

THE CORPORATION OF IBM, by and thru its Manager, CHARLES QUIST,
Petitioner, v. **HIS HONOUR HENRIQUE PEARSON**, Assigned Circuit Judge, Sixth
Judicial Circuit, Sitting in its December Term, A. D. 1982, and **SEKU SIRLEAF**,
Respondents.

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

Heard: April 18, 1983. Decided: July 6, 1983.

1. The sheriff's returns showing service of a court order is presumed to be correct, but the presumption is rebuttable and not conclusive.
2. It is a violation of normal procedure for a trial judge, noticing the absence of a party for trial where said party is reported by the sheriff to have been duly served, not to conduct a proper investigation of the circumstances prior to disposal of the matter by ex parte hearing.
3. It is a cardinal rule that judges ought never to hasten in the disposal of matters if so doing would be prejudicial to the interest of parties.

In an action of damages filed in the Sixth Judicial Circuit Court, Montserrado County, the notice of assignment was served on petitioner's counsel one hour after the time assigned for the hearing of the case which was scheduled for the same day as the service of the notice of assignment. Petitioner made notation on the assignment to the effect of the late receipt. An ex parte hearing was held and a verdict returned in favour of corespondent Seku Sirleaf, from which petitioner files a petition before the Chambers Justice for a writ of prohibition in order to stay a ruling on the said verdict. The Chambers Justice denied the petition and on appeal to the Full Bench, the petition granted and matter ordered retried. The Court noted that the trial judge should not have been hasty in disposing of the case, and that he should have first inspected the returns of the sheriff, taken note of the notation made by counsel for petitioner to the effect that he was served the assignment late, and conducted an investigation of the said allegations, before ruling on the request of counsel for co-respondent. The Court held that it was error for the trial judge not to have undertaken the foregoing steps and that his action, being erroneous, warranted the granting of the petition and the reversal of the judgment complained of.

Raymond A. Hoggard appeared for the petitioner. S. Edward Carlor appeared for the respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The petitioner is a defendant in an action of damages instituted by Co-respondent Sekou Sirleaf in the Sixth Judicial Circuit Court of Montserrado County. In his complaint, the

plaintiff/respondent maintained that the defendant/petitioner leased his house for Six Thousand (\$6,000.00) Dollars but before the expiration of the terms of the lease agreement, the petitioner left co-respondent's house without turning same over to him thereby exposing it to intruders who had entered upon and damaged it to the detriment of the co-respondent. Therefore he prayed for \$6,000.00 as special damages and the award of general damages as the jury may deem sufficient commensurate with the embarrassment, inconvenience and discomfort that he had suffered traceable to the act of petitioner. Law issues were disposed of and the case assigned for trial on the 7th of February, 1983 at 8:30 a.m. The notice of assignment is dated February 5, 1983 and served on February 7, 1983. Although the returns of the sheriff indicated that the notice of assignment was duly served on all the parties; yet, an inspection of said notice of assignment revealed that counsel for petitioner, after signing the notice, made the following notation: "Received at 9:35 a.m. after assigned hour." Even though this notation raises the issue of late service, yet the records are void of any ascertainment made by the trial judge by way of investigation as to the truthfulness of the notation made by the petitioner's counsel, especially so when the case was tried on the self same day the notice of assignment was served on petitioner. The application made by the co-respondent's counsel and the ruling of the judge are quoted below:

"The plaintiff is represented by Counsellor S. Edward Carlor, who wishes to inform court that the matter was assigned for 8:30 this morning for trial. It is now 9:50 a.m., even though the defendant acknowledged the notice of assignment but up to and including this period of 9:50 a. m., the defendant has not appeared. The plaintiff therefore requests court that he be permitted to produce evidence after the defendant has been called three times at the door, and based upon plaintiffs evidence, the jury be directed to bring a verdict for him. And respectfully submits. "THE COURT: The returns of the sheriff show that the notice of assignment was served on both parties informing them of the hearing of this case to commence on the 7 th day of February, 1983, at 8:30; it is now 10: 00 a. m. and the counsel for the defendant is not present. The application of plaintiff's counsel is granted and the sheriff will proceed to the door and call the defendant three times and make his report. And so ordered."

After granting the above quoted application and proceedings ex parte had, the jury returned a verdict awarding \$6,000.00 as special damages and \$5,000.00 as general damages; but before the judge could render final judgment, counsel for defendant fled to the Chambers of Mr. Justice Smith with a petition for the issuance of the extraordinary writ of prohibition to restrain the Judge from rendering final judgment on the verdict. The alternative writ was issued and after arguments pro et con, the Justice in Chambers denied the peremptory writ and quashed the alternative writ with costs against the petitioner. Hence, this case is before us on appeal from the Chambers Justice.

Petitioner strenuously argued before us that despite the fact that the notice of assignment was served on him very late, nonetheless he walked from his office, since there was no gas in his car due to the scarcity of gas in the country at the time and no taxi would stop for him to take him to the Temple of Justice. The he got to the court only to discover that the judge had hastily concluded the trial and that the jury had been disbanded.

He therefore had no other choice but to file this petition with the Clerk for the attention of the Justice in Chambers to safeguard the interest of his client, he maintained. He also contended that a judge should not be in a hurry in disposing cases if by so doing his hasty action would be prejudicial to the interest of the other Party.

The only issue before us is whether or not the returns of the sheriff were conclusive in view of the notation made by the counsel for petitioner on the notice of assignment as to the time of service, especially when the trial was concluded on the same day the notice of the assignment was served on the parties. The sheriff's returns showing service is presumed to be correct, but the presumption is rebuttable and not conclusive. *Fagans v. Harris*, 23 LLR 190 (1974) and *Freeman v. Kini*, 23 LLR 413(1974). We hold that the judge should have conducted an investigation into the contention of the petitioner's counsel and the records of said investigation should have formed part of the records in the case. For, if the notice for the trial was served on petitioner one hour after the assigned hour, then the trial judge should have either allowed more time or issued another notice to be served on the parties. This not being done was a violation of the normal procedure.

It is also a cardinal rule that judges ought never be hasty in the disposal of a matter if so doing would be prejudicial to the interest of parties. *Davies v. Yancy et al.*, 10 LLR 89, 96 (1949).

With regards to respondent's contention that petitioner had remedy by error proceeding, this Court held in the case, *MacCarthy v. Gray*, 23 LLR 142 (1974), "though a writ of prohibition should be providently issued, since it is an extraordinary remedy, nonetheless the mere existence of another remedy is not in itself necessarily sufficient to deny issuance of the writ for such other remedy must be plain, speedy, and adequate in the circumstances of the particular case."

In view of the foregoing, it is our holding that the ruling of the Chambers Justice be and the same is hereby reversed and the peremptory writ of prohibition granted as to the rendition of final judgment on the verdict. The Clerk of Court is, however, instructed to include in the mandate a clause ordering the court below to resume jurisdiction over the case and proceed with the trial commencing from the empanelling of a trial jury. Costs to abide final determination of the damages suit. And it is so ordered.

Petition granted.

