

MOLLY KROMAH and MARSAH KROMAH, Appellants/Plaintiffs-In- Error, *v.* **HIS HONOUR VARNIE D. COOPER** and HIS HONOUR HALL W. BADIO, Assigned Circuit Judges, Presiding, Ninth Judicial Circuit Court, and **WALTER GWENIGALE**, Appellees/Defendants-In-Error.

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

Heard: December 16, 2004. Decided: February 28, 2005.

1. In order for a writ of error to obtain, the plaintiff-in-error must satisfy the court beyond mere allegations that there was no negligence on his part in his failure to prosecute a regular appeal.
2. The Supreme Court will not grant party-litigants relief by a writ of error growing out of their failure to timely appeal a final judgment or ruling rendered against them.
3. The Supreme Court will not grant a writ of error because of a trial court's failure to appoint or deputize a lawyer to take the judgment or ruling on behalf of parties not in court during the rendition of judgment/ruling where their outright failure to appear or file an answer when they were served with the writ of summons by the trial court constitutes gross negligence on their part.
4. A court has no duty to deputize a lawyer to take a ruling on behalf of an adverse party who had prior and due notice to appear, but failed to appear without prior excuse.
5. Every order, pleading or written motion required to be served, other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, and similar paper must be served upon each of the parties affected thereby.
6. No service of papers needs to be made on parties in default because of their failure to appear, except as provided in 1 LCLR, Section 9.2(2).
7. Any pleading exerting new or additional claims for relief must be served upon a party who has not appeared in the manner provided for the service of summons.
8. Where there is no pleading exerting new or additional claims for relief in a case pending before a trial court, a trial judge is under no obligation to deputize a lawyer to take the ruling or final judgment for the parties who were regularly summoned but failed and neglected to appear or file an answer.

The plaintiffs-in-error filed before the Supreme Court Justice in Chambers a petition for a writ of error alleging that the trial judge rendered judgment without service upon them of a notice of assignment for the hearing of the case and without appointing or deputizing an attorney to take his judgment as would have afforded them the opportunity to appeal the judgment to the Supreme Court. The defendants-in-error countered that a writ of summons

was issued and served on the plaintiffs-in-error; that the plaintiffs-in-error failed to appear or file an answer; and that therefore the trial judge committed no error in proceeding to hear the case, in rendering judgment in the absence of the plaintiffs-in-error, and without appointing or deputizing a lawyer to take the judgment on behalf of the plaintiffs-in-error.

The Justice in Chambers denied the petition and affirmed the judgment of the lower court. From the Chambers Justice's decision an appeal was taken to the full bench.

The Supreme Court *en banc*, after a review of the matter, affirmed the ruling of the Justice in Chambers and the trial court and denied the petition for a writ of error. The Court held that for a writ of error to obtain, the plaintiffs-in-error must satisfy the Court beyond mere allegations, that there was no negligence on the part of the plaintiffs-in-error to prosecute a regular appeal. The Court observed that both the certificate of the clerk of the trial court and the report of the judge of the lower court showed that the plaintiffs-in-error were duly served with summons regarding the action but that they failed to file an appearance or answer. The act of the plaintiffs-in-error, the Court noted, constituted gross negligence and hence, under those circumstances, there was no necessity for the service of a notice of assignment on the plaintiffs-in-error for the hearing or trial of the case. Accordingly, it said, the writ of error would not be granted.

The Supreme Court held further that the trial court was under no legal duty to appoint or deputize a lawyer to take the ruling of the court on behalf of the absent plaintiffs-in-error who had prior and due notice to appear but who had failed to appear without giving any prior excuse. The Court noted that there were no additional claims asserted by the plaintiffs in the lower court as would have warranted the trial judge issuing a notice of assignment for the hearing of the case or deputizing a lawyer to take the ruling of the court. The writ of error, it said, could therefore not lie.

Yamie Q. Gbeisay of Talia Law Associates appeared for the defend *Francis Y. S.*
Garlanolu appeared for the plaintiffs-in-error ants-in-error.

MR. JUSTICE GREAVES delivered the opinion of the Court.

The appellants/plaintiffs-in-error, Molly Kromah and Mar-sah Kromah, defendants in an ejectment suit before the Ninth Judicial Circuit Court, Bong County, Liberia, hereinafter known as plaintiffs-in-error, filed a seven-count petition for a writ of error before the Justice in Chambers against His Honours Varnie D. Cooper & Hall W. Badio, Circuit Judges Presiding over the Ninth Judicial Circuit Court in two successive terms of court, and Walter Gwenigali (plaintiff in the court below), appellees/defendants-in-error, hereinafter known as defendants-in-error. In their petition for a writ of error, the plaintiffs-in-error alleged, among other things, that the trial judge rendered final judgment against them without a notice of assignment being served on them and without deputizing or appointing a lawyer to take the

final judgment on their behalf, to except to same, and to announce an appeal therefrom. The Justice in Chambers ordered the issuance of the alternative writ of error which was served on the defendants-in-error and returned served.

In their returns to the said writ, the defendants-in-error, contended that a writ of summons, along with a copy of the complaint in the ejectment action was properly served on plaintiffs-in-error and returned served; that when plaintiffs-in-error failed to file their answer or to appear; that co-defendant-in-error Walter Gwenigale obtained a then clerk's certificate to that effect; and that his Honour Varnie D. Cooper, assigned circuit judge to that circuit committed no error by proceeding to hear the matter and render final judgment in the absence of the plaintiffs-in-error without appointing a lawyer to take the ruling following the plaintiffs-in-error's failure to appear and/ or answer co-defendant-in-error Gwenigale's complaint which had been duly served and returned served. The defendants-in-error further stated in their returns that a writ of possession was ordered issued, served and returned served, and subsequently executed; that it was following the execution that the co-defendant-in-error, His Honour Hall W. Badio, ordered the re-issuance of the writ of possession previously ordered by co-defendant-in-error, His Honour Varnie D. Cooper. The defendants-in-error therefore prayed this Court to deny the issuance of the peremptory writ of error.

When the case was assigned for argument, Mr. Justice Junius who presided in Chambers during the October Term, A. D. 1988, ordered the presiding judge of the 9th Judicial Circuit Court, Bong County, R. L., to conduct an investigation relative to the allegations contained in the plaintiffs-in-error's petition for the writ of error (i.e. an investigation as to the service of the writ of summons). The presiding judge then forwarded his findings to the Chambers Justice, which reads thus:

“The investigation revealed that the writ of summons was served on the parties concerned and returns made thereto. Further to this, five notices of assignment were served and returned served on the defendants for the trial of the case.”

“When we received your mandate on Wednesday, August 31, 1988, at 5:00 P.M., we ordered the clerk to issue notices of assignment for hearing of the investigation. Said notices of assignment were served and returns served, but the parties failed to put in their appearance in keeping with the notices of assignment. Hence, we concluded that the writ of summons was served on the parties but for reasons best known to themselves, they have misinformed the Honourable Supreme Court of Liberia.”

Respectfully yours,

Sebron J. Hall, Sr.

Sebron J. Hall, Sr.

Assigned Circuit Judge Presiding”

The Justice in Chambers, after hearing arguments, denied the issuance of the peremptory

writ, quashed the alternative writ and ordered the lower court to enforce its final judgment. To said ruling, the plaintiffs-in-error excepted and announced an appeal to the *full bench* of this Court.

The lone issue this Court has to decide is whether or not a writ of error will lie in this case?

The evidence in this case shows, as per the report of His Honour Sebron J. Hall, Assigned Circuit Judge, Ninth Judicial Circuit Court, Bong, County, dated the 2nd day of September, A. D. 1988 and addressed to His Honour J. D. Baryougar Junius, Justice Presiding in Chambers of the Honourable Supreme Court of the Republic of Liberia, that the writ of summons was duly served on the plaintiffs-in-error and five notices of assignment were also served on them for the trial of the case. Additionally, a clerk's certificate in the records, signed by Samuel E. Taylor, Clerk of the People's Ninth Judicial Circuit Court, Bong County, shows:

“Walter T. Gwenigali of Phebe Hospital,
Bong County.....PLAINTIFF) ACTION
vs.) EJECTMENT
Molly Kromah and Marsah Kromah)
DEFENDANTS)
CLERK'S CERTIFICATE

“This certifies that from a careful perusal of the above mentioned case file upon request by counsel for plaintiff, shows that defendants Molly Kromah and Marsah Kromah have filed no returns or answer since the filing of this action on May 24, 1983.

“Hence, this certificate, upon request by plaintiffs' counsel.

“Given under my hand and seal of court in the City of Gbarnga, Bong County, this 17th day of June, A. D. 1983.

“Seal: Samuel E. Taylor
Samuel E. Taylor

“Certified, true and Clerk of Court correct copy of the original.”

According to Chapter 16, Section 16.21(4), of the Civil Procedure Law, 1 LCL Revised, page 146, captioned *Purpose of Writs*: “A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment.”

The Honourable Supreme Court of Liberia held in the case *Harmon v. Bility*, 29 LLR 389 (1981), that for error to obtain, the plaintiff-in-error must satisfy the Court, beyond mere allegations, that there was no negligence on his part in his failure to prosecute a regular appeal.

It appears clearly from the clerk's certificate from the clerk of court of the Ninth Judicial Circuit, Bong County, and the Report of His Honour Sebron J. Hall, Sr., the assigned judge

of the Ninth Judicial Circuit Court during its June, A. D. 1988 Term, that indeed the plaintiffs-in-error were duly served with the writ of summons and returned served, but that they failed and neglected to file their appearance or answer. To obtain a writ of error, according to this Court, one must satisfy the Court, not by mere allegations, that there was no negligence on his/her part in his/her failure to prosecute a regular appeal before a writ of error will be granted. The outright failure of the plaintiffs-in-error to appear or file an answer when they were served with the writ of summons in the suit below was gross negligence on their part and thus this Court will not grant them relief by a writ of error. This Court will also not grant said writ for the other reason stated by plaintiffs-in-error to the effect that the court below should have appointed or deputized a lawyer to take the ruling on their behalf since they were not in court. This Court, in the case *Korpoko v. Barclay, Reeves et al.*, 36 LLR 733 (1990), text at page 737, opined that “A court has no duty to deputize a lawyer to take a ruling on behalf of an adverse party who had prior and due notice to appear, but fails to appear without prior excuse.”

Section 8.3 of the Civil Procedure Law, 1 LCL Revised, page 104, *Service of Papers, (1) General Requirement*, states that: “Every order required to be served, every pleading, every written motion other than one which may be heard *ex parte* and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties affected thereby; *but no service need be made on parties in default for failure to appear except as provided in Section 9.2(2).*” [Emphasis supplied]. Section 9.2(2), 1 LCL Revised, page 106, *Service of Pleadings, Manner of Service*, provides that “Any pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for the service of summons. In any other case, a pleading shall be served in the manner provided for service of process generally.”

We hold therefore that under the conditions prevailing in the matter in the court below, the trial judge was under no obligation to deputize a lawyer to take the ruling or final judgment for the plaintiffs-in-error in the lower court. In keeping with the holding in the *Korpu v. Reeves* case, quoted above, the plaintiffs-in-error had failed to appear or file an answer to the writ of summons served on them. Moreover, there was no pleading exerting new or additional claims for relief filed by the defendants-in-error to warrant service on the plaintiffs-in-error pursuant to Section 9.2 (2), 1 LCL Revised. Accordingly, we uphold the ruling of the Chambers Justice to the effect that error will not lie, as the plaintiffs-in-error had been regularly summoned but neglected to file an answer, and that the trial court was under no duty to have any counsel appointed to take the ruling on their behalf.

Wherefore, and in view of the foregoing, the ruling of the Chambers Justice is hereby affirmed. The petition for a writ of error is denied, the alternative writ ordered quashed, and the peremptory writ refused. The Clerk of this Court is hereby ordered to send a mandate to the lower court to resume jurisdiction over the case and enforce its final judgment. Costs are ruled against the plaintiffs-in-error. And it is hereby so ordered.

Judgment affirmed; petition denied.