

JOHN T. PRATT, Plaintiff-In-Error, *v.* **HIS HONOUR HALL W. BADIO**, Circuit Judge Presiding in Chambers over the People's First Judicial Circuit, Criminal Court "B", then **CIRCUIT JUDGE WALLACE OCTAVIUS OBEY, STIPENDIARY MAGISTRATE JOHN C. THOMAS**, of the Magisterial Court of New Kru Town, **BENJAMIN VALENTINE** and his wife, **DAISY VALENTINE**, Defendants-In-Error.

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

Heard: November 8, 1982. Decided: February 3, 1983.

1. Summary proceedings or investigation is a remedial process whereby circuit courts review reported irregularities committed by magistrates, justices of the peace and constables without the aid of a jury.
2. Summary investigations are criminal in nature and must be instituted in the name of the Republic of Liberia. A private individual can only be an informant or a witness in a summary investigation and cannot therefore be a party.
3. Summary investigations instituted by private citizens, and not by the State, are in violation of the statute, and are null and void *ab initio*.
4. A writ of error will be issued only in favor of or to a party who for a good reason has failed to take an appeal from the judgment and who has lost his rights to the statutory appeal without laches on his part.
5. An application for a writ of error will be denied where the petitioner was not a party litigant to the judgment in the trial court.
6. As a general principle of law, accrued costs must be paid before a writ of error can lie. However, a writ of error will issue without the payment of accrued costs in all criminal matters.
7. Summary proceedings being criminal in nature, payment of accrued cost are not applicable.
8. In the appellate practice, an error which goes to the merits of the matter, whether assigned as error or not, must be reviewed.

Plaintiff-in-error, John T. Pratt, instituted an action of summary ejection to recover possession of real property against Co-defendant in error, Benjamin H. Valentine, in the New Kru Town Magisterial Court. Judgment was rendered in favour of plaintiff-in-error, but because of the refusal of the magistrate to enforce the judgment, plaintiff-in-error petitioned Judge A.W. Octavious Obey, circuit court judge of the First Judicial Circuit by way of summary proceedings, naming himself as the petitioner and party to the proceedings. Without a hearing and without the orders of Judge Obey, the clerk of the court sent a mandate to the respondent magistrate to enforce his judgment. Not satisfied with the mandate, Co-defendant-in-error, John C. Thomas, petitioned another circuit court, Criminal Court "B", presided over by Judge Hall Badio for summary proceedings against the magistrate. In these second summary proceedings, as in the first, which were before Judge Obey, co-defendants-in-error named himself as petitioner and as a party to the proceedings.

After hearing the summary proceedings against the magistrate, and upon a communication from Judge Obey denying that he ever ordered a mandate sent to the magistrate, Co-defendant-in-error, Judge Badio, ordered the purported mandate of Judge Obey cancelled and the original defendants put in possession of the property. Not being satisfied with this ruling of Judge Badio, plaintiff-in-error applied to the Justice in Chambers for a writ of error against Judge Badio, Judge Obey, Magistrate Thomas, and Co-defendants-in-error Valentine. The Justice in Chambers issued the writ, heard and granted the petition, from which defendant in error appealed to the Full Bench.

Plaintiff-in-error contended that he did not have his day in court in the summary investigation before Judge Badio as same was heard and ruled upon without any notice to him, and, moreover, that he was not named as a party. Hence, the ruling could not affect him, he contended. Defendants-in-error contended, on the other hand, that the petition should be denied in that plaintiff-in-error did not pay the accrued costs prior to filing of the petitions.

The Supreme Court held that: (1) summary proceedings are criminal in nature and hence the payment of costs is not applicable; (2) that summary proceedings, being criminal in nature, must be instituted in the name of the Republic of Liberia and that a private individual can only be an informant or, at best, a witness, but cannot be a party; (3) that the naming of plaintiff-in-error and defendants-in-error in their respective petitions for summary proceedings were erroneous; and (4) that since plaintiff-in-error was not a party to the proceedings and the judgment subject of the application for error, error cannot lie.

The Supreme Court, in view of the aforesaid findings, held that the two summary

proceedings before Judge Obey and Judge Badio, having being instituted by plaintiff-in-error and defendants-in-error in their private individual capacities, instead of by the Republic of Liberia, were null and void *ab initio*. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice, denied the petition, and mandated the trial court to instruct the magistrate court to resume jurisdiction and to dispose of the matter *de novo*.

Lewis K. Free appeared for plaintiff-in-error. *John T. Teenia* appeared for defendants-in-error.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On the 31st day of March, 1981, one John T. Pratt, now plaintiff-in-error, instituted an action of summary ejectment against one Benjamin H. Valentine and his wife, co-defendants-in-error, in the Magisterial Court of New Kru Town within the City of Monrovia, Montserrado County, to recover possession of real property. Trial was allegedly had ending in favour of the plaintiff-in-error but the trial magistrate, John C. Thomas, reportedly refused to enforce his judgment to put the plaintiff-in-error, John T. Pratt, in possession. Consequently, on July 9, 1981, plaintiff-in-error petitioned the resident circuit judge of the First Judicial Circuit, Montserrado County, then His Honour A. W. Octavius Obey, to look into the failure of Magistrate Thomas to enforce the judgment. Thereupon, Judge Obey on the 15th of July, 1981, is said to have directed the clerk of said court, Mr. Eric Z. Mechian, to send a mandate to Magistrate John C. Thomas to enforce his judgment. There is no record to show that the directives mandated by the judge as claimed exist.

On December 30, 1981, Mr. Valentine also petitioned another circuit court judge, His Honour Hall W. Badio, then presiding over Criminal Court "B", complaining about the enforcement of the purported judgment on the alleged orders of Judge Obey with respect to the summary ejectment proceedings without trial notice to him. A writ of summons for summary investigation was issued against Magistrate Thomas for executing the reported Judge Obey's mandate. In the two summary investigations against Magistrate Thomas, the two informants erroneously named themselves as parties to the actions.

The records show that Judge Badio heard the last summary investigation against Magistrate Thomas with Mr. Valentine as informant and ordered the alleged mandate of Judge Obey cancelled with instructions that the parties in the summary ejectment be cited to appear before Magistrate Thomas for the reading of his mandate, having discovered that Judge Obey had never given such orders to the clerk, Mr. Eric Z. Mechian. A copy of the ruling was also ordered delivered to Mr. Pratt. Thus, the Valentines were automatically placed in possession of the property subject of the summary ejectment.

As a result of Badio's ruling, Mr. Pratt, who was not the rightful party or made a party to the summary investigation, petitioned the Justice in Chambers, Mr. Justice Ceapar A. Mabande, for a writ of error against Judge Badio, Judge Obey, Magistrate Thomas and Mr. Valentine on the ground that he did not have his day in court in the summary investigation. In their returns, the defendants-in-error contended that accrued costs having not been paid and the ruling of Judge Badio not being a final judgment, error could not lie. The Justice in Chambers ordered that the writ be issued, and thereafter heard and granted the petition. Defendants-in-error noted exceptions and appealed to the Court *en banc*.

The issues presented by these facts and contentions are:

1. Whether an informant in a summary investigation can become or be made a party?
2. Whether or not a person who is not a party to an action and who has not been served with process or heard can claim to have been denied his day in court?
3. Whether error lie in a case where accrued costs have not been paid, and, if so, does this requirement also apply to a case of a criminal nature?

In this jurisdiction, a summary proceeding or investigation is a remedial process whereby circuit courts review reported irregularities committed by magistrates, justices of the peace and constables without the aid of a jury or without going into technical rules and procedure so as to give speedy relief. It is a proceeding controlled exclusively by the State and prosecuted upon the information of the informant who does not become a party. Throughout such proceedings, the trial partakes of a criminal nature, the penalty of which is usually a fine or imprisonment or suspension from office. *King v. Ledlow*, 2 LLR 283 (1916); *Smith v. Stubblefield and Brown*, 15 LLR 338 (1963); and *Giese v. Jallah*, 16 LLR 141 (1960).

The summary investigations involved in this case were all instituted in the name of the informants and not under the name of the Republic of Liberia while the two informants were private citizens. This is contrary to the express provisions of the law extant in this jurisdiction.

Turning to issue number two, we say that no person should be affected by a judgment in which he has neither been duly cited to appear nor afforded an opportunity to be heard. A perusal of the records certified to us reveals that a copy of Judge Badio's ruling was delivered to Mr. Pratt by Attorney George Tulay when Mr. Pratt was neither a party to the summary proceedings nor made one thereto. The mere furnishing by the court of a copy of a ruling to a person who is not a party does not make that person a party. The Civil Procedure Law

provides how parties may be added:

"Parties may be added by order of any court except the Supreme Court on motion of any party or, on, its own initiative at any stage of the action on terms that are just. . ."Civil Procedure Law, Rev. Code 1: 5.54.

Delivering a copy of a court's ruling to a person without first giving him timely notice to participate in the trial in which it is believed that person will be affected is not enough to meet the fundamental principle of notice. But since Mr. Pratt was not a party statutorily, Judge Badio's ruling could not and should not have affected him. *Tubman v. Murdoch*, 4 LLR 179 (1934) and *Gbae et al. v. Geeby*, 14 LLR 147 (1960). However, assuming that the ruling did affect Mr. Pratt, a writ of error was not a proper legal remedy to have been sought by a person who desired to prevent the enforcement of a judgment to which he was no party nor in privity of relationship with any of the parties.

Counsel for plaintiff-in-error, on the one hand, argued that when the summary proceeding filed by Mr. Valentine was called, heard and decided by Judge Badio in the absence of Mr. Pratt, and without prior notice, it deprived him of his right to be heard and that the judgment was final.

On the other hand, counsel for defendants-in-error, contended that in the summary proceeding, which was heard and decided by Judge Badio, plaintiff-in-error was not a party; he was not therefore entitled to notice and that the judgment did not deprive him of his right to be heard in subsequent days whenever his petition for summary proceedings against Magistrate Thomas was called. Hence, the judgment was interlocutory, concluded the counsel.

According to the trial records, the case that was called, heard and decided by Judge Badio was the summary proceeding at the instance of Mr. Benjamin Valentine as informant, to which proceeding Plaintiff-in-error Pratt was not a party. Hence, he was not entitled to any notice of the hearing.

Where issues joined between party-litigants are heard and decided by a court of competent jurisdiction, such decision constitutes a final judgment. The complaint filed by Mr. Valentine attacked the magistrate for enforcing a faked mandate while Magistrate Thomas contended that he did this in obedience of orders. These contentions were heard and disposed of by Judge Badio who declared the purported mandate of Judge Obey to be null and void, and thereafter assigned Mr. Pratt's complaint against the magistrate for hearing. A final judgment is a single decision that determines the entire controversy as it was done in the instant case.

In *Pongay v. Obey*, 29 LLR 500 (1982), it was held that:

"Where a trial court gives a judgment and a command tending to relinquish any further determination of that controversy, the judgment is final and the party affected is entitled to appeal if he is present, or apply for a writ of error only if he was absent for cause and the command had not been fully executed."

A writ of error will be issued only to a party who, for a good reason, has failed to take an appeal from the judgment and who has lost his rights to the statutory appeal without laches on his part. The statute controlling the procedure for applying for a writ of error dictates first and foremost that a statement why an appeal was not taken be overtly asserted under oath; and for the purpose of this opinion we quote hereunder the relevant portion of the said statute:

"A party against whom judgment has been taken, who has for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after its rendition, file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error. Such an application shall contain the following:" Civil Procedure Law, Rev. Code 1: 16.24(1).

In this case, not only did the plaintiff-in-error fail to indicate in his statement why an appeal was not taken, but also fatally failed and neglected to show his relationship with the party litigants that is, the Republic of Liberia as complainant and Magistrate John C. Thomas as respondent in the summary investigation. As stated earlier in this opinion, no private individual citizen, in keeping with the several opinions of this Court, can be a party to a summary investigation; a private individual can only be an informant and as such he is merely a witness and nothing more. An application for a writ of error will therefore be denied where the petition fails to conform to these statutory requirements. *Borbor et al. v. Gillatey et al*, 25 LLR 124 (1976).

According to the laws cited herein, a writ of error lies when there is a final judgment rendered but still unexecuted, and no appeal formally announced, owing to a reasonable cause; and that the party applying must of necessity be a party to the suit for which such final judgment has been rendered. In the case at bar, the plaintiff-in-error for the writ of error was never a party to the summary investigation against Magistrate Thomas with Mr. and Mrs. Valentine as informants and thus contrary to the law. The application for the writ of error, having failed to conform to the statute governing writ of error, same must therefore be denied. *Wodawodey v. Kartiehn*, 4LLR 102 (1934) and *Mends-Cole et al. v. Weeks et al.*, 13 LLR

525 (1960). Therefore, the summary investigation out of which these error proceedings grew was a legal nullity for which no further comment is necessary.

From a thorough inspection of the records certified to us, there is no indication that the information filed by Mr. Pratt was ever gone into by Judge Obey except for the fictitious documents bearing the signature of the former clerk, which we are quoting verbatim hereunder:

"July 15, 1981

Dear Mr. Magistrate:

By directive of His Honour A. Wallace Octavius Obey, Resident Judge presiding by assignment, you are hereby commanded to enforce service of the writ of possession in favor of Mr. Pratt, as a result of judgment rendered in his favor without delay. Kindest regards,

Very truly yours,

s/ Eric Z. Mechian

t/ Eric Z. Mechian

CLERK, PEOPLE'S FIRST JUDICIAL
CIRCUIT COURT "A" MONTSERRADO
COUNTY, REPUBLIC OF LIBERIA

His Honor John C. Thomas

Stipendiary Magistrate

New Kru Town"

And as can be seen from Judge Obey's letter to Judge Badio dated June 1, 1982, after he had left the bench, it was discovered that the purported orders of Judge Obey were fake. Judge Obey's letter to Judge Badio is also quoted hereunder for the benefit of this opinion:

"Dear Judge Badio:

I understand that some presentation is being made to you during a summary proceedings hearing that I heard and disposed of a matter between one Pratt and Benjamin H. Valentine; this is a BIG LIE, if same is unsupported by records of court. I understand that Magistrate Thomas made the representation. Please don't let anyone suffer because of such false allegations.

Respectfully,

s/ A. W. Octavius Obey

ASSISTANT MINISTER FOR LITIGATION, JUSTICE"

Consequently, it must be concluded that the information filed by Mr. Pratt in the Civil Law Court, is still pending before that court and that the alleged mandate sent to Magistrate Thomas without the minutes of court to support it was also a legal nullity.

As a general rule of law, accrued costs must be paid before a writ of error can lie; but this principle of law holds true only in cases of a civil nature. And it is also a general rule of law practiced by courts of common law and in this jurisdiction that accrued costs can never be taxed or levied in cases of a criminal nature. The suit out of which these error proceedings grew is criminal in nature and as in all criminal cases, the State neither pays nor receives costs; hence, the accrued costs payment requirement cannot apply in this case. Therefore, in a criminal case where a person applying for the writ of error is a party to the action for which final judgment has been rendered, a writ of error will issue without the payment of accrued costs under the circumstances outlined herein above, Civil Procedure Law, Rev. Code 1: 45.4; *Dennis v. Republic*, 2 LLR 534 (1925); and *Deady v. Republic*, 3 LLR 256 (1944).

Because of these errors committed by the party-litigants, the judges and officers of court, as outlined and discussed in this opinion, it cannot be said that there was any regular trial resulting into a judgment from which a writ of error could legally lie or for that matter a legal relief could be obtained. According to Black's Law Dictionary, a plain and fundamental error, goes to the foundation of the cause irrespective of the failure of the parties to raise it in their pleadings; and in the appellate practice the error which goes to the merits of the matter whether assigned as error or not must be reviewed. Therefore, in the Court's opinion, it would be a sheer malignity and a miscarriage of justice were we to refuse reviewing the entire records of these proceedings in the absence of a showing that substantial harm would result to either party by such review simply because they were not raised by the parties. Civil Procedure Law, Rev. Code 1: 51.15.

In view of the facts, the circumstances involved and the laws cited, this Court has no alternative but to declare the proceedings, that is, the so-called summary investigation and counter summary investigation, null and void *ab initio*. Accordingly, the ruling of the Justice in Chambers is reversed. Notwithstanding, there is one thing that strikes us and our consciences about this case. Both the plaintiff, Pratt, now, plaintiff-in-error, and the defendants, Mr. and Mrs. Valentine, now co-defendants in-error, in their efforts to protect their respective interests in the magistrate court, New Kru Town, believed they were fighting a just cause as plaintiff and defendants, respectively. This belief also dominated their efforts in the circuit courts, Temple of Justice. Both Pratt and Mr. and Mrs. Valentine believed before the circuit courts that they were parties to the summary investigation proceedings in

the same way they had been in the magistrate court in the summary ejection.

We are satisfied with our decision in nullifying the summary investigation proceedings as doing otherwise would be a direct violation of the existing law. Nevertheless, we are also convinced that the Valentines and Mr. Pratt were to all intents and purposes parties to all these proceedings and in their consciences cannot deny this hard reality of fact. But as the courts of law are concerned essentially with legal justice, as opposed to moral justice, we have been compelled to arrive at a decision that merely satisfies the law and not the conscience.

However, to be fair to Mr. Pratt, and, for that matter, the Valentines, the summary ejection will have to be remanded to the magistrate for a *de novo* trial and to enter a final judgment as the evidence shall dictate.

The Clerk of this Court is hereby ordered to send a mandate to the court below to instruct the New Kru Town Magistrate to resume jurisdiction and dispose of this matter without further delay in accordance with the principles expressed in this opinion. And it is so ordered.

Petition denied.