

**GANTA SAWMILL** by and thru its General Manager, Petitioner, v. **HIS HONOUR  
FREDERICK K. TULAY**, Assigned Circuit Judge, Eight Judicial Circuit, Nimba County,  
and **HOUSING BUILDERS COMPANY**, represented by its General Manager,  
Respondents.

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

Heard: June 14, 1983. Decided: July 8, 1983.

1. The necessity for an assignment of error required by statute or rule of court is a matter of substance, and not a matter merely of form which can be waived or dispensed with by agreement or conduct of the parties or their counsel.
2. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute.
3. Where the statute in question specifies the only manner in which an act is to be performed, its observance is mandatory. This limitation is the more mandatory where the statute in question specifies the only manner in which an act is to be performed.
4. The law does not give to the Supreme Court the authority either to add or take away from what the Legislature has commanded, unless the command breaches provisions of the Constitution; and in such cases, the constitutional issue must be squarely raised.
5. In a petition for a writ of error, it is mandatory that the parties be designated as specified by the statute and that the accrued costs be paid as a prerequisite to the issuance of the writ.
6. Where the jurisdiction of the Supreme Court constitutes its authority, capacity, power or right to act, it would be a travesty of justice for the Court to act when such authority, capacity, power or right has not been properly and legally conferred upon the Court by law.
7. The voice of our statutes silences the common law forever.

Co-defendant-in-error, Housing Builders Company filed foreclosure proceedings against the plaintiff-in-error, Ganta Sawmill, in the Eight Judicial Circuit, Nimba County. The writ of summons served on the plaintiff-in-error specified that the plaintiff-in-error should appear or file returns or an answer within less than ten days, a period required in a normal proceeding. When the plaintiff-in-error failed to answer or appear on the date specified in the summons, the trial court, upon the application of Co-defendant-in-error Housing Builders, entered a judgment by default. The petitioner therein was then allowed to present evidence in support of its claim. Ruling on the matter was then suspended to another date.

However, on the day after receipt of the summons and one day before the rendition of judgment, plaintiff-in-error filed returns to the petition in foreclosure. Notwithstanding, a

day thereafter the trial court entered a decree in favor of the Codefendant in-error Housing Builders. It was from this decree that the plaintiff-in-error sought redress from the Supreme Court by the filing of a petition for a writ of error. The petition was granted, after a hearing by the Justice in Chambers. However, on appeal to the Full Bench, the ruling of the Chambers Justice was reversed.

The Supreme Court held that it could not entertain the petition on the merits or go into an examination of the errors allegedly made by the trial court, in view of the challenge to its jurisdiction by the defendants-in-error. The defendants-in-error had asserted that the Court was without jurisdiction to hear the petition because the plaintiff-in-error had failed to pay the accrued costs prior to filing of the petition, as mandated by the statute; and further, that the petitioner had characterized the parties as petitioners and respondents, rather than plaintiff-in-error and defendants-in-error, as required by law. The Court sustained both contentions and refused jurisdiction over the case.

The Court noted that the requirements of the statute were mandatory and could not be waived by the parties. It noted also that it was sound to follow the clear mandate of the Legislature and that the said Act superceded any common law principles to the contrary. It opined that the Justice in Chambers was in error when he granted the petition, given the jurisdictional challenge raised by the defendants-in-error. The Chambers Justice's ruling was therefore reversed.

Raymond A. Hoggard appeared for the plaintiff-in-error. Clarence E. Harmon appeared for the defendants-in-error.

MR. JUSTICE KOROMA delivered the opinion of the Court

On December 5, 1981, foreclosure proceedings were instituted against the Ganta Sawmill Corporation by Housing Builders Company, both parties named as being represented by their respective managers. A writ of summons was issued out of the office of the clerk of the Eighth Judicial Circuit Court, Nimba County, commanding the sheriff to summons the plaintiff-in-error, respondent in the foreclosure proceedings, to appear and answer the petition on December 9, 1981, four days after the issuance of the writ of summons. The writ also instructed the clerk to notify the plaintiff-in-error to file its formal appearance on or before the 8<sup>th</sup> of December, 1981, and that upon its failure to do so, judgment would be entered against it by default. On the same date of its issuance, the writ of summons was served and returned served by the sheriff of Nimba County on one Siaka, who was said to be an official of the plaintiff-in-error company.

On December 9, 1981, the day in the trial court when plaintiff-in-error was required to appear and answer in the foreclosure proceedings, the case was called for hearing, with Counselor Clarence E. Harmon announcing representation for the Housing Builders

Company, petitioner in the trial court and co-defendant in-error herein. When Counselor Harmon observed that the plaintiff-in-error was neither in court nor had filed an answer or formal appearance, he prayed the court to call it three times at the door of the courtroom. This request having been granted and the plaintiff-in-error called three times, with the sheriff reporting that he had failed to answer, co-defendant-in-error, Housing Builders Company requested the court to enter a plea of not liable in favour of the plaintiff-in-error and to allow co-defendant-in-error to produce evidence to establish its case. The application was granted, the plea of not liable was entered on the minutes of court, and witnesses for Housing Builders Company were qualified, allowed to depose, and thereafter discharged. Housing Builders Company then rested evidence and ruling in the case was reserved until December 15, 1981.

On December 14, 1981, nine days after the service of the writ of summons on the plaintiff-in-error, it filed in the office of the clerk of court an answer in which it prayed for the dismissal of the petition for foreclosure. Whether or not the court was ever informed of the filing of the plaintiff-in-error's answer is not known as no mention of it was made of it either in the minutes of the court or in the court's final judgment.

The court entered final judgment on December 15, 1981, a day after the filing of the plaintiff-in-error's answer. Ganta Sawmill Corporation, not being in court nor represented by counsel during the rendition of the final judgment to register exceptions to the said judgment and take an appeal therefrom, fled to the Chambers of this Court and petitioned for a writ of error. The alternative writ having been issued, the defendant-in-error filed their returns and appeared for hearing. The Chambers Justice heard and granted the petition and ordered the Clerk to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction and order the issuance of the writ of re-summons to be served on the plaintiff-in-error according to law, allowing it time to file its returns to the foreclosure proceedings before the hearing of the case. From this ruling, the defendants-in-error appealed to this Court en banc for a final determination.

The issues raised by Ganta Sawmill Corporation, plaintiff-in-error, for this Court to decide were: (1) was Ganta Sawmill Corporation legally summoned and brought under the jurisdiction of the trial court? and (2) was the said corporation notified by regular assignment to be present on the 9th and 15th of December, 1981, the same being the dates of hearing of the case and entry of a final decree, and if the trial court did not, would error lie?

Those issues raised by co-defendant-in-error, Housing Builders Company, for the consideration of this Court were: (1) which statutes take precedence in foreclosure proceedings where the complaining party files an indemnity bond, the statutes controlling regular actions or statutes controlling special proceedings? (2) Did this Court acquire jurisdiction over the case when the mandatory prerequisite for the filing of a petition for a

writ of error had not all been met? (3) What is the office of the writ of foreclosure? and (4) did the lower court acquire jurisdiction over this case?

The two issues raised in the plaintiff-in-error's brief and the fourth issue raised in the defendants-in-error's brief embrace jurisdictional issues with regards to the trial court and therefore consolidation of those issues was necessary. However, we shall give priority consideration to count two of the defendants-in-error's brief which questioned the Supreme Court's jurisdiction over these error proceedings on the ground of failure by plaintiff-in-error to have complied with the mandatory statutory prerequisites regarding the filing of a petition for a writ of error. It is obvious that this Court of appellate adjudication cannot judiciously pass upon the issues raised by the parties if it is not properly clothed with jurisdiction to do so, as provided by law. Hence, we take recourse to the procedure on application and hearing of writ of error. The relevant provision of the statute states as follows:

"Application. A party against whom judgment has been taken, who has 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 As a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff-in-error, shall be required to pay all accrued costs, and may be required to file a bond in the manner prescribed in section 51.8. Such bond shall be conditional on paying the costs, interests and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed." Civil Procedure Law, Rev. Code 1: 16.24(1).

In count five of the returns, co-defendant-in-error, Housing Builders Company, prayed for the dismissal of the petition for the writ of error because of the plaintiff-in-error's failure to: (1) properly designate the parties as plaintiff-in-error and defendants-in-error, and (2) pay all accrued costs as required by statute. Recourse to the records in the case and to the petition filed in the Chambers of this Court reveal that the violations alleged in the returns are borne out by the records. The records reveal that the parties were designated as petitioners and respondents rather than as plaintiff-in-error and defendants-in-error. Moreover, although the petitioners were attacked in the returns for failure to pay the accrued costs, a prerequisite to applying for the writ of error, it decided not to file an answering affidavit to challenge or to withdraw and refiled petition. The fact regarding this statutory violation respecting the nonpayment of accrued costs, was acknowledged and confirmed by the Chambers Justice in his ruling on the petition. However, in resolving the legal issues raised, our colleague in Chambers decided to ignore the statute controlling and apply the legal maxim that "where the wrongs committed by both parties are equal, the position of the defendant in the court of origin is preferred." In other words, our colleague viewed the service of the writ of summons on one Siaka, said to be an officer of Ganta Sawmill Corporation, as legally null

and void and therefore he concluded that the trial court did not properly acquire jurisdiction over the plaintiff-in-error, respondent in the foreclosure proceedings. The question of the improper service of the writ of summons on the plaintiff-in-error company in the foreclosure proceedings and the trial that followed thereafter are the wrongs allegedly committed against the Ganta Sawmill Corporation which our colleague equated to the violation of the statute by the said company in applying for the writ of error, and which he considered as equal wrongs. Hence, the application of the maxim hereinabove granted quoted.

It is at this point that we have refused to follow the path chosen by our colleague in resolving the jurisdictional issue raised in the returns. This Court recognizes that, "the necessity for an assignment of error required by statute or rule of court is a matter of substance, and not a mere matter of form which can be waived or dispensed with by agreement or conduct of the parties or their counsel." 5 C.J.S., Appeal and Error, § 1218. Further, this Court held in the case *George v. Republic*, 14 LLR 158 (1960), that it had no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed. Our law does not give us authority either to add to or take from what the Legislature has commanded unless they said command breaches provisions of the Constitution; and in such a case the constitutional issue must be raised squarely. *Ibid.*, at 159. The specific wording and command of the statute in question places a strict limitation upon any person applying to the Supreme Court for a writ of error. It offers no option or choice as to the procedure in applying for the writ, but rather makes it mandatory that the accrued costs be paid as a prerequisite to the issuance of the writ and it specifies how the parties should be designated. This not having been done, the violator must suffer and not benefit from own act of violation.

We find it difficult, if not impossible, to compromise the argument of the petitioner or plaintiff-in-error to the effect that the trial court did not acquire jurisdiction over it by virtue of the improper service of the writ of summons, yet, insisted that this Court should assume jurisdiction over these error proceedings when jurisdiction has not been conferred upon it by operation of the statute controlling the said proceedings. This argument by the plaintiff-in-error amounts to seeking the aid of the law when the seeker offends and refuses to obey the law. Where jurisdiction constitutes our authority, capacity, power or right to act, it would be a comedy of error and a travesty of justice for us to act when such authority, capacity, power or right has not been properly and legally conferred upon us by law. Our action in such a case will be void of any judicial or legal effect.

We consider the issue of jurisdiction raised by the defendant-in-error to be legally genuine and it cannot therefore be brushed aside or overlooked by the application of the common law or legal maxim. The voice of our statutes silences the common law forever. Hence, we are estopped by this jurisdictional argument from giving judicial consideration to the

following points of argument: (1) whether or not the trial court legally acquired jurisdiction over Ganta Sawmill when the sheriff's returns showed that the writ of summons was served on one Siaka, whose office with Ganta Sawmill Company was not carefully defined, so as to decide whether he was the proper authority to receive precepts for the company? (2) Whether or not the plaintiff-in-error had its day in court on the dates of the hearing and rendition of the foreclosure decree? (3) which statutes take precedence in foreclosure proceedings where the complaining party files an indemnity bond, the statutes controlling regular actions or those controlling special proceedings? These are the issues that we would have been compelled to discuss and pass upon if the plaintiff-in-error had not defaulted and failed to bring these proceedings under the jurisdiction of this Court.

Wherefore and in view of the foregoing facts, circumstances and legal citations, we hereby refuse jurisdiction and hold that we should not hear the case on its merits. The ruling of the Chambers Justice is therefore hereby reversed, the alternative writ quashed and the petition denied. The Clerk of this Court is hereby instructed to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over this case to enforce its judgment. Cost is ruled against the plaintiff-in-error. And it is hereby so ordered.

*Ruling reversed.*