

MOIGBE SIRLEAF, Plaintiff-In-Error, v. **HIS HONOUR HALL W. BADIO**,
Assigned Circuit Judge presiding over the August Term, A. D. 1980, of the Tenth Judicial
Circuit, Lofa County, **LASANNA KUYETE** and **ALHAJI KUYETE**, Defendants-In-
Error.

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

Heard: May 3, 4, 1983. Decided: July 7, 1983.

1. One of the grounds for the granting of a motion for continuance is illness of a counselor absence of a material witness.
2. It is error on the part of a trial judge not to deputize an attorney to take a decree or judgment of court on behalf of an absent party.
3. On cancellation of a deed to real property, the title reverts to those owning the property before the issuance of the deed.
4. An issue must first be raised by the party who wants to benefit thereunder before it can be passed on by a court of law.

Plaintiff-in-error filed a motion for continuance before the lower court on ground that he was ill and undergoing medical treatment. Plaintiff-in-error attached a medical certificate evidencing his illness. The trial judge ignored the certificate, assigned the case for disposition of the law issues, disposed of the law issues and ruled the case to trial. Several other excuses sent to the trial judge upon receipt of the new assignments were also ignored by the judge, who ruled that the plaintiff-in-error had abandoned his case and accordingly proceeded with the trial thereof in the absence of the plaintiff-in-error. On the same day of the hearing, after the presentation of evidence, the trial judge entered a decree, again in the absence of the plaintiff-in-error, cancelling the latter's public land sale deed. In entering the said decree in the absence of the plaintiff-in-error, the trial judge failed to appoint counsel to take the ruling on behalf of the absent plaintiff-in-error, as provided by statute. A writ of error was therefore applied for by the plaintiff-in-error. The Chambers Justice denied the petition for a writ of error and quashed the alternative writ. The Full Bench reversed the Chambers Justice's ruling, holding that the trial judge had erred in not appointing counsel to take the ruling for the plaintiff-in-error. The Court noted that one of the grounds stipulated by the statute for granting a motion for continuance was illness of a party or his counsel. The Court, observing that the plaintiff-in-error had filed a motion requesting continuance of his case due to illness, and had presented a medical certificate in support of his assertion of illness, concluded that the trial judge had misapplied the law in granting the application for abandonment against the plaintiff-in-error. Under the circumstances, the Court said, the trial judge should have appointed counsel to take the ruling so as to afford the plaintiff-in-error

the opportunity to except to and appeal from the ruling and have the Supreme Court review the same. The Court held that a failure by the trial judge to comply with the statutory requirement rendered the judge's action erroneous and provided a legal basis for issuance of a writ of error. The Court therefore reversed the ruling of the Chambers Justice, granted the petition and ordered the writ issued.

M Fahnbulleh Jones appeared for plaintiff-in-error. John A. Dennis appeared for defendant-in-error.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The plaintiff-in-error was a respondent in a cancellation proceeding instituted in the Tenth Judicial Circuit, Lofa County, by the Republic of Liberia through the Ministry of Justice and represented by the County attorney of Lofa County. The records revealed that the respondent was served with a notice of assignment and he filed a motion for continuance on the ground that the late Mr. Justice Bortue had given him 30 days to look for a counsel since his original counsel in person of Counsellor Robert G. W. Azango was disbarred from representing him because of Rule 28 of the Circuit Court Rules of Court, in that Counsellor Robert G. W. Azango presided as a judge over an injunction case pertaining to the same property. He also wrote a letter on the 5th of September, 1980, informing the judge of his motion that he had filed for continuance. Despite the motion filed on the 15th day of August, 1980, and the letter written September 5, 1980, the judge proceeded on the 15th of September 1980 to dispose of the law issues in the absence of plaintiff-in-error and his counsel and dismiss the plaintiff-in-error's answer without deputizing any attorney to take the ruling for him.

The records disclosed that the judge ordered the issuance of an assignment for Monday, December 22, 1980, at 10:00 a.m. for the trial of the case on the same day he disposed of the law issues. On September 19, the plaintiff-in-error again wrote the judge informing him of his illness and that he was still under medical treatment and attached to his letter a medical certificate from Dr. J. B. Titus' Clinic, Warren Street, P.O. Box 2626, Monrovia, dated September 19, 1980, indicating that he was sick and undergoing treatment for weeks suffering from urethritis and chronic prostatitis. The judge again ignored the medical certificate and the accompanying letter from the plaintiff-in-error and proceeded with the trial in the absence of the plaintiff-in-error and his counsel on September 22, 1980 under what he termed abandonment. Having concluded trial on the same day, the judge rendered final decree on the 23rd of September, 1980, canceling plaintiffs-in-error's public land sale deed without any notice to him or his counsel, and without appointing an attorney to take the ruling for the plaintiff-in-error.

The plaintiff-in-error, not being satisfied with the procedure adopted by the trial judge, petitioned the Chambers of the late Mr. Justice Bortue with a petition for a writ of error.

The respondents filed their returns through their counsel the Solicitor General of Liberia in person of Counsellor James Geizue. Plaintiff-in-error also filed an answering affidavit and subsequently a submission. These were resisted, argued and the peremptory writ denied and the alternative writ quashed by the Justice in Chambers. The plaintiff-in-error has appealed from the ruling of the Justice in Chambers. Hence, this case is now before us for final determination. We wish to state also that after the final rendition of judgment on the 23rd of September 1980, the Clerk of the Tenth Judicial Circuit, by the direction of the judge, issued a writ of possession in favour of the late Alahaji Mamadee Kuyete or his heirs who were never a party to the cancellation proceeding. According to the records before us, the parties to the cancellation proceeding were the Republic of Liberia, plaintiff versus Moigbe Sirleaf of the City of Voinjama, Lofa County, defendant, action - bill in equity for the cancellation of fraudulent public land sale deed and a relief against fraud.

We quote the last paragraph of the judge's decree:

"The clerk of this court will issue a writ of possession and have same placed in the hands of the sheriff of this county commanding him to put the heirs of the late Alahaji Mamadee Kuyete in possession of the property heretofore owned, controlled and possessed by Moigbe Sirleaf, the respondent herein whose deed has been cancelled under this Decree using the metes and bounds described hereinabove and granted to the late Alahaji Mamadee Kuyete on April 23, 1966 and the Republic this hundred and nineteenth year. The clerk shall also order the sheriff to inform all or any individual occupying said property or exercising any color of right of ownership in said property whether in person, by designation or by an agent that said property has been turned over to the heirs of the late Alahaji Mamadee Kuyete and therefore they should cease any manner of control over said property and have same relinquished to the heirs of the late Alahaji Mamadee Kuyete in keeping with the writ of possession and the orders of this court. AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED."

Given under my hand in open Court, this 23rd day of September, A. D. 1980. Sgd. H. W. Badio ASSIGNED CIRCUIT JUDGE PRESIDING" We shall also quote for the benefit of this opinion the two last paragraphs of the judge's ruling on the law issues: "Therefore, and in view of the foregoing, it is the ruling of this court that the respondent's amended answer be and the same is hereby dismissed and he is now ruled to a bare denial of the facts outlined in the petition in this proceeding. AND IT IS HEREBY SO ORDERED. THE COURT: The clerk of this court is hereby ordered to prepare an assignment for the trial of this case on Monday, December 22, 1980, at 10:00 a.m. The assignment will be placed in the hands of the sheriff of this county to be served on the respondent in keeping with law and procedure. AND IT IS HEREBY SO ORDERED.

Given under my hand in open Court this 15' day of September, A. D. 1980. Sgd. H. W. Badio ASSIGNED CIRCUIT JUDGE PRESIDING"

Despite the fact that he ordered the trial assigned on Monday, December 22, 1980 at 10:00 a.m., yet the judge heard and disposed of the case on September 22, 1980 contrary to his own ruling thereby depriving plaintiff-in-error his day in court.

The judge has misapplied Rule 7 of the Circuit Court Rules when he granted the application for abandonment after plaintiff-in-error had filed a motion for continuance and, besides, wrote the judge informing him of his illness which letter was buttressed by a medical certificate from Dr. Titus' Clinic, one of the reputable and renown doctors in Liberia. We quote Rule 7 relied upon by the judge:

"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and in its discretion. A failure to file a motion for continuance or to appear for trial after return by the sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case in which instance the court may proceed to hear the plaintiff's side of the case and decide hereon or, dismiss the case against the defendant, and rule the plaintiff to cost, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be the foremost concern of the judge assigned to preside over the term." Plaintiff-in-error having filed a motion for continuance, and having written to the judge indicating his illness, which was supported by a medical certificate, it was error for the judge to have proceeded with the trial to finality. One of the grounds for the granting of a motion for continuance is illness of a counselor absence of a material witness. Granting that the counsel was available, could he have testified for the respondent in the lower court and plaintiff-in-error in these proceedings? We answer in the negative. The plaintiff-in-error had to take the stand and testify on his own behalf and produce evidence, in support of his denial, since he was ruled on a bare denial. Civil Procedure Law, Rev. Code 1: 9.1(2) and 26.3.

It was also error for the judge not to have deputized an attorney to take the decree of the court on behalf of plaintiff-in-error. Ibid. 1:9.1(2), 51.6.

Section 51.6 of the aforementioned Civil Procedure Law, under the caption Announcement of taking of the appeal, provides:

"An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Counts 6, 7, 8, 9 of the petition and 7 and 8 of the answering affidavit are therefore sustained as against the entire returns of the respondents.

In counts 6 and 11 of the answering affidavit and 10, 11 and 13 of the petition, plaintiff-in-error contended that the judge erred when he ordered issued a writ of possession and placed Lasanna Kuyete and Malike Kuyete, who are not parties in the cancellation proceeding in possession of the land. In the case *Pratt, et. al v. Smith, et. al*, 26 LLR 160, 167 (1977), this Court held that cancellation proceeding was not a possessory action. In that case, His Honour John A. Dennis had decreed, in a cancellation proceeding instituted by the Republic of Liberia against one Dawoda Harmon for a 15-acre tract of land situated in Fanima Town, canceling Mr. Dawoda Harmon's deed which decree was affirmed by the Supreme Court. In executing the mandate of the Supreme Court, His Honor Frank W. Smith then presiding over the Civil Law Court of the Sixth Judicial Circuit issued a writ of possession directed at John T. Pratt, Vice Grebo Governor et al., representing the Grebos and Krus of Fanima Town, and the Supreme Court held that it was error to issue a writ of possession for the land in question, because on cancellation of a deed to real property, the title reverts to those owning the land before the issuance of the deed who may then institute an action to evict trespassers. The contentions of the petitioner in the above counts are therefore sustained.

With reference to counts 18 and 19 of the petition and 13 and 14 of plaintiff-in-error answering affidavit and submission, we have also discovered that the cancellation proceeding was instituted against the same property for which the ejectment suit was instituted and finally decided by this Court in favour of plaintiff-in-error. In order to avoid untold litigations, we have decided to withhold the mandate in the ejectment suit in abeyance pending the final determination of the cancellation proceeding. If the cancellation proceeding is finally adjudicated in favour of the plaintiff-in-error then and in that case both mandates will be executed together; but if the plaintiff-in-error loses the cancellation proceeding the mandate will accordingly indicate as to its execution. However, we hold that everything should remain in status quo, that is, the property in question should remain under the supervision of the court and the sheriff of Lofa County is authorized to collect all rents due and have the same kept in escrow pending final determination of the cancellation proceeding. If at all the writ of possession ordered issued by Judge Badio was served, same is hereby declared a legal nullity and the property ordered reverted under the supervision of the court as stated above.

Our distinguished colleague in denying the petition for the peremptory writ of error maintained that the plaintiff-in-error had violated the statute by not alleging in the petition that the execution of the judgment is not complete. Whilst this is the provision of the

statute, yet, the issue must first be raised by the party who wants to enjoy the benefit of such provision, because the Court not being a party cannot raise issues but must pass on issues raised by the parties. A careful perusal of the records revealed that the respondents never raised such an issue in their returns. Hence, this Court cannot sua sponte raise such issue and at the same time decide on it. We therefore disagree with our colleague in this respect.

In view of all that we have narrated and the laws cited, it is the opinion of this Court that the ruling of the Justice in Chambers be and the same is hereby reversed and the decree given by the judge canceling plaintiffs-in-error deed is ordered vacated and set aside. The Clerk of this Court is ordered to send a mandate to the court below instructing the judge presiding therein to resume jurisdiction over the case and dispose of the cancellation proceeding commencing with the disposition of the law issue. Costs to abide final determination. And it is hereby so ordered.

Ruling reversed; case remanded.