JOHN T. TEEWIA, Administrator of the Estate of the late ANNIE MITCHELL, Plaintiff in Error, v. R. D. UREY, Commissioner of Probate, Monthly and Probate Court, Montserrado County, and EDWARD S. SOKAN, Defendants in Error.

APPEAL FROM RULING OF JUSTICE GRANTING ISSUANCE OF

WRIT OF ERROR TO THE MONTHLY AND PROBATE COURT,

MONTSERRADO COUNTY.

Argued May 3, 1978. Decided June 29, 1978.

The posting of a bond in error proceedings is discretionary with the Justice who grants the writ.

A writ of error may be granted when an inferior tribunal has denied to a litigant his day in court.

Actual illness of counsel is a proper ground for continuance of a cause, but where the application for continuance on the ground of illness makes no explanation and offers no proof that counsel was in fact indisposed and is unsupported by circumstances, the court will not grant the application.

In an action against the administrator of an estate requesting that a certain piece of property be extracted from a decedent's estate, the trial judge rendered judgment against the administrator and ordered that the property be turned over to the complainant, Sokan. The administrator, who had not received a notice of assignment and was not in court to except to the judgment, petitioned for a writ of error to the Justice in chambers. It was granted for the reason that petitioner had not had his day in court.

On appeal from that ruling, counsel for defendant in error did not appear for the argument. On receiving the notice of assignment for the hearing of the proceedings in error, he had indicated on the notice that he was ill and could appear at a later date. The Supreme Court held, however, that this was insufficient to explain his absence at the argument and proceeded to consider the ruling in chambers, which it affirmed. It also fined the counsel for contempt.

S. Edward Carlor for plaintiff in error. No appearance for defendant in error.

MR. JUSTICE BARNES delivered the opinion of the Court.

Defendants in error noted their exceptions and appealed from the ruling entered by our distinguished colleague, Mr. Justice Henries, in chambers on the petition of plaintiff in error, for a writ of error to the bench en banc.

The petition was assigned for hearing on April 13, 1978, at the hour of 9:00 in the morning. The return shows that service was made on counsel for both parties, but counsel for defendants in error refused to sign the notice of assignment. We think it is necessary for the benefit of this opinion to quote the return of the Marshal to the notice of assignment issued on the date mentioned earlier. The return reads thus:

"This is to certify that on the 12th day of April, 1978, this notice of assignment has been duly served on counsel for petitioner in error but counsel for defendant in error has refused to sign same when Bailiff Peter Paul handed him the assignment to sign it but stated that he will come to court. Hence I make this my official return in the clerk's office for my chief's approval.

"[Sgd.] PETER PAUL,

Dated 13/4/78.

Approved: ADAM RICKS,

Deputy Marshal, Supreme Court of Liberia."

When the case was called, in keeping with the notice of assignment, the defendant in error failed to appear. The second notice of assignment was ordered issued on May 1, 1978. The return of the Marshal of the Supreme Court shows that all parties were duly notified to appear before this Court on May 2, at 9: 00 in the morning as per assignment. On this notice of assignment the defendant in error

scribbled the following words: "Sorry ill. Will be prepared on Monday the 8th." His signature followed.

The Court considered the conduct of Counselor Edward S. Sokan, counsel for defendant in error, unprofessional and an outright disregard of the rules and practice in our jurisdiction. The Court was compelled under the circumstances to order issued a writ of summons against him to appear before the Supreme Court to show cause, if any he had, why he should not be held to answer in contempt for failing to appear to argue the proceedings on the writ of error. We shall say more about this later in this opinion.

When the defendant in error failed to appear to argue his case before the bench en bane, counsel for plaintiff in error on his appeal from the justice's ruling in chambers invoked the application of the provision of Rule IV, part 6, of the Revised Rules of the Supreme Court with regard to nonappearance of counsel for one of the parties on the argument. After due consideration by the Court, the application was granted.

We have carefully reviewed the petition of plaintiff in error, and the return of the defendant in error Sokan. There has been a thorough examination of the records of the Monthly and Probate Court, from which these proceedings emanate. It is our firm opinion that the ruling in chambers should stand. The ruling is herein quoted to form a part of this opinion:

"When an information was filed against defendant in error Sokan, relative to his interfering with the intestate estate of the late Annie Mitchell, the Monthly and Probate Court, Montserrado County, ordered that all monies from the estate be placed in escrow until final determination of the action instituted by the defendant in error against the plaintiff in error, administrator of the estate, requesting that a certain piece of property be extracted from the inventory of the estate.

"The plaintiff in error alleged that on December 22, 1976, without any notice of assignment being served on him, the trial judge rendered judgment against him and ordered that defendant in error Sokan be put in possession of the property and the rents from the property be turned over to the defendant in

error. The petitioner, not being in court to except to the judgment, petitioned for a writ of error, contending that he did not have his day in court; that the judge erred when he added a party to the action without notice to the plaintiff in error ; and that it was also error for the judge to decree that the defendant in error be put in possession of the property in dispute.

"The defendant in error filed a return consisting of nine counts, only two of which we deem necessary for determination of this issue, and they are: (1) that the plaintiff in error failed to file a bond as a prerequisite for petitioning for a writ of error; and (2) that the judgment of the Probate Court has been fully executed.

"Taking the last issue in the return first, the defendant in error has not shown any evidence of the court's decree having been executed; even the court's records do not show execution of the court's decree. It is true that the court gave the decree, but there is no evidence of a writ of possession being issued and executed. KarpehWreh v. Baker Azango, 18 LLR 293 (1968).

"As to the issue of the bond, the Civil Procedure Law, Rev. Code 1:16.24-, provides that 'as a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff in error, shall be required to pay all accrued costs, and may be required to file a bond in the manner prescribed in section s1.8. Such bond shall be conditioned on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed.' The contention of the defendant in error cannot stand, as this Court has held that the posting of a bond in error proceedings is discretionary with the Justice who grants the writ. Paterson, Zochonis & Co., v. Flomo, 20 LLR 4o4 (1971); Sawyer v. Freeman, 17 LLR 274 (1966).

"In his argument, the defendant in error raised the issue of nonpayment of accrued costs. He argued that the amount should be $25 at least, without showing how this amount was arrived at. In any event, the plaintiff in error proffered a cashier's check of $25 in favor of the 'Sheriff of the Probate Court a/c accrued cost re: Teewia vs. Judge Urey and Sokan— Error.' In view of this exhibit this contention is overruled.

"Coming back to plaintiff in error's allegation of not having his day in court, it is observed from the records that only one notice of assignment was issued—it was for a hearing of the matter on December 3, 1976; and it was not signed by the plaintiff in error to indicate that it had been served on him. The ruling and decree of the Probate Court were made on December 22, 1976. The records do not show any issuance or service of a notice of assignment for that date. It is clear, therefore, that the plaintiff in error, not having been given an opportunity to be heard, was denied his day in court. Gbae v. Geeby, 14 LLR 147 (196o) ; Paterson, Zochonis & Co. v. Flomo, supra.

"In the circumstances, the peremptory writ of error is hereby issued and the proceedings of the lower court ordered vacated; and the Clerk of this Court is hereby ordered to send a mandate to the Probate Court to resume jurisdiction over the matter and retry it after duly informing the parties concerned to be in attendance upon court. Costs to abide final determination."

The ruling of the Justice in chambers is hereby affirmed. And it is so ordered.

Counselor who failed to appear in assignment for hearing of an appeal before the Supreme Court are subject to disciplinary penalties. This was the holding of this Court in Davies v. Liberian-American-Swedish Minerals Company, 14 LLR 535 (1961).

Notwithstanding the second notice of assignment issued on May 1, 1978, for the hearing of the proceedings in error, counsel for defendant in error refused to appear but elected to indicate on the notice of assignment, "Sorry ill. Will be prepared on Monday the 8th." It has been the holding of this Court for more than forty-three years that the illness of counsel is a proper ground for continuance of a cause. Burney v. Jantzen, 4 LLR 322 (1935). On this same point of illness of counsel, the Court in Massaquoi v. Republic, 8 LLR 155 (1943), quoted with approval, p. 158, from RULING CASE LAW:

"'Whether or not a continuance should be granted because of the absence, from illness, death or other cause, of applicant's counsel must necessarily depend on the facts and circumstances of each particular case. Certain it is that the mere absence of counsel unexplained, or without sufficient reason being given therefor, is not a ground for a continuance, and in general it seems that courts in considering applications for a continuance, and in inquiring into the grounds thereof, do not view the absence of counsel with much favor.' 6

R.C.L. Continuances, § 6 (1915)."

Should this Court consider the words written by the counsel of defendant in error: "Sorry ill. Will be prepared on Monday the 8th," as an application for continuance or postponement of the case for illness? We think not. Every lawyer practicing before this Court should be aware that the practice of law is not a joke but an art to be practiced with professionalism and common sense in handling the tools of the profession. It is not the pleasing duty of this Court to take disciplinary measures against any counsellor of this bar because lawyers are gentlemen of highest caliber and entitled to the greatest consideration in representing their clients before this Court. But when the lawyer becomes unmindful of his professional responsibility and disregards the order of this Court, he or she will be penalized for such misconduct.

Therefore, it is our considered opinion that Counselor Edward S. Sokan should be and he is hereby immersed in a fine for contempt, and he shall pay into the Bureau of Internal Revenues the amount of $200 within forty-eight hours. For failure on the part of counsel to pay that amount, he shall be prohibited directly or indirectly from the practice of law until the fine shall have been paid. And it is hereby so ordered.

Ruling affirmed.