

**HIS HONOUR JOHN LASANA**, Justice of the Peace for Montserrado County,  
and **ISAAC G. WILES**, Plaintiffs-In-Error, v. **HIS HONOUR HARPER SOE  
BAILEY**, Judge Presiding by Assignment over the First Judicial Circuit Court, Criminal  
Assizes "B", and **B. S. TAMBA**, Justice of the Peace, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE FIRST  
JUDICIAL CIRCUIT, CRIMINAL ASSIZES "B", MONTSERRADO COUNTY.

Decided April 20, 1983.

1. A non-appearing party who has neither filed a brief nor returns to a petition shall be given forty-eight hours within which to file such brief or returns, and to appear for arguments.
2. All party litigants must be notified of the date of the hearing of their cases in court in order for them to appear and defend their positions at the time designated by court.
3. Where the court has neglected or failed to issue notice to all parties as to the time and place of a hearing before proceeding therewith, the non-appearing party cannot be said to have had his day in court, and error will lie to correct such blatant error and the judgment cannot be enforced against the party who had been deprived of his day in court.
4. In criminal cases in the circuit courts, the Republic of Liberia is the party plaintiff and does not receive or pay costs of court.
5. A party defendant in a criminal case who is found guilty of the offense or of misconduct is not required to pay costs. Hence, a private prosecutor at whose instance or upon whose complaint the State prosecutor acts may only seek redress through the civil courts, if he has been damaged by the acts of the criminal defendant.
6. The first Judicial Circuit Court, Criminal Assizes "B", Montserrado County, is a criminal court which does not collect costs in criminal cases heard and decided.
7. Summary proceeding against magistrates and justices of the peace is criminal in nature and the Republic of Liberia is the plaintiff.

These error proceedings grew out of summary proceedings to recover real property, filed in

from the premises of Co-plaintiff-in-error Wiles. Co-defendant-in-error Tamba then proceeded to the Circuit Court for the First Judicial Circuit, Criminal Assizes "B", Montserrado County, on summary proceedings.

Although the case was not heard on the date on which it was assigned, and no further assignment was issued for hearing at a subsequent date, the co-defendant-in-error judge, without notice to the plaintiffs-in-error, heard and determined the matter, and rendered judgment against the plaintiffs-in-error, in which he fined the co-plaintiff-in-error justice of the peace \$50.00 and assessed costs of \$56.00 dollars against the plaintiffs-in-error. It was from this judgment that the petition for a writ of error was filed.

The Justice in Chambers found merits in the petition and therefore reversed the judgment of the lower court. The Justice held that under the practice and procedure in this jurisdiction, the trial court was required to notify the party litigants of the date and time for the hearing of their matter, and that it was error for the trial judge to proceed with the hearing and determination of the case without giving such notice.

The Justice also held that the First Judicial Circuit Court, being a criminal court, it could not assess costs of court. The Justice noted that as the Republic of Liberia is the plaintiff in criminal cases, and that as the Republic is not entitled to receive costs or obligated to pay costs of court in criminal cases, no such costs could be assessed by the court. He therefore declared the action of the trial judge to be erroneous, reversed the judgment of the trial court, and ordered a new trial in the summary investigation which had been determined by the co-defendant-in-error judge. He further ordered that appropriate notice be sent to all parties involved.

Isaac R. Malobe appeared for plaintiff-in-error. H Soe Bailey appeared for defendants-in-error.

SMITH J., Presiding in Chambers.

These error proceedings grew out of a suit of summary proceedings to recover the possession of real property as instituted by co-plaintiff-in-error Isaac G. Wiles in the justice of the peace court of Co-plaintiff-in-error John Lasana against Co-defendant-in-error B. S. Tamba, who is also said to be a Justice of the Peace.

According to the argument of counsel for plaintiffs-in-error before us, it would seem that Co-

case and entered judgment by default against the co-defendant-in-error. Consequently, co-defendant-in-error, B. S. Tamba, was dispossessed of the property and the plaintiff put in possession thereof.

Co-defendant-in-error Tamba, not being satisfied with the act and judgment of the justice of the peace, sought the arm of the First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, presided over by the co-defendant-in-error judge, His Honour H. Soe Bailey, by the filing of a petition for summary proceedings against Justice of the Peace John Lasana. Justice of the Peace Lassna having been duly served filed returns and appeared on the day assigned for the hearing of the petition for summary proceedings. Unfortunately, the case was not heard on that day.

The plaintiffs-in-error have complained in their petition that without further notice of assignment for the hearing of the summary proceeding, and in their absence, the trial court proceeded to hear the proceeding and to rendered judgment by default against them; that in the said judgment, Co-plaintiff-inerror John Lasana was fined \$50.00, and that a bill of costs in the amount of \$156.00 was prepared, approved by the codefendant-in-error judge, and served on the plaintiffs-in-error, together with a commitment to incarcerate the said plaintiffs-in-error should they fail to satisfy the bill of costs.

Based upon the petition of the plaintiffs-in-error, the alternative writ of error was issued and served on the defendants-in-error, commanding them to file returns to the said writ on or before the 15th day of March, 1983. When the case was called for hearing on the 7th day of April, 1983, as per assignment, it was discovered that no returns had been filed by the defendants-in-error. Moreover, none of the defendants-in-error was present in court, even though they were duly served with the notice of assignment which they refused and failed to acknowledge by signing thereon, in keeping with the Marshal's returns to said assignment. The hearing of argument was therefore suspended and the defendants-in-error were given forty-eighty (48) hours within which to have their returns filed and to appear for hearing on April 13, 1983, at the hour of eleven o'clock in the morning. The Clerk of Court was directed to communicate with the defendants-in-error, which was done on the 6th of April, 1983.

When the case resumed on the 13th day of April, 1983, in keeping with the assignment, the defendants-in-error still did not appear; nor had they filed returns to the petition, as directed

48 hours, if that party has still not filed a brief and fails to appear, the Court shall proceed to hear the side of the appearing party and rule thereon.

Under the practice and procedure in this jurisdiction, party litigants must be notified by the court of the date of the hearing of their cases in court in order for them to appear and defend their positions at the time designated by the court, and if the court neglects and fails to give such notice before proceeding, the non-appearing party cannot be said to have had his day in court. In such a case, error will lie to correct the mistake or abuse. Moreover, the judgment growing out of such error cannot be enforced against a party who has been deprived of his day in court. Civil Procedure Law, Rev. Code 1: 16.24; *Freeman v. Twe*, [1941] LRSC 10; 7 LLR 227 (1941); and *Gbae v. Geeby*, [1960] LRSC 50; 14 LLR 147 (1960).

The First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, is a criminal court, and therefore does not collect costs in criminal cases heard and decided by it. In that court, the Republic of Liberia is the party plaintiff and it does not receive costs nor pay costs. In such cases also, a party defendant who is found guilty of an offence or misconduct is not required to pay costs. Hence, any private prosecutor at whose instance or upon whose complaint the State's prosecutor acted in prosecuting a case may seek redress through the civil courts, if in his opinion, he has been damaged by the act of the defendant, or by an official who might have infringed upon his private rights.

Summary proceedings against magistrates and justices of the peace are criminal in nature and the Republic of Liberia is the plaintiff. The person at whose instance the State prosecutes is only the private prosecutor and not the party plaintiff. It was therefore erroneous for the co-defendant-in-error judge to proceed to hear the case without the service of a notice of assignment, and to award costs in such a criminal case relating to the alleged misconduct of a justice of the peace.

In view of the foregoing and the legal citation stated above, it is our opinion that the petition for a writ of error be, and the same is hereby granted. The peremptory writ of error is ordered issued, commanding the defendant-in-error judge, or any other judge for that matter, presiding in the First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, to set aside the judgment of the said court and to proceed to hear the petition for summary proceedings against Justice of the Peace John Lasana, after the issuance and service of an appropriate notice

