

KEKURA KPOTO, Petitioner, v. **HIS HONOUR FRANCIS N. PUPO, SR.**, Judge, Debt Court, Montserrado County and **JOSEPH T. YOUNIS**, President, Younis Engineering Construction Services, Respondents.

PETITION FOR A WRIT OF CERTIORARI FROM THE DEBT COURT FOR
MONTSERRADO COUNTY.

Decided June 24, 1983.

1. Every lawyer representing a client before the courts has a duty to be concerned with the hearing and determination of his case rather than permit his client to engage in delay tactics in the eyes of the public.

In an action of debt by attachment, petitioner repeatedly filed notices of continuance upon receipt of assignments for the hearing of his case, contending that he was ill, and attaching to the motion medical certificates in support of the claim. After several continuances, the trial judge denied the petitioner's last motion, stating that the basis for petitioner's motions was to delay the trial of the case and to baffle justice. He therefore ordered the case proceeded with. From this ruling, petitioner filed a petition for a writ of certiorari.

The Justice in Chambers, while acknowledging that the petitioner's several motions for continuance seemed designed to delay the trial of the case, nevertheless granted the petition. The justice noted that as the medical certificate was due to expire in a few weeks time, the continuance should be granted, but that no further adjournment or motion for continuance should be entertained by the trial court.

M Fahnbulleh Jones appeared for the petitioners and Rogers Steel appeared for respondents.

SMITH, J., presiding in Chambers.

An action of debt by attachment was instituted against the petitioner herein by Co-respondent Joseph T. Youths, President of Youths Engineering Construction Services, in the Debt Court for Montserrado County. When the case was assigned for hearing, the petitioner, defendant in the trial court, filed a motion for continuance, attaching a medical certificate in which the defendant was advised to rest for 60 days. The court heard and denied the motion, stating as the ground therefor that the motion was intended to baffle the trial of the case. Defendant thereupon petitioned this Court for a writ of certiorari against the ruling denying the motion for continuance.

respondents argued that the petition was aimed at baffling and delaying the trial of the case and hence should be denied.

The clerk of the debt court failed as usual to send up a certified copy of the records of the case as is mandatorily required by law. This act, we note, was a dereliction of duty by the clerk of the debt court, and we again go on record as warning the said clerk against a repetition of this act.

Because of the absence of the certified records from the trial court, we ordered the clerk to send us the original file of the case, which he did. Upon inspection of this file, we discovered that the issues of law were disposed of on the 20th day of April, 1983, and that the case was first assigned for trial on the 26th day of April, 1983, at the hour of 10 o'clock in the morning. The assignment was served and returned served, but there was a notation on that assignment stating that Counsellor Jones had gone to see the doctor. In addition to this notation, the defendant, Kekura Kpoto, petitioner herein, had secured a medical certificate for himself, dated March 16, 1983, under the signature of Dr. William J. Boyce of John F. Kennedy Medical Center, indicating that the defendant was undergoing treatment and needed absolute rest until mid May, 1983. Predicated upon this medical certificate, the defendant filed a motion for continuance, which was heard and granted by court. When the case was again assigned for hearing on the 24 th day of May 1983, at the hour of 9:30 a.m., the cause could not be heard because, according to a letter from counsel for defendant, dated May 23, 1983, the said defendant was alleged to have gone to Kolahum City, Lofa County, on sick leave, and that counsel was therefore requesting postponement of the case to another day. Hence, the case was not heard on the 24t h day of May, 1983, as had been assigned, evidenced by the notice of assignment. Another notice of assignment was thereupon issued for hearing of the case on the 31' day of May, 1983 at the hour of 9:30 in the morning. This new assignment was served and returned served. Defendant Kpoto again filed another motion for continuance attaching another medical certificate, dated May 27, 1983, which stated that the defendant was advised to have bed rest for 60 days plus regular weekly check-ups. This motion was heard and this time denied by the court because the court felt that the defendant was baffling the trial of the case. It is from the ruling denying the motion for continuance that this proceeding was instituted.

During the arguments, counsel for the petitioner was asked by the Bench as to the whereabouts of the petitioner presently. He replied that he could not tell the whereabouts of his client. However, it is clear to us that the petitioner has at no time during the pendency of the case been hospitalized. It was only when a notice of assignment was issued that a certificate to rest was presented. We

before the courts to be concerned with the hearing and determination of his case rather than to permit his client to engage in delay tactics in the eyes of the public.

Since indeed the 60 days given by the doctor on May 27, 1983 will expire on July 26, 1983, the petition is hereby granted and a peremptory writ of certiorari is ordered issued, commanding the judge in the trial court to set aside his ruling denying the motion for continuance, and have the case assigned for hearing on any day after, July 26, 1983. It is our further holding that no other adjournment or motion for continuance should be entertained. Costs abide final determination of the case. And it is hereby so ordered.

Petition granted