

Abraham Donzo of the City of Paynesville, Montserrado County Republic of Liberia PLAINTIFF -IN- ERROR VERSUS His Honor **Emery S. Paye**, Assigned Circuit Judge Sixth Judicial Circuit, Civil Law Court, His Honor **Joseph S. Doe**, Associate Magistrate, Paynesville City, Montserrado County and **Samuel Barbour**, Republic of Liberia DEFENDANTS-IN-ERROR.

LRSC 29

APPEAL. PETITION FOR WRIT OF ERROR

HEARD: April 22, 2010 DECIDED: June 29, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case on review is yet another matter growing out of a summary proceeding action in which a party, in total disregard to court's orders and the judicial system of this country, ignores the summons and assignments sent him to appear before a magisterial court. Having failed to appear and a judgment rendered against him, he runs to a Circuit Judge on summary proceedings when the judgment is being executed, and the judge, for reasons best known to himself, overturns the judgment made below, sometimes without a proper hearing, as a result of which our court system becomes ineffective, allowing a party to thwart justice with impunity.

In this case, the records shows that the plaintiff in error and his grantor, Nelly Barbour Richards, instituted a summary proceedings to recover possession of real property before the Paynesville Magisterial Court against the defendant in error and other tenants. The plaintiff in error alleged that Nelly Barbour sold him a piece of property on which were two dilapidated houses, and he obtained an administrator's deed. The occupants on the property were approached to vacate it and they asked for time to comply. Having been given reasonable time, the occupants, without any title or right to the property, refused to vacate. The plaintiff in error and his grantor therefore instituted an action of summary proceedings to recover possession of real property.

Magistrate Joseph S. Doe, who presided over the summary proceedings to recover possession of real property action, caused a writ of summons to be issued and served on the defendant in error and other occupants of the property. Thereafter two notices of assignments were served on them. The defendants refused to accept the court's precepts and did not appear in court in obedience to the summons and subsequent court assignments. Thereafter, the magistrate proceeded to hear the matter and

rendered judgment against the defendants in error along with the other occupants. A writ of possession was issued to evict them from the property. This magisterial proceeding took place in April 2006.

Abraham Donzo, the plaintiff in error alleges that he then proceeded to renovate the property at an estimated cost of ten thousand United States dollars. Thereafter, one of the evicted occupants known as Neezoe, assumed the name of Samuel Barbour and took Magistrate Doe, up on summary proceedings before Judge Emery Paye, who was then the assigned Judge in the Sixth Judicial Circuit, Montserrado County. Samuel Barbour, defendant in error, alleged in his petition before Judge Paye that he and the occupants did not have their day in court as they were never served copies of either the writ of summons or assignments, and that the returns of the ministerial officer were false and misleading.

The plaintiff in error in the petition for a writ of error states that the Judge Paye called for a conference in the summary proceedings matter, but while the conference was being held, the Judge asked that the conference be continued to a later date as he was leaving to attend the admission program of law graduates to the BAR. The plaintiff in error says that to his uttermost surprise, without any further notice to him to appear, The Judge sent a mandate to Magistrate Doe, dated January 22, 2007, about a year after plaintiff in error was put in possession of his property, instructing the magistrate to resume jurisdiction of the matter, set aside his ruling and final judgment, have the defendants repossessed of the property, and the complaint dismissed. The plaintiff in error further alleges that without assigning the reading of this mandate from Judge Paye, the magistrate had the ministerial officers go and dispossess him of his property, putting in possession the defendant in error of the premise which include not only the house occupied by him previously but also the one which other occupants had occupied and had been evicted without contestation.

The plaintiff in error stated that he filed a petition for summary proceeding before Judge Paye complaining the magistrate of having dispossessed him without serving him a notice for the reading of the mandate, but Judge Paye did not hear his petition until the court term ended. The plaintiff in error then filed a petition for error before the Justice in Chambers alleging that because of the actions of both Judge Paye and Magistrate Doe, he did not have his day in court to enable him take the appropriate legal steps to secure his property.

The writ was issued by this Court and the matter assigned for hearing at various times during which the defendant in error was not represented. Exercising its usual caution

in handling property matters, this Court instructed the Clerk to write asking the defendant in error to appear before the Full Bench to address the concerns of his non representation. On November 8, 2008, the defendant in error appeared and asked for two weeks postponement to enable him retain a counsel. He alleged that he was not aware of the petition filed against him, neither was he served the petition for the writ of error.

Beyond this Court's granting the request for two-week postponement, the defendant in error continued to fail to show up for hearings when the matter was assigned. He was again cited and warned to retain a legal counsel to represent him or the Court would proceed without his representation.

It was not until April 14, 2010, that the defendant in error informed the court that he had requested Counsellor Joseph Blidi to augment and strengthen his legal representation although this court was not aware of any other legal representation that he had and had decided to strengthen. On April 22, 2010, Counselor Joseph Blidi in obedience to the court's assignment appeared on behalf of the defendant in error and made a submission to have the matter further postponed to enable him locate the defendant in error and ascertain from him the facts so as to have him file a brief. This Court, having made a decision not to postpone the hearing of this matter any longer, denied the submission and ordered him to proceed with his representation, stating that counselor Blidi should have spoken with his client and ascertain the facts before accepting to represent him. Besides, the defendant in error has been in possession of the property since January 2007, and it was to his advantage to have this matter continuously postponed.

A review of the court's file reveals an instruction by Judge Emery Paye to the Clerk of Court, to cite the respondents to a conference in response to the petition filed by the defendants in error. A writ of summons dated November 17, 2006, was then issued by the Clerk, calling for the parties to appear for a conference on the 23rd day of November 2006. The Sheriff's returns shows that the respondents Magistrate Doe, the defendant in error, and his grantor were served the summons. The Court's file further reveals another order to the Clerk of Court to cite the parties for a conference slated January 19, 2007, but no record is on file of an assignment being made or served for this date. Instead, the courts file shows the next action from the Judge to be an instruction to the Clerk to send a mandate to the respondent magistrate to resume jurisdiction of the matter, set aside his several rulings and final judgment, repossessed the defendant of the property, and dismiss the plaintiff's complaint. This order was complied with on January 22, 2007. The file shows no record that when the magistrate

received the Judge's mandate, he sent out an assignment for reading of the mandate.

Rule 33 of our Judiciary rules governing Circuit Courts requires that upon the application of a party by petition for summary proceedings against a magistrate or justice of the peace, the judge shall cite the parties to a conference prior to issuing the writ which contains a stay order. Even if this Court was to assume that a conference was held, there is no record of a writ issued, or assignments made and served for hearing of the petition. What we see in handwritten on the inside of the court's file are two instructions to the Clerk to cite the parties to a conference, for November 23, 2006, and January 19, 2007, after which, an instruction to the Clerk of Court to send a mandate to the magistrate to set aside his rulings and judgment and repossess the defendant in error.

Counsellor Blidi incessantly argued before us that his client, the defendant in error, did not have his day in Court. We reminded him that the issue before us is not whether his client had his day in court. In fact, we say his client's issue of not having his day in court had been addressed by the court below but in a way the plaintiff in error finds legally untenable prompting him to come to this Court for redress. What is before us is the plaintiff in error's contention that he did not have his day in court when Judge Emery Paye failed to have a conference on the petition for summary proceedings, issue a writ requesting that plaintiff in error file his returns to the petition, and thereafter have a hearing from which a final judgment would be made. This, the defendant in error says would have given him and his grantor the opportunity to except to the ruling and announce an appeal. In addition, the magistrate did not send out an assignment for the reading of the mandate before evicting him from his property. This would have also given him another opportunity to take the necessary legal steps to secure his property.

Under our jurisdiction, the Circuit Court has the power, authority and jurisdiction to issue a writ of summary proceeding in the nature of prohibition addressed to inferior courts and their officers in exercise or aid of their jurisdiction over them, but this Court has said a writ of prohibition will not be issued where there is no showing that a court proceeded by the wrong rule or that the petitioner had actual notice of the suit but neglected to act in his interest. *The Commercial Bank of Liberia Vs. Her Honour Casellia Steward and the American Expressed Company*, 30 LLR 364, (1982).

Our Constitution has treated property rights as a fundamental right, Art.11(a); and Art. 20(a) states that no one shall be deprived of property except in accordance with due process. Neither defendant in error nor the records in this matter before us has shown

evidence that there was due process in evicting the plaintiff in error from the property.

The plaintiff in error alleges that the defendant in error and other tenants refused to accept the courts precepts and default judgment was rendered against them. The Court's file show a number of court's papers sent out to the defendant in error and other occupants, and the Sheriff reported thereon that the defendant in error and other occupants of the property had refused to accept the court's papers, stating that they are not aware of anyone owning the property.

This Court, recently in its opinion of the case, Barclay Teah vs. Kemokai, March Term, 2009, stated that our courts are under no obligation to compel a party litigant who waives his right to appear and be heard, to appear and participate in a trial involving him. Any litigant who chooses to ignore assignments for appearance in court does so at his own risk, as our courts will proceed to dispose of such matter before them without his participation. Again this Court has said, "The failure of a party to appear, plead, or proceed to trial is ground for entering a default judgment against the defaulting party" Liberia Logging and Wood Processing Company vs. Allison, 40 LLR 199, 206 (2000).

Where it is evident from court's records that a party had refused to accept court's precepts or to appear in court when duly served notices to appear, the appellate court is under an obligation to take note of the records of the defaulting party's wanton neglect and disobedience to the court order and defend his cause; and the appellate court must not subsequently aid such party, since to do so will lead to the public disregard of our courts orders and a failure of our judicial system.

Counsel for the defendant in error requests us to take note of the plaintiff in error's prayer in his brief, requesting this Court to send the case back to the court below for jury trial since the defendant in error is contesting title. This Court says it is not bound by defendant in error's prayer as we have no issue of title or ejectment before us. What this Court has to determine from the records before it, is whether the plaintiff in error had his day in court before being dispossessed of property he claims to own. From the records of the case, we are convinced the plaintiff in error did not have his day in court. Our law provides that this Court will grant a writ of error where the petitioner has been deprived of his day in court.

WHEREFORE, the Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction ordering that the defendant in error be evicted along with all other occupants on the property and the plaintiff in error be immediately put

in possession of the property, giving effect to this judgment. Costs ruled against the defendant in error. And it is hereby so ordered.