

**AMARA KAMARA**, Informant/Appellant, v. **KOFA CHEA** and **ASSOCIATE  
MAGISTRATE WILLIAM F. SATTO**, Respondents/Appellees.

INFORMATION PROCEEDINGS.

Heard: October 19 - 20, 1983. Decided: December 21, 1983.

1. An appeal cannot be dismissed on the ground that said documents were not timely filed where the trial judge had left the circuit in which he presided within the time required by statute for approval of bills of exceptions and appeal bonds, if the appellant exhibits postal receipts, forwarding the documents to the judge, which show on their faces dates within the said time limit.
2. It is necessary to the validity of a judgment that the court should have jurisdiction of the question which its judgment assumes to remedy or relief which that judgment undertakes to grant.
3. A judge presiding in any of the criminal assizes in Montserrado County, in the exercise or aid of the appellate jurisdiction conferred by law, can only entertain summary proceeding growing out of criminal proceedings pending before a magistrate, traffic judge or a justice of the peace, and not one emanating from a civil proceeding.

Informant/appellant brought summary proceedings against the co-respondent judge growing out of a default judgment in an action of summary proceedings to recover possession of real property. The summary proceedings having been decided against informant, he filed information before the Supreme Court. On review, the Supreme Court held that the notice of the completion of the appeal being filed out of time, the appeal was not properly before Court and therefore was dismissed. The Court also held that the criminal court for Montserrado County lacked jurisdiction to try summary proceedings against a judge arising out of a civil action in the court of first instance. The matter was dismissed without prejudice to informant to re-file in the proper forum.

J. D. Gordon of the Carlor, Gordon, Hne & Teewia Law Offices appeared for informant. Stephen B. unbar, Sr. appeared for the respondents.

MR. JUSTICE SMITH delivered the opinion of the Court:

This appeal grew out of a case of summary proceedings to recover possession of real property instituted against Amara Kamara, informant/appellant herein, by Kofa Chea, co-respondent/co-appellee, in the magisterial court for the City of Monrovia, Montserrado County. The records show that Associate Magistrate William F. Satto presided over the case, rendered a default judgment against the informant, and ordered issued a writ of possession. In the process of executing this writ, informant fled to the First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, by a petition in the form of a letter dated

September 13, 1982, addressed to Judge Martha K. Massoud, then presiding over the August 1982 Term of the said court, which letter in its essential part reads, as follows:

"One Miss Kofa sued me in the magisterial court, Temple of Justice, Monrovia; the writ was served on me, but when the case was assigned for trial, the writ could not be found in the court's file. Thereupon, the Associate Magistrate, William F. Satto, told my lawyer in the person of Counsellor J. D. Gordon that whenever the writ was found he would make an assignment.

Associate Magistrate Satto instead of assigning the case as promised, rendered judgement against me thereby depriving me of my day in court.

In view of the foregoing, I am respectfully requesting that you order Associate Magistrate William F. Satto to desist from further exercising jurisdiction in the case of summary proceedings to recovery possession of real property until you shall have heard this complaint."

Judge Massoud, up to the expiration of her term of court, did not reach this case; hence, it remained on the docket.

The records further show that on the 19<sup>th</sup> day of January, 1983, Judge Eugene L. Hilton, resident circuit judge and at the time the presiding judge of the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, called up the petition and also rendered a default judgment against the petitioner, informant in this case, because he was absent and not represented by counsel when the case was called. Based upon the default judgment, the associate magistrate was mandated by Judge Hilton to resume jurisdiction and enforce his civil judgment. While in the process of enforcing the judgment by serving writ of possession on the informant and attempting to evict him from the subject property, the informant sought the intervention of the Chief Justice, complaining that although his complaint against the irregularities committed by the trial Magistrate Satto was still pending before Criminal Assizes Court "B", the said magistrate was enforcing his judgment against him.

Mr. Justice Yangbe, then serving as Chief Justice a.i., received the informant's complaint and on the 30<sup>th</sup> day of March, 1983, directed Judge Harper S. Bailey to investigate informant's complaint, give appropriate relief in the premises, and make returns to his Chambers as to how his instruction was carried out.

In obedience to the instruction of the Chief Justice a.i. aforesaid, Judge Bailey instituted investigation into the matter and observed that although, according to the records, the summary proceedings were filed before Her Honour Martha K. Massoud, then presiding over the August 1982 Term of Criminal Assizes "B", yet the matter was heard by Judge Hilton of Criminal Assizes "A", who rendered a default judgment against Amara Kamara, the informant, because of his failure to sign and receive the notice of assignment. That

because Judge Hilton with whom he has concurrent jurisdiction had rendered judgement in the case, he (Judge Bailey) was without authority to review his said colleague. He therefore dismissed the informant's information and suggested that the parties seek redress in the People's Supreme Court.

The informant thereupon, by and through his counsel, J. D. Gordon, noted exceptions to the ruling and appealed the case before this forum of last review, contending in substance that although Judge Bailey had concurrent jurisdiction with Judge Hilton, yet, the proceeding was pending before Criminal Assizes "B" and not in Criminal Assizes "A" over which Judge Hilton presided, and hence his judgement by default in a case which was not pending before his court is void and unenforceable and, therefore, the concurrent jurisdiction rule could not apply in the instant case. The informant thereupon perfected his appeal before this Court.

While this appeal was pending, respondents filed a motion to dismiss the appeal on the grounds that the judgement appealed from was rendered on April 27, 1983, and informant's bill of exceptions which should have been filed within ten (10) days was not filed until sixteen (16) days thereafter. That the appeal bond was filed two (2) months and twenty-three (23) days after judgement, and also that the notice of the completion of the appeal was not filed within statutory time.

The informant resisted the motion to dismiss and attached to his resistance two post-office receipts showing that bill of exceptions and the appeal bond were mailed to the trial judge, who had already left for his resident circuit, within the statutory time. Counsel for respondents conceded that the trial judge left the Circuit of his assignment before expiration of the time for submission to him and filing of the bill of exceptions and the appeal bond by the informant. The respondents' counsel also conceded the fact that if the dates on the postal receipts are within the time allowed by statute, the documents (bill of exceptions and appeal bond) are presumed under the practice as having been filed within the time allowed by statute.

In many instances, judges leave their circuits of assignment immediately upon the expiration of their terms or even before the last day of a given term as a result of some unavoidable circumstances, without approving bills of exceptions and appeal bonds in cases in which their judgements were appealed from, thereby working hardship on the appealing parties. Such an issue came up in the case: *Weah v. Republic*, 17 LLR 622 (1966), when the appellant mailed his bill of exceptions to His Honour Judge Lewis K. Free who had left the circuit for his approval, and here is what the Supreme Court said, Mr. Justice Roberts speaking for the Court:

"Failure to file a bill of exceptions within the statutorily prescribed period of time is not ground for dismissal of an appeal when the appellant proves, by postal receipt for a registered letter, that the bill of exceptions was timely tendered to the trial court."

In the instant case, informant having shown two postal receipts which show on their faces dates within the time limit prescribed by statute for the tendering and filing of the bill of exceptions and the appeal bond, the appeal cannot be dismissed on the ground that said documents were not timely filed.

However, respondents' counsel contended during the argument that the notice of the completion of the appeal was not served within the sixty (60) days allowed by statute in order to give this Court jurisdiction to hear and decide the appeal. Informant's counsel, on the other hand, argued that the notice of the completion of the appeal could not have been issued and served within sixty (60) days after judgement because the trial judge had not returned the approved bill of exceptions and the appeal bond on time to enable him to have them filed with the clerk of court within the sixty (60) days after judgement; that by reason of said documents still being in the custody of the trial court, informant had no obligation to apply for the issuance of the notice of the completion of the appeal and have the same served, neither could the clerk have issued the same without having in his office the approved bill of exceptions and the approved appeal bond.

As cited *supra*, the tender of a bill of exceptions and an appeal bond to the trial judge within ten (10) days and sixty (60) days, respectively, evidenced by postal receipt, constitutes timely filing of the documents in satisfaction of the requirement of the law. Equally so, in our opinion, copies of the bill of exceptions and the appeal bond with certified or photocopies of the postal receipts should have been presented to the clerk of the trial court by the informant with a request to issue the notice of completion of appeal since this must be done within the time (60) days allowed by law; instead, informant elected to wait for the return of the bill of exceptions and the appeal bond to him by the trial judge before applying for the issuance and service of the notice of the completion of the appeal without the time limit within which to do so. The Court wonders why did the informant elect to wait over 60 days before serving notice of the completion of his appeal?

The notice of completion of appeal, which is a jurisdictional step, not having been served on the respondents until over two months and twenty-three (23) days, contrary to statute, to deny the motion to dismiss and sustain the contention of the informant's counsel would be opening a floodgate for negligent litigants and their counsel to pass through, thereby destroying the doctrine of *stare decisis* and rendering the Court inconsistent.

The Bench is divided on the issue, in that, the minority holds that informant could not have applied for the issuance of notice of the completion of the appeal when the informant had not received the approved bill of exceptions and the approved appeal bond from the trial judge, as the clerk of court should be in possession of all such documents to justify the issuance of the notice of the completion of appeal. Regrettably, however, we have found no

law to support the holding of our distinguished dissenting colleagues on this elementary issue.

The other pertinent issue which we find presenting itself in these proceedings and not raised by any of the parties is, the jurisdiction of the First Judicial Circuit Court, Criminal Assizes "A:" or "B", Montserrado County, to entertain, hear and determine a summary proceeding against a magistrate or justice of the peace growing out of a civil case.

The case out of which these proceedings grew is a summary ejection in which a default judgement was rendered by Associate Magistrate Sato. Judge Eugene L Hilton, presiding in the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, heard and determined the informant's petition for summary proceeding against the associate magistrate and mandated the Associate Magistrate to resume jurisdiction and enforce his default judgement which he had rendered in a civil proceeding (summary ejection).

It appears to us that some judicial actions need to be taken by this Court to set the record straight, since this Court is the last place of hope for man, and justice demands that irregularities in the procedural aspect of the adjudication process in the inferior courts should not be condoned by any act of this Court, but to immediately have any such irregularities corrected upon discovery in the name of consistency in our practice and procedure and for transparent justice to be meted out.

Our distinguished colleagues who have dissented from us contend that the jurisdictional issue not having been raised by any of the parties, this Court should take no cognizance thereof, as doing so would be against the scope of review provided by statute. They also hold the view that all circuit judges have jurisdiction to hear and decide summary proceedings against magistrates or justices of the peace, and therefore, either Judge Hilton or Judge Bailey, presiding in the First Judicial Circuit Court, Criminal Assizes "A" and "B", respectively, had jurisdiction over the summary proceedings against the trial magistrate. They relied upon the jurisdiction specifically given to the First Judicial Circuit Court, Criminal Assizes "B", to hear and decide all summary proceedings from courts not of record in Montserrado County.

We the majority, cannot bring ourselves to agree with the holding of our distinguished colleagues on any of the argument advanced, because what they are saying, in essence, is that even if a case is non-judicial, for example a purely political matter, so long as the jurisdictional issue was not raised by any of the parties, neither this Court nor the inferior court can sua sponte raise the issue of its jurisdiction and decide it.

The view of our distinguished colleagues on the jurisdictional issue is almost similar to that which Mr. Justice Shannon expressed in his dissenting opinion in the case: French Cable Company v. Johnson as reported in 11 LLR 264 (1952). In that case, Mr. Justice Shannon

felt that a jurisdictional issue raised for the first time in the appellate court should not be entertained despite the fact that it was the authority of the court that was questioned. The majority opinion, quoted AMERICAN LAW INSTITUTE, Restatement of the Law of Judgments, § 7 (1942). Section 7 of the quoted text, under the caption "competence of the court", states as follows:

"Even though the state in which a judgment is rendered has jurisdiction over the defendant, a court of the state has not jurisdiction to render a judgment against him if the state has not given to the court power to entertain the action. Although a state has jurisdiction over the person of the defendant, it may not have given to a particular court or it may not have given to any of its courts power to entertain the action. In such a case, the court has not competency to render a valid judgment. The court has not power to render a valid judgment, not because the state lacks power but because it has not conferred power upon the court."

Mr. Justice Davis, in his concurring opinion in that case, citing 14 AM. JUR., Courts, § 191, at 385-386, said: "Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term; and a court which is competent to decide on its own jurisdiction in a given case may determine that question at any time in the proceeding of the case, when ever that fact is made known to appear to its satisfaction, either before or after judgment...."

Our distinguished colleagues hold that since none of the parties raised the jurisdictional issue, the question of whether the First Judicial Circuit Court for Montserrado Court, which is left with only criminal cases, could entertain, hear, and determine summary proceeding growing out of civil action, should not be passed upon by us. We disagree with this view because, in our opinion, the trial court being a criminal court having only criminal jurisdiction, should have first inquired to determine whether it had jurisdiction in summary proceedings growing out of a civil action.

Under our practice and procedure, civil practice is not the same as criminal practice. In Montserrado County, the criminal court is separate from civil court, and, therefore, a judge presiding in the Civil Law Court, Sixth Judicial Circuit, cannot exercise jurisdiction which is exclusively left to the First Judicial Circuit Court, which is divided into "A" and "B".

For a court to render a valid judgment, it must first determine whether it has jurisdiction. A court has the power and duty to examine and determine whether it has jurisdiction of a subject matter presented to it, and the question shall be considered by the court before it looks at other matters involved in the case. This the court may, and must, on its own motion do without waiting for the question of its jurisdiction to be raised by any of the parties involved in the proceeding. 20 AM. JUR. 2d., Courts, § 92, at 453. This Court must therefore examine and determine whether the First Judicial Circuit Court, Criminal Assizes "A" and "B" aforesaid, whose judgment we are asked to review, had jurisdiction over the subject

matter to have rendered judgment; and if not, such judgement is void and thus, not reviewable by this Court, for to do so would be a fruitless exercise. A judgment is wholly void in the event the subject matter is withheld from the jurisdiction of a particular court. It is therefore necessary to the validity of a judgement that the court should have jurisdiction of the question which its judgement assumes to remedy or relief which that judgment undertakes to grant.<sup>49</sup> C. J. S., Judgments, § 19) (a) and (d).

In the counties other than Montserrat, the circuit courts established thereat exercise both criminal and civil jurisdiction, including probate, tax, admiralty and appellate jurisdiction of all appeal cases from the courts of first instance whether they be civil or criminal, as well as all summary proceedings against magistrates and justices of the peace within the judicial circuits. But in the County of Montserrat, there is established a separate civil court and a separate criminal court known as the First Judicial Circuit, which exercises jurisdiction over only criminal cases and it is subdivided into Criminal Assizes "A" and "B", respectively, because of the docket congestion in said circuit. The circuit court of law, equity and admiralty, known as the Sixth Judicial Circuit, exercises jurisdiction over only cases other than criminal. Judiciary Law, Rev. Code 17:3.1. Therefore, under sec. 3.3 of the Judiciary Law, a judge presiding in any of the Criminal Assizes (Montserrat County) in the exercise or aid of the appellate jurisdiction conferred by law, can only entertain summary proceeding growing out of criminal proceedings pending before a magistrate, traffic judge or a justice of the peace, and not one emanating from a civil proceedings.

Furthermore, the Judiciary Law, Rev. Code 17:7.4, provides that: "Except as provided in paragraphs 2, 3 and 4 (which refer to areas over which provisional probate courts have jurisdictions, action for debt and tribal matrimonial cases in certain magisterial areas), appeals from decisions of Magisterial Courts shall be to the Circuit Court in the county in which the Magisterial Court sits; provided that the Circuit of the First Judicial Circuit shall hear such appeals only in criminal cases arising in Montserrat County and that the Circuit Court of the Sixth Judicial Circuit shall hear such appeals in cases other than criminal cases arising in Montserrat County" (emphasis ours).

Resulting from a question posed by the Bench, counsel for informant argued, and counsel for respondents agreed, that by reason of the jurisdiction conferred upon the First Judicial Circuit Court, Criminal Assizes "B", to hear all appeal cases from courts not of record in Montserrat County, all summary proceedings against the judges of those courts, habeas corpus and naturalization proceedings, the said court had jurisdiction to hear the summary proceeding against the trial magistrate growing out of a summary ejection case. Our distinguished colleagues seem to be in agreement with this argument and thus dissent from us. We, however, strongly hold that either the Legislature or any administrative order giving this court such jurisdiction did not intend to confer civil jurisdiction on the criminal court contrary to the statute creating the criminal and civil courts.

The prime intent for conferring jurisdiction on the First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, to hear and determine summary proceeding against judges of courts not of record in Montserrado County, was for said court to correct irregularities committed in the conduct of a criminal hearing, but not any irregularity in the conduct of a civil hearing. It is therefore construed by this Court that the jurisdiction conferred upon the Criminal Court "B" to hear and determine summary proceeding against judges of courts not of record or any officer thereof, was intended for summary proceeding growing out of criminal trials, and not in civil hearings which are left exclusively with the Civil Law Court created for that purpose.

Our distinguished colleagues, relying on the Civil Procedure Law, Rev. Code 1: 51.15, hold the position that this Court should not consider points of law not raised in the court below and argued in the briefs. We have already pointed out that the court, under the law cited, may upon its own motion raise the issue of jurisdiction and determine whether it has jurisdiction to hear and decide the subject matter presented to it for its decision. More than this, under the same section of the Civil Procedure Law, "scope of review", relied upon by our distinguished colleagues, there is an exception which provides that the appellate court may in any case consider points of law not raised in the interest of justice and base its decision on a plain error apparent on the records. For the benefit of this opinion, we quote the relevant portion of this section:

"1. Points of law first raised in appellate court. The appellate court shall not consider points of law not raised in the court below and argued in the briefs, except that it may in any case, in the interest of justice, base its decision on a plain error apparent on the record" (emphasis supplied).

We further hold that this Court, under the Civil Procedure Law, Rev. Code 1: 51.17, "Disposition of Appeal", has the authority to reverse, affirm, or modify wholly or in part, any judgement before it, as to any party. The court shall render a final determination or, where necessary or proper, remand to the lower court for further proceedings. The appellate court shall also render a judgement which should have been rendered by the trial court. *Townsend v. Cooper*, 11 LLR 52 (1951). We are therefore of the opinion that the First Judicial Circuit Court should have rendered a judgement refusing jurisdiction to hear and determine the summary proceedings growing out of summary ejection suit instituted in the magisterial court, because it lacks jurisdiction to do so, and not having rendered such judgement, this Court of last review shall render the kind of judgement which the trial court ought to have rendered.

Where in a civil trial the trial magistrate or justice of the peace proceeded by wrong rules other than those which ought to be observed at all times, especially where any of the parties claimed to have been deprived of his day in court, as in the instant case, the summary



proceeding against such magistrate or justice of the peace is civil in nature and, therefore, cognizable only before the court exercising civil jurisdiction. And where it appears to the satisfaction of this Court that an inferior court has proceeded contrary to the rules which out to be observed at all times and/or said inferior court is without jurisdiction of the subject matter and it is apparent on the record that such inferior court has not jurisdiction conferred upon it by law to hear and decide such proceeding, the Supreme Court will not condone the act by knowingly reviewing a void judgement simply because the jurisdictional issue was not raised, but will correct the irregularity in the interest of justice.

In view of all that we have narrated hereinabove, it is our considered opinion that the judgement rendered by Judge Hilton in the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, ordering the trial magistrate to resume jurisdiction and enforce his civil judgment, is void for lack of jurisdiction. The summary proceeding instituted before the Criminal Court "B" of the First Judicial Circuit to review the civil action of the trial magistrate should be, and the same is hereby, dismissed without prejudice to the informant to reinstitute said proceeding before the proper judicial forum exercising civil jurisdiction. The motion to dismiss the appeal is hereby granted on the ground of untimely service of the notice of completion of the appeal; costs disallowed. And it is hereby so ordered.

*Motion granted.*