could not take over until 15 days before the opening date of the court, which was March 3rd, what happened to that court during the intervening period? The obvious answer is that between the end of one term and the beginning of the next the resident judge acts and presides over his court until the Chief Justice assigns another judge to preside therein. In the instant case, Judge Henries, being the judge presiding over the proceedings and the resident circuit judge, made the events in this case peculiar.

Nevertheless, given what we have said above, we are constrained to give credence to the records of the court below, and thus confirm that Judge Henries did have the authority to render the ruling that he gave and we hold the said ruling to be valid and legal. Whether the ruling is correct and in keeping with law on the issues decided, remains a different matter.

We now return to the four issues raised by the defendants-in-error, starting with the payment of accrued costs. The sta-tute quoted above makes it a prerequisite, i.e. mandatory, that an applicant for a writ of error must first pay accrued costs. The defendants-in-error, in support of their contention that accrued costs had not been paid, obtained from the marshal of the Supreme Court a certificate that the plaintiffs-in-error had not paid to the marshal any accrued costs in the case.

In response, the plaintiffs-in-error argued that the certifi-cate of the marshal of the Supreme Court is ineffective and irrelevant to the case at bar because accrued costs are to be paid in the trial court reimbursing the opposing party of all costs he had accrued in the trial court prior to, and which had led to the institution of, the error proceedings in the Supreme Court.

We are in full agreement with the plaintiffs-in-error that the proper person (s) to establish and certify the payment or nonpayment of accrued costs should have been either or both the clerk and/or sheriff of the Civil Law Court. This not having been done, the contention of defendants-in-error relative to the nonpayment of accrued costs is not sustained.

The next issue is whether or not an error petition should be venued before the Justice in Chambers or the full bench.

The statute, quoted *supra,* provides that either the Supreme Court or an assigned Justice (meaning either the Chief Justice or the Justice in Chambers) shall grant or deny the application for the writ. See Civil Procedure Law, Rev. Code 1:16.24121, *supra.*

But the Rules of Court specifically provide: "The Justice in Chambers may refuse to grant the application for a writ of error if in his opinion the statutory requirements for issuance are not met, or where the grounds for granting are not sufficient. The plaintiff-in-error may appeal to the Court *en banc* for review of the ruling denying the granting of the ap-plication as a matter of right. However, where the allegations of the application warrant the granting of the application, the Chambers Justice shall order the writ issued and direct the Clerk of Court to docket the proceedings for hearing by the full bench." The Rules continue: "Where a party has for good reasons failed to take an appeal as provided by law, there may be granted to such party by the Justice presiding in Chambers, a writ of error..." *Rule IV, Parts 7 and 8, Supreme Court Rules as amended and revised January 1999.*

The defendants-in-error have contended that since error proceedings, like appeals, are heard by the full bench, the petition for the writ of error should also have been venued before the full bench and not before the Chambers Justice alone. In keeping with the statute and Rule of Court, quoted *supra,* coupled with the practice and procedures in this jurisdiction established over the years, we find and hold that it was not an error or a

violation of the law for the plaintiffs-in-error to venue their application or petition before the Chambers Justice. In fact, the Rules of Court specifically provide that the Chambers Justice shall order the writ issued and direct the Clerk of Court to docket the case for hearing by the full bench. Therefore, the contention of the defendants-in-error in that respect is not sustained.

The third issue is whether or not error will lie where exceptions were taken to the judgment by the court appointed counsel, an appeal announced and, within the ten days prescribed by law for the filing of the bill of exceptions, the party instead files a petition for error on the fifth day after the rendition of the judgment? There are two aspects to this issue. Firstly, the statute and the Rules of Court provide that the basis for error is that an appeal was not announced from the judgment and, secondly, that the failure to announce an appeal was for a good reason. The first part is the failure to announce an appeal and the second aspect is the reason why an appeal was not announced. We shall treat them separately.

The records certified to this Court from the trial court revealed that Judge Henries deputized Attorney Samuel R. Clark to take the ruling for and on behalf of the plaintiffs-in-error, who were defendants in the court below. The records showed also that Attorney Clark accepted his appointment and that after the ruling was made, he excepted to it and appealed from it to the Supreme Court. Ordinarily, this would have been sufficient to deny a petition for a writ of error because an appeal was announced. However, there is a problem in denying the petition in the instant case. The plaintiffs-in-error have challenged the truthfulness of the records which showed that the judge actually appointed Attorney Samuel Clark to sit in for plaintiffs-in-error, and that the said attorney excepted to the ruling and appealed therefrom. To buttress their challenge made to the records and their denial of the truthfulness there-of, the plaintiffs-in-error proferted a sworn statement, in the form of an affidavit signed by Attorney Clark, who says therein:

> "He never took any Ruling or judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, on behalf of Counsellor J. Emmanuel R. Berry, in any case in which Counsellor Cyril Jones was opposing counsel; neither did he ever acknowledge his appointment by Judge Wynston Henries to take any ruling or judgment in the above case between Counsellor J. Emmanuel R. Berry as counsel for the petitioners and Counsellor Cyril Jones as counsel for the respondents...."

Thus, the proper thing to do in such circumstances is to conduct an investigation. But that cannot be done in the Su-preme Court since we are sitting in our appellate jurisdiction. It is because of our inability to investigate and determine which statement is actually the truth as between the court records and Attorney Clark's affidavit that we are reluctant to outrightly deny the petition. Because there is doubt that an appeal was really announced, we are constrained to allow the error proceedings, and we so hold.

As we stated earlier in this opinion, the law on error is that an appeal was not announced for a good reason. We have dealt with the failure to announce the appeal. We now turn to

the reason why the appeal was not announced.

Again, the certified records revealed that Judge Henries heard oral arguments on the motion and resistance on January 28, 2002, and reserved ruling thereon pending the issuance of a notice of assignment. According to the defendants-in-error, Judge Henries issued the assignment on February 21, 2002 for ruling to be made on February 27, 2002. The sheriff's returns indicate that when the assignment was taken to Counsellor Berry for service on February 21st, he received it, read it, and observed that the assignment did not indicate what the case was being assigned for and that he therefore refused to sign for it. The returns further indicated that the bailiff came back and the clerk then typed in the word "Ruling". Upon the return of the bailiff to Counsellor Berry's house on February 26, 2002, with the corrected assignment, the bailiff met Mrs. Berry, who said that Counsellor Berry was to go to Bassa the next day, February 27, 2002, the day on which the ruling was to be made, and hence, she did not take the assignment.

The defendants-in-error contended that Counsellor Berry did not have an established office for purposes of service of papers, etc. During the arguments before this Bench Counsellor Berry admitted the allegation that he did not have an office, but he sought to justify the same. The failure of Counsellor Berry to maintain an established office was a clear violation of the standing orders of this Supreme Court that each lawyer (member of the Bar) should maintain a visible office for the purpose of service of papers and that he/she must submit to the clerk of court the full address of the said office, including the telephone number(s). Counsellor Berry and others similarly situated are in contempt of this Court for this flagrant and deliberate violation of and disobedience to the Court's order that they maintain visible and accessible offices to enhance the legal process and ensure the service of papers. All lawyers are hereby reminded of the Supreme Court Judicial Order, issued November 7, 2001, requiring all lawyers to establish clear and accessible offices and to submit that information to the Clerk of the Supreme Court. This Court hereby reaffirms its Judicial Order, referred to above, and says that any counsellor-at-law who fails to comply with this requirement shall be subject to the penal measures laid down in said Judicial Order, and that any continued violation and disregard of said Order will result in this Court declaring that such lawyer shall not be permitted to practice law directly or indirectly in this Republic until and unless there is confirmed compliance and such a ban is lifted by the Supreme Court. See the case *In re: Contempt Proceedings Against Counsellor Frances Johnson-Morris et al,* 40 LLR (2001), decided on December 21, 2001 at the October Term, A. D. 2001 of this Court.

As to whether Counsellor Berry had good reason for not announcing an appeal, this Court, after considering all the circumstances, answers in the affirmative. When the notice of assignment was served on him the first time on February 21, 2002, some defect or omission was discovered, for which it was taken back to the clerk of court to insert the word "Ruling". Thereafter, it was not taken back to be served on him until February 26, 2002, five days later

and one day be-fore the assigned date for the ruling. The bailiff did not meet him in person but instead met his wife. This decision would have been different had Counsellor Berry been met in person.

The Court noted that had Counsellor Berry maintained a visible and accessible office, service would have been effective if the assignment were left with any office staff. But where, as in the instant case, Counsellor Berry was working out of his house (residence), that poses a problem. Yet even there, service would have been effective if his wife had agreed to take the notice of assignment from the bailiff. We note here that by using his home for office purposes, Counsellor Berry opened up and left his family vulnerable to intrusion into their privacy and also to being served with process or papers. Having clarified this issue, we will disregard the service of the notice of assignment at Counsellor Berry's home on his wife, which she refused to take because the counsellor was not at home at the time. We therefore hold that service on Counsellor Berry was not complete on February 26, 2002, and for that reason we hold further that his failure to announce an appeal was for a good reason, i.e. the lack of notice. We have arrived at this holding because, as we had earlier ruled and held, there is a dispute as to the appointment of a lawyer to take the ruling on behalf of Counsellor Berry, as per the denial by Attorney Samuel R. Clark. This is especially the case since we cannot investigate the dispute at this level. We have therefore determined to give Counsellor Berry the benefit of the doubt.

Before leaving this issue, there is one aspect of the case which we cannot allow to go unnoticed. The aspect to which we refer is that the judge handed down his ruling February 27, 2002, meaning that the ten days within which to file the bill of exceptions would have expired on March 9, 2002. In the instant case however, instead of preparing and filing his bill of exceptions, the plaintiffs-in-error, acting through his counsel, Counsellor Berry, proceeded on March 4, 2002 to file a petition for a writ of error, a period of only five days after the rendition of the trial court's judgment. In other words, there was sufficient time to have prepared the bill of exceptions and presented it to the judge for approval. The plaintiffs-in-error have not alleged that their bill of exceptions was presented to Judge Henries and that he refused to approve same. Had they followed that procedure, this would have set the stage for a remedial process, but not a writ of error; instead, mandamus would have been the proper proceeding to compel the judge to sign the bill of exceptions.

We therefore want to sound this note of caution to all lawyers and parties. There is no substitute for appeal where there is adequate remedy through the appeal process, and we will not entertain short-cuts and bypasses to that process. This case is not a model and should not be the pattern to follow or the basis upon which to rely to bring error proceedings in order to avoid the regular appeal process. The appeal statute is clear and is to be strictly observed.

It is common knowledge that when judgment has been rendered and an appeal has been announced and granted, the appeal process goes into play and the next step is to file the bill

of exceptions within ten (10) days of judgment and the appeal bond within sixty (60) days. The plaintiffs-in-error circumvented this process by bringing these error proceedings, quite contrary to the intent of the provisions of the error statute. They cleverly avoided all the requirements for a normal appeal, especially the requirement to procure or obtain an appeal bond. This we seriously frown upon, and we caution lawyers not to engage in such behavior hereafter as it will be met with the strictest sanction.

The last issue raised by the defendants-in-error is whether an attorney who has knowledge of an assignment, raises technicalities as to its issuance, and then fails to appear upon that assignment, can claim that he has been denied his day in court. Generally, and in the normal course of things, this question would have been answered in the negative. However, given the special circumstances in this case, which makes it peculiar, we are constrained to answer in the affirmative and to grant the error.

Some of the peculiarities of this case are: (1) In the magisterial court, the events which led to the default judgment are peculiar in that Counsellor Berry is a Seventh Day Adventist and as such was worshiping on Saturday when the assignment was served on him. Even though Saturday is a working day in the court, yet the assignment could have waited or been taken back to him later Saturday evening, but not while he was in church. (2) Counsellor Berry uses his house as both office and home. (3) When the assignment from the Civil Law Court was taken the first time, he observed that it contained a deficiency and, hence, it was taken back for correction. It was not taken back to him the same day but some five days later, at which time the bailiff did not meet him in person but his wife. (4) The defendants-in-error claim that a lawyer was deputized to take the ruling for Counsellor Berry, but this lawyer, Attorney Samuel Clark, denied that allegation in his sworn affidavit. Since the Supreme Court cannot take evidence on appeal, and a doubt was cast over the truthfulness of the records, the case has to go back to the trial court. (5) The plaintiffs-in-error came by error instead of appeal, when the

time to perfect an appeal had not yet lapsed.

For all of the foregoing reasons and more, we are of the considered opinion that there were too many irregularities for which this case has to be remanded to the trial court for correction and to afford both parties an equal opportunity to appear and prosecute and/or defend their respective interests and rights. We therefore hereby order all the proceedings below set aside and vacated, both in the Civil Law Court as well as in the magistrate court. The complaints made and papers filed are also set aside and declared void and of no legal effect. The parties are hereby ordered returned to *status quo ante.* At their choice and option, the parties are free to institute new proceedings in whichever court has jurisdiction over the action and subject matter of whatever case is brought. The petition for a writ of error is hereby granted and the ruling below reversed.

Wherefore, and in view of the forgoing, it is the considered opinion of this Court that these error proceedings and the petition be and the same are hereby granted. The ruling of

the trial court is reversed, all proceedings in all the courts below set aside, and the parties returned to *status quo ante*. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge therein presiding to resume jurisdiction over the case and to give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

Petition granted.