

**ROBERTSON S. MONBOE**,Petitioner, *v.***STIPENDIARY MAGISTRATE  
THOMAS G. PAGE**and **JUDGE McCAULEY**of the Provisional Monthly and Probate  
Court, Marshall Territory, and **SAHAR KOHENE**,Respondents.

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

Heard: December 14, 1982. Decided: February 3, 1983.

1. Where the petitioner claims that he was denied his day in court, the remedy available to him is error and not prohibition.
2. A writ of prohibition is a process which does not concern itself with, or gives, or interferes with irregularities and errors committed in the trial of a cause.
3. A writ of prohibition concerns itself with preventing inferior courts or tribunals from assuming jurisdiction which is not legally vested in them; and it is a purely negative and not an affirmative remedy.
4. Whatever power is conferred may be exercised, and if it is exercised injudiciously or irregularly, it amounts to an error merely and not to a usurpation or excess of jurisdiction as to warrant prohibition.
5. A party who has not had his day in court may within six months after the judgment file an assignment of error in the Supreme Court for review of the case by the Supreme Court.

These proceedings emanate from an action of summary ejectment instituted against petitioner in the magistrate court of Marshall, Montserrado County. When the notice of assignment was served on petitioner, he wrote a letter to the magistrate informing him of the inability of his counsel to attend court due to sudden illness, but the magistrate ignored the letter and

The Supreme Court found upon review of the records that; (i) petitioner was duly brought under the jurisdiction of the magistrate court and that at least three notices of assignment were issued, served and returned served on him; (ii) that the provisional monthly and probate court neither usurped, abused or exceed its jurisdictional powers, nor proceeded contrary to rules and procedures which should be observed at all times; and (iii) that there existed other adequate remedies available to petitioner. Accordingly, the Supreme Court *affirmed* the ruling of the Chambers Justice.

*S. Edward Carlor*, of the Carlor, Gordon, Hne and Teewia appeared for petitioner. *G. Bona Sagbe* appeared for respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

A petition for prohibition was filed before the Chambers Justice who after hearing argument *pro et con* on the 17th day of March A. D. 1981, entered a ruling against the petitioner from which an appeal was taken to this bench *en banc*.

The gist of the petition for prohibition is as follows:

1. That an action of summary ejection was pending in the magisterial court, Marshall Territory, Montserrado County, in which petitioner was a party defendant;
2. That petitioner wrote the magistrate informing him of the inability of counsel for petitioner to attend court, in keeping with the notice of assignment, due to sudden illness of his counsel who was hospitalized in ELWA Hospital in Monrovia but the magistrate ignored the letter.

the magistrate. Consequently, the enforcement of the judgment was suspended pending decision in the summary proceedings;

A five-count return was filed to the petition for prohibition and some are briefly summarized as follows:

1. That petitioner failed to appear and, as a result, a judgment by default was rendered against him and the court having acquired jurisdiction in the case, prohibition will not lie.

A party who has not had his day in court may within six months of the judgment file an assignment of error in the Supreme Court for review of the case by the Supreme Court. Civil Procedure Law, Rev. Code 1:16.24. Since the petitioner claimed that he was deprived of his day in court, the proper remedy should have been error and not prohibition.

The Court observed from the records, that is, the notices of assignment and decision of the co-respondent magistrate, that petitioner was duly brought under the jurisdiction of the magistrate court and that the decision was rendered after three notices of assignment issued and returned served on the parties. We have also observed that there is no showing from the petition where the provisional monthly and probate judge of Marshall Territory has exceeded his jurisdiction or proceeded contrary to rules and procedures to be observed at all times.

This Court has held that the writ of prohibition is a process which does not concern itself with, or give, or redress, or interfere with irregularities and errors committed in the trials of causes. This is the function of an appeal or the writs of error and certiorari but not of this high prerogative writ; for a writ of prohibition concerns itself with preventing inferior courts or tribunals from assuming jurisdiction which is not legally vested in them and it is a purely

powers and because there exist other adequate remedies. Whatever power is conferred may be exercised, and, if it be exercised injudiciously or irregularly, it amounts to an error merely, and not to a usurpation or excess of jurisdiction.” See *Fazqah v. National Economy Committee et. al*[1943] LRSC 2; ,8 LLR 85, 89 (1943).

In view of the facts, the circumstances stated together with the law cited, the ruling of the Chambers Justice is confirmed, and the Clerk of this Court is hereby ordered to send a mandate to the territorial court of Marshall, Montserrat County, to resume jurisdiction over the case and enforce its judgment in the summary proceedings. The judge therein is also mandated to send instructions to the court of origin to enforce the judgment in the parent case of summary ejectment. Costs are charged against the petitioner. And it is so ordered.

*Petition denied; ruling affirmed*