MARY GBEH, Plaintiff-In-Error, v. **CLAY BLAMAH and SARAH BOLLEY,** by and thru their husbands, CLAY BLAMAH and JOSEPH BOLEY, respectively, and **HIS HONOUR ALFRED B. FLOMO**, Judge Presiding over the November Term, A. D. 1976, of the Seventh Judicial Circuit Court, Grand Gedeh County, Defendants-In-Error.

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

Heard: November 30, 1982. Decided: February 4, 1983.

1. The object of the writ of error is to review, scrutinize and correct any error of law committed in the proceedings and during the trial.

2. A writ of error cannot cure negligence on the part of any party in the process of prosecuting or defending an action.

3. Where the alleged error of the trial court arose as a result of the negligence of the petitioner and his counsel, a writ of error cannot issue to correct the error.

4. The filing and services fees constitute the accrued costs mandatorily required to be paid by the plaintiff-in-error.

5. Filing fees consist of cost of stamps, clerk's filing fees and costs for issuing and signing affidavits.

6. Service fees consist of the sheriff's or messenger's pay according to mileage for serving the pleading.

7. The payment of accrued costs is not discretional, but is a mandatory prerequisite to the issuance of the writ of error and must be strictly complied with or the Supreme Court will refuse relief.

Plaintiff-in-error instituted an action in the Seventh Judicial Circuit, Grand Gedeh County. He took the stand, along with her witnesses, testified and rested her side of the case. On the same day, Co-defendants-in-error, Blamah and Bolley, took the stand and outlined the theory of their case. Thereafter, the trial was suspended. When the trial resumed the next day, plaintiff-in-error's counsel failed to appear, but sent a letter requesting for continuance. The request was resisted and denied, and the case was reassigned for the next day to permit

plaintiff-in-error to retain another counsel. When the trial resumed, plaintiff-in-error was absent, whereupon Co-defendants-in-error Blamah and Bolley, moved the court to consider his absence as abandonment of the case and to direct the jury to bring a verdict of not liable in favor of Co-defendants-in-error Blamah and Bolley. The motion was granted and upon the directives of the court, the jury returned a verdict of not liable, upon which a final judgment was rendered. It is from the final judgment that plaintiff-in-error applied to the Justice in Chambers for a writ of error contending that she did not have her day in court.

Defendants-in-error, in resisting the petition, contended that the trial court committed no error in that it was plaintiff-in-error who abandoned the prosecution of her case. Defendants-in-error also contended the application should be denied because plaintiff-in-error did not comply with the statutory requirements for the issuance of a writ of error by her failure to pay the accrued costs. From a ruling denying the petition, plaintiff-in-error appealed to the Supreme Court en banc.

The Supreme Court held that both plaintiff-in-error and her counsel were negligent in the conduct of the trial and that a writ of error cannot cure said negligence. The Supreme Court also held that payment of accrued costs was a jurisdictional requirement for the issuance of a writ of error, and since petitioner failed to pay the accrued costs, the Court cannot assume jurisdiction over the petition. The ruling of the Chambers Justices was therefore affirmed.

No appearance for the plaintiff-in-error. John T. Teewia appeared for defendants-in-error

MR. JUSTICE KOROMA delivered the opinion of the Court.

On the 18th day of January 1977, Mary Gbeh of Zwedru, Grand Gedeh County, by and through her Counsel, Counselor Clarence O. Tuning, filed a ten-count petition before His Honour S. Raymond Horace, Justice presiding in Chambers, praying for the issuance of the alternative writ of error, citing the defend-ants-in-error to appear and show cause why the peremptory writ should not be issued against them and they be made to pay compensatory damages to the plaintiff-in-error. The principal issue of contention which constitutes the complaint in the petition was that she did not have her day in court when the trial was terminated in her absence and final judgment entered against her.

In resisting this petition, the defendants-in-error filed a four- count returns raising two grounds of argument: (1) that the trial court committed no error when it terminated the case in the absence of the plaintiff-in-error and entered final judgment because the said plaintiff-in-error abandoned the prosecution of her case and (2) that the plaintiff-in-error cannot benefit from this petition for failure to meet the statutory prerequisite to the issuance of the

writ of error.

These issues in the petition and returns having been argued and passed upon by our distinguished colleague presiding in Chambers, Mr. Justice Morris, who quashed the alternative writ and denied the petition. The plaintiff-in-error has appealed from said ruling to the Full Bench for review and final determination.

This case having been duly assigned on November 22 for hearing on November 30, 1982, the counsel for plaintiff-in-error upon signing the assignment, addressed the below quoted letter to the Court:

Monrovia, Liberia
November 23, 1982
Their Honors,
The Chief Justice and Associates,
People's Supreme Court,
October Term, A.D. 1982 (In Session),
Temple of Justice,
Monrovia, Liberia
Your Honours:

I have the honor to say that, very casually at about 12:20 p.m., this afternoon, whilst walking on Broad Street, the Marshal accosted me with an assignment of hearing and arguments in re the case: Mary Gbeh, etc., v. Clay Blamoh et al, petition for a writ of error on Tuesday, November 30, 1982, at 9 o'clock in the morning. Fearing to appear contemptuous to Your Honours, for not affixing my signature to this notice of assignment, I signed same out of due respect for Your Honours and the People's Supreme Court. May I request leave of Your Honours to assert that I came to Monrovia this time, purposely to attend the enthronement of our Bishop George D. Brown as Arch-bishop of the Province of West Africa; and brought nothing with me like a file with legal documents. Moreover, this cause has been twice argued, even at the March Term, A. D. 1982, and was suspended for ruling. This being so, as the People's Supreme Court, is a court of record and the records including the minutes of Court can be taken recourse to.

I have bought my ticket to leave by Air Liberia's plane anytime this week, when space is available, and pray an excuse of Your Honours, for not being able to appear before the People' Supreme Court on Tuesday, November 30, 1982. May I humbly request, however, that the citations of law, laid in the petition and resistance to the motion to dismiss be countenanced as upon them I am relying, to topple the motion to dismiss, in order that the peremptory writ of error be ordered issued that the court below be instructed to resume

jurisdiction over the case and to permit said case to have priority over all other civil cases in the order of hearing.

With sentiments of respects,

Respectfully yours,
Clarence O. Tuning
COUNSELOR-AT-LAW
COT/smg.

Predicated upon this letter, the Court proceeded to entertain argument on the side of the defendants-in-error.

Taking recourse to the trial records as to the denial of the plaintiff-in-error's day in court, we find the following facts: that the plaintiff-in-error who was plaintiff in the court below had taken the stand along with her witnesses testified and rested her side of the case on the 24th day of December 1976. On the same date, the co-defendants-in-error, Blamah and Bolley, outlined the theory of their case and had their witnesses qualified when the trial was suspended thereafter to resume on December 28, 1976. Upon the resumption of the trial of the case on this date, the court ordered the reading of a communication it had received from Counselor Clarence O. Tuning in which he was requesting the continuance of the case to the February Term of court because of his inability to attend upon said trial any longer due to the serious illness of his mother, who according to him, died on December 30, 1976. This request was resisted by the defendants in the court below on the point that the statutory requirements for continuance had not been met by the plaintiff to warrant the granting of the request or motion. The court ruled on the request and resistance in favor of the co-defendants-in-error but in doing so, suspended the hearing of the case until the next day, December 29, 1976 in order for the plaintiff-in-error to obtain the services of another counsel.

Although the plaintiff-in-error who was present in court when this ruling was made had not expressed her inability or unwillingness to employ the services of another counsel to prosecute her interest in this case, yet when the trial resumed the next day, she absented herself. The defendants-in-error then moved the court to consider the absence of the plaintiff-in-error as an abandonment of her cause and requested the Court to direct the trial jury to bring a verdict of not liable in favor of the said co-defendants-in-error. This motion having been granted, the court directed the trial jury who returned a verdict of not liable in favor of the co-defendants-in-error. Upon this verdict, a final judgment was entered ruling the plaintiff-in-error to costs of court. From this ruling, the plaintiff, now plaintiff-in-error,

has come to this Court to seek relief by the writ of error.

The object to the writ of error, in the language of Mr. Justice Beysolow, is to review, scrutinize, and correct any error of law committed in the proceedings and during the trial of the case. Logan v. James, 3 LLR 360. This function of the writ of error cannot cure negligence on the part of any party in the process of prosecuting or defending a cause of action as is well demonstrated in this case on the part of the plaintiff-in-error in the court below. Two aspects of negligence are observed by this Court on the part of plaintiff-in-error and her counsel in the trial court leading to the termination of the case against the said plaintiff-in-error. Firstly, negligence on the part of the counsel to file a motion for continuance as a legal requirement in the interest of his client. Instead, he selected to write a letter of excuse in which he tried to appeal to the passion and sympathy of the court with regards to the illness of his mother. The trial court exercised judicial prudence in ruling out the said letter and proceeding with the trial as in the court of transparent justice, "passion is stilled and the calm spirit of the law prevails, "says Mr. Justice T. McCants-Stewart. Lawrence v. Republic, 2 LLR 65, 66 (1912).

The second aspect of negligence was that which the plaintiff-in-error herself committed. Although she was present in Court when the trial judge overruled her counsel's request for continuance of the case to the next term of court, and suspended the trial until the next day to allow her time to secure the services of another counsel, and to which ruling she registered no exceptions, she manifested no interest by failing to appear in court on December 29, 1976 to either put in some excuse or make some expression in her own interest with regards to her side of the case. This attitude on her part did not only constitute an abandonment of her cause but also negatively reflected upon the dignity of the Court. The writ of error could in no wise cure these acts of negligence. Counts 1,2,3,4,5, and 6 of the petition are therefore overruled as against counts 3 and 4 of the returns.

Counts 7, 8, and 9 of the petition averred that; (1) although the costs were the only part of the judgment the plaintiff was liable to pay as adjudged by the trial judge, she had not paid same because she did not have her day in court; (2) that there are no accrued costs to be paid by the plaintiff-in-error as prerequisite to the granting of the alternative writ save the cost of the filing of the petition and the service of the alternative writ in the sum of $10.00 which was being forwarded; and (3) that the judgment of the trial court had not been satisfied in whole or in part.

The defendants-in-error have countered these averments in counts 1 and 2 of their returns and have prayed this Court to quash the alternative writ and deny the petition because of the gross violation of the statute controlling the filing of a petition for the issuance of the writ of

error.

In passing on these arguments, we must first show what constitute accrued costs payable to a defendant-in-error as a condition for the issuance of the writ of error. The filing and service fees constitute the accrued costs. The filing fees consist of (a) cost of stamps, (b) clerk's filing fees, (c) cost for issuing and signing affidavits. The service fees consist of the sheriff's or messenger's pay according to mileage for serving the pleading.

The statute then requires that the following procedure be followed on application for the writ of error:

"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. Such an application shall contain the following:

a) An assignment of error, similar in form and content to a bill of exceptions, which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;

b) A statement why an appeal was not taken;

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

d) A certificate of a counselor of the Supreme Court, or of any attorney of the circuit court if no counselor resides in the jurisdiction where the trial was held, that in the opinion of such counselor or attorney real errors are assigned.

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 bond in the manner prescribed in section 51.8 of the Civil Procedure Law. Such bond shall be conditional on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error dismissed." Civil Procedure Law, Rev. Code, 1:16.21.

Recourse to the petition shows that the accrued costs have not been paid as the plaintiff-in-error in count eight of her petition has said without reservation that there are no accrued costs to be paid as a prerequisite to the granting of the alternative writ of error. However,

the said plaintiff-in-error decided to forward to nowhere, the sum of $10.00 “pursuant to Part I of Supreme Court's Rules XIII." By this averment of the plaintiff-in-error, are we made to understand that the defendants-in-error and defendants in the court below never filed and served an answer to the plaintiff's complaint? And since the records certified before us substantiate that an answer was duly filed and served, how can the plaintiff-in-error legally avow that there are no accrued costs to be paid? The payment of accrued costs as a prerequisite to the issuance of the writ of error, being statutorily mandatory and not discretional, cannot be avoided and brushed aside by any plead but must be adhered to in strict confirmative with the law. The Court has always held that "the requirements for a writ of error imposed by statute must be strictly complied with or the Supreme Court will refuse relief." Borbor v. Gillatey, 25 LLR 124 (1976).

In view of the above, we must then conclude that there did exist accrued costs payable to the co-defendants-in-error but which were not paid by plaintiff-in-error as mandatorily required by statute. This statutory violation then brings us to the question to be resolved as to whether or not the petition for a writ of error is properly before us since the nonpayment of accrued costs raise a jurisdictional issue. "To render a judgment binding, a court must have jurisdiction of the parties and of the subject matter."Compagnie des Cables Sud-Americaine v. Johnson, 11 LLR 264 (1952).

In view of the foregoing facts and the laws cited, it is our holding that error will neither lie to cure the negligence of both the plaintiff-in-error and her counsel nor will it lie where the legal requirements in applying for the writ are violated. The ruling of the Chambers Justice quashing the alternative and denying the issuance of the peremptory writ on the ground of jurisdiction is hereby confirmed with costs against the plaintiff-in-error. And it is hereby so ordered.

Petition denied.