

World Vision of Liberia represented by the Coordinator and all Authorized personnel of the Organization, and its Employees Wilmot Kennedy all of the City of Monrovia, Liberia AND **Atlantic Life & General Insurance Company** represented by its President, Clemenceau Urey, and all authorized Personnel of the Institution also of the City of Monrovia, Liberia PLAINTIFFS-IN-ERROR Versus Their Honors **Boima Kontoe** and **Emery S. Paye**, Assigned Judges respectively, Civil Law Court, September Term A.D. 2006 and **Peter Kroma** of the City of Monrovia, Liberia, DEFENDANTS-IN-ERROR.

PETITION FOR WRIT OF ERROR

HEARD: MARCH 25, 2009 DECIDED: JULY 23, 2009

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On August 16, 2001, the defendant-in-error, Peter Kroma, was accidentally knocked down by Wilmot Kennedy, an employee of co-plaintiff-in-error, World Vision, with a motorcycle owned by World Vision, resulting into a broken hip, leg, jaw and several broken teeth. The records show that the motorcycle was insured by the Atlantic Life & General, Insurance Company, the other co-plaintiff-in-error in this case.

The accident case was investigated by the Liberian National Police and a report submitted on September 5, 2001, which indicated that the operator of the motorcycle, Wilmot Kennedy, was liable for the occurrence of the accident. Peter Kroma was first treated at the Redemption Hospital and later transferred to Dr. H. Browne's Clinic on the Tubman Boulevard, in the vicinity of the Monrovia City Hall, Sinkor, Monrovia. Records show that he was also treated at the John F. Kennedy Hospital in Sinkor.

When World Vision was informed about the accident, it referred the matter to its insurance company, the Atlantic Life & General Insurance Company, who made

several payments amounting to L\$3,000.00 (Three Thousand Liberian Dollars) and executed a promissory note dated April 17, 2001, to pay all other medical bills for Peter Kroma.

However, Peter Kroma, through his counsel, claimed that World Vision and Atlantic Life & General Insurance Company stopped and refused to make further payments and exhibited complete "don't care attitude" towards his plight, despite the promise by Atlantic Life & General Insurance Company to pay all medical bills for him as a result of the accident.

It is alleged that upon the discharge of Peter Kroma from the Browne's Clinic, several attempts were made to discuss with World Vision and the Atlantic Life & General Insurance Company his claim representing losses and expenses he incurred as well as pain and "mental anguish" he suffered as a result of the accident, but to no avail.

Consequently, on February 9, 2004, Peter Kroma, by and through his Legal Counsel, the Henries Law Firm, filed an action of damages for personal injury against World Vision as 1st defendant, and Atlantic Life & General Insurance Company as 2nd defendant in the Civil Law Court, Sixth Judicial Circuit Court, Montserrado County, sitting in its March Term, A.D. 2004, claiming the total amount of L\$50,000.00 as special damages and requested court to award him not less than US\$100,000.00 as general damages.

On February 19, 2004, the Scott and Associates Law Firm and the David A.B. Jallah Law Firm jointly filed a motion for enlargement of time praying court for more time to file answer for World Vision and Atlantic Life & General Insurance Company. The motion was granted and World Vision and Atlantic Life & General Insurance Company were given up to May 20, 2004 to file their answer.

On May 20, 2004, the answer was filed by the two law firms. The answer did not deny the occurrence of the accident, neither did it deny that the motorcycle which

knocked down Peter Kroma was owned by World Vision and driven by an employee of World Vision. The answer basically stated that in the absence of judicial determination of the road accident matter by the Traffic Court, it is illegal and erroneous to file an action of damages on the basis of a police report, since the police report is not a final judgment from a court.

The records show that when the law issues were disposed of and the matter ruled to trial, several notices of assignment were issued and served on the parties for the trial of the case, but the plaintiffs-in-error and their lawyers did not appear for trial, even though the notices of assignment were served on the lawyers for the plaintiffs-in-error.

When they refused to appear in court upon the last notice of assignment dated August 17, 2006 for hearing to be had on September 4, 2006, the counsel for the defendant-in-error invoked Chapter 42.1, 1 LCL Revised Civil Procedure Law which provides that: "If a defendant has failed to appear, plead, or proceed to trial, ...the plaintiff may seek a default judgment against him." The trial court entered default against the plaintiffs-in-error and thereafter the empanelled jury, after hearing the defendant-in-error's side of the case, brought a unanimous verdict of liable against the plaintiffs-in-error. The jury awarded the defendant-in-error the amount of L\$50,000.00 as special damages and US\$100,000.00 as general damages.

A notice of assignment was issued for the court's final ruling to be entered on September 8, 2006. The notice of assignment was served on the David A.B. Jallah Law Firm, but the said firm did not appear for the court's final ruling, whereupon Attorney Joseph Gibson of the Wright, Jangaba & Associates Law Firm was appointed by the trial court to take the ruling for the absent plaintiffs-in-error. Attorney Gibson accepted the appointment, took the court's final ruling on behalf of the plaintiffs-in-error and announced an appeal to the Supreme Court.

Attorney Gibson claimed that the David A.B. Jallah Law Firm refused to sign for

and receive the final ruling of the trial court on the ground that the firm was no longer counsel of record in the case. He issued an affidavit to that effect dated February 3, 2007.

According to Attorney Gibson, when the David A.B. Jallah Law Firm persistently refused to receive the trial court's ruling on the 11th, 12th, 13th, and 14th of September, 2007, he perused the court's file and found that the firm, through Counselor David A.B. Jallah, had signed pleadings in the case. He then wrote a letter to the firm dated September 27, 2006 in which he enclosed the court's ruling and a copy of the pleadings the David A.B. Jallah Law Firm had filed in the case.

On September 29, 2009 the David A.B. Jallah Law Firm, through Counselor David A.B. Jallah, wrote Attorney Gibson and returned the court's ruling to him and informed him that although his firm once served as legal counsel for the Atlantic Life & General Insurance Company, its services had been discontinued "prior to the hearing of the case and the rendition of the final judgment therein".

When the period of ten days required for the filing of bill of exceptions elapsed, the counsel for the defendant-in-error filed a motion before the trial court to dismiss the appeal announced by Attorney Gibson on behalf of the plaintiffs-in-error.

At the hearing of the motion to dismiss the appeal on November 16, 2006, Counselor Gloria Musu Scott of the Scott & Associates appeared and prayed court for continuance for five days to prepare and file resistance to the motion to dismiss the appeal. The trial court granted the request and reassigned the motion for November 21, 2006.

At the call of the case on November 21, 2006 for the hearing of the motion to dismiss the appeal, the Scott and Associates did not appear and no other lawyer appeared for the plaintiffs-in-error.

The counsel for the defendant-in-error requested the trial court to grant the motion to dismiss the appeal relying on Section 10.7, 1LCL Revised, Civil Procedure Law, which provides that:

"...If a party does not appear to oppose a motion or fails to furnish the papers demanded on the notice, the motion shall be granted on proof of due service of the notice and required papers."

The trial court granted the motion and dismissed the appeal.

The bill of cost totaling US\$106,000.00 was prepared and taxed. Co-plaintiff-in-error Atlantic Life & General Insurance Company appeared and paid the amount of US\$10,000.00 contending that the limit of liability under the policy that covered the motorcycle which co-plaintiff-in-error, World Vision insured was US\$10,000.00.

After the payment of US\$10,000.00 by co-plaintiff Atlantic Life & General Insurance Company, the plaintiffs-in-error, through their additional counsel, Counselor Marcus R. Jones, filed this petition for the writ of error.

The plaintiffs-in-error contended in their petition for writ of error that: a) they did not file their bill of exceptions in this case because Attorney Joseph Gibson who was appointed by the trial court to take the court's final ruling on their behalf did not deliver the ruling to them until after 21 days; b) that Counselor Gloria Musu Scott, one of their lawyers was out of the country with the knowledge of the trial court; c) that the services of their other lawyers, the David A. B. Jallah Law Firm had been discontinued; d) that they paid the amount of US\$10,000.00 against the bill of cost because of pressure brought to bear on them; and e) that the amount US\$10,000.00 awarded by the jury to the defendant-in-error was quite astronomical.

In counter argument, the defendant-in-error maintained that: a) the plaintiffs-in--

error were jointly represented by two separate law offices, the David A.B. Jallah Law Firm and the Scott & Associates Law Firm, thus the absence of one lawyer from one of the two firms was not a ground for continuance and the service of precept on the other firm did not constitute reversible error; b) that the court - appointed counsel, Attorney Joseph Gibson took the trial court's final ruling to the David A.B. Jallah Law Firm, but that that firm refused to accept the 'ruling; c)' that the contention of the plaintiffs-in-error that the David A. B. Jallah Law Firm was no longer representing them is not supported by the records of the case; d) that by taxing the bill of cost and making part payment in the amount of US\$10,000.00, the plaintiffs-in-error had accepted liability to settle the full judgment amount; and e) that the jury award of US\$10,000.00 in an accident case that left the defendant-in-error on crutches for the rest of his life due to broken hip and legs is certainly not astronomical.

For the determination of this case we will consider the following issues:

1. Whether conviction by the Traffic Court is a prerequisite in the filing and determination of an action of damages for personal injury caused by road accident?
2. Whether the services of the David A.B. Jallah Law Firm were properly withdrawn from the plaintiffs-in-error's case?
3. Whether when two separate law firms are involved in a matter on the same side, the absence of one lawyer from one of the firms is ground for continuance?
4. Whether writ of error will lie under the facts and circumstances of this case?

Concerning the first issue - whether conviction by the Traffic Court is a prerequisite in the filing and determination of an action of damages for personal injury caused by road accident, our answer is no!

The law is that the Traffic courts have jurisdictions ...

"to try without a jury any violation of the vehicle and traffic law constituting an infraction...The procedure in criminal proceedings in magisterial and justices of the peace courts shall govern the procedure in traffic courts." 9.2, New Judiciary Law of Liberia.

In this jurisdiction, traffic cases are quasi-criminal. And the law is that the institution of a civil action is not contingent upon the fact that a criminal action is pending undetermined or has been terminated. *Osabulg V. Liberia Port Storage Company Inc.*, 34 LLR 283, (1978).

"A civil action is a proceeding in court by one party against another for the redress of a legal wrong or for the enforcement or protection of a private right or the redress or prevention of a private wrong. The term embraces both legal and equitable actions. A criminal action is an action by or on behalf of the state against one charged with the commission of a criminal act for the enforcement of the penalty or punishment prescribed by law. The fact that the same act may constitute a wrong against society, punishable as a crime, and a wrong against an individual, redressable in a civil action, does not make the civil action a criminal action, inasmuch as the objects of the two proceedings are different.

The term "quasi-criminal" has been applied to some actions which, in addition to incorporating aspects of criminal procedure, also have a dominant and punitive element such as a sentence, penalty, or fine." 1 AM JUR 2d, 32.

Where the law gives a right or prohibits an injury, it also gives a remedy; a remedy available to a party in a civil suit on account of injury suffered as in the case before us is not contingent on the successful prosecution of a quasi-criminal case. We hold, therefore, that the plaintiffs-in-error's contention that in the absence of judicial determination of the road accident matter by the Traffic Court it is illegal and erroneous to file an action of damages on the basis of a police report has no

legal basis.

We address next, whether the services of the David A.B. Jallah Law Firm were properly withdrawn from the plaintiffs-in-error's case.

The plaintiffs-in-error contended that Counsellor Gloria Musu Scott of the Scott and Associates Law Firm, one of their lawyers, was out of the country with the full knowledge of the trial court, and that the services of their other lawyers, the David A.B. Jallah Law Firm had been discontinued, therefore, they could not attend upon the notices of assignment for the hearing of the case, a situation which led to the default judgment against them. The case file reveals, that Counselor Gloria Musu Scott wrote to the trial court informing the court that on account of ill health she was traveling out of Liberia to seek medical care and that she would be away for six months. She requested the court for continuance in all matters in which she served as counsel of record.

However, there is no indication that the services of the other law firm representing the plaintiffs-in-error, the David A.B. Jallah Law Firm, were properly discontinued or withdrawn. We have carefully perused the case file and there is no trace of notice of change of counsel filed. The question is how were the services of the David A.B. Jallah Law Firm discontinued?

§ 1.8 (2), 1 LCL Revised, Civil Procedure Law provides: "An attorney of record may be changed by court order or, unless the party is an infant or an incompetent person, by filing with the clerk of the court a notice of change together with a statement of consent to the change signed by the attorney and the party. A copy of notice of such change shall be served on the other parties."

Rule 36, Code For The Moral And Ethical Conduct Of Lawyers provides: "The Right of a lawyer to withdraw from employment once assumed arises not only from good cause. Even the desire or consent of the client is not always sufficient. The lawyer should not throw up the unfinished task to the detriment of his client,

except for reasons of honour or self-respect. A client's insistence on a course which the professional duty and integrity of the lawyer does not permit, he may be warranted in withdrawing from, on due notice to the client, allowing him time to employ another lawyer..."

In *Wuo v. Wordsworth*, 30 LLR 106, (1982), this Court held that an attorney may not compromise, abandon or withdraw from his representation of a client's case without the knowledge or consent of that client.

There being no showing that the services of the David A.B. Jallah Law Firm were properly discontinued from the plaintiffs-in-error's case in keeping with' the authorities cited above, we hold that said firm, as at the time of the service of notice of assignment on them for the trial of the case, were lawyers for the plaintiffs-in-error and should have represented them at the trial.

On the question of whether when two separate law firms are involved in a case on the same side the absence of one lawyer from one of the firms is ground for continuance our answer is also no!

We have already determined that the services of the David A.B. Jallah Law Firm were not properly terminated or discontinued, so that firm should have represented the plaintiffs-in-error at the trial. The absence of Counselor Gloria Scott from the country can not therefore be a valid ground for the postponement of the case as she was not the only lawyer representing the plaintiffs-in-error.

In *American International Underwriters, Inc. v. Fares Import*, 30 LLR 335 (1982), this Court held that "Where a party in a case is represented by more than one lawyer, the cause should not be deferred because of the absence of one of the lawyers."

We address last, the issue whether under the facts and circumstances of this case, writ of error will lie.

§ 16.24, 1LCLR, Civil Procedure Law provides: "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..." [Emphasis supplied].

The question is did the plaintiffs-in-error have good reason for failing to make a timely announcement of the taking of an appeal when judgment was entered against them? We hold no, they did not have good reason. As we have said, the David A.B. Jallah Law Firm persistently refused notices of assignment for the hearing of the case and also to take the final ruling when they, for all intents and purposes, were still representing the plaintiffs-in-errors.

This Court has held: "Plaintiffs in error applying for a writ of error on the contention that they have been deprived of their day in court are properly denied the relief sought when a notice of assignment of their case for trial was duly served upon their lawyer, who failed to appear in court on the trial date." *Benson v. Findley*, 18 LLR, 285 (1968).

The Supreme Court has also held that denial of day in court is no ground for the issuance of the writ of error when counsel declines appearance after notice. *Mulba v. Dennis*, 22LLR, 46 (1973). Based on these decisional laws, it is clear that writ of error will not lie in this case, given the facts and circumstances.

The plaintiffs-in-error contended that the court-appointed counsel, Attorney Joseph Gibson, who took the final ruling did not deliver the ruling to their lawyers until after 21 days, thereby making it impossible for them to have filed their bill of exceptions in statutory time. However, Attorney Joseph Gibson issued affidavit in which he confirmed under oath, that he took the ruling to the David A.B. Jallah Law Firm on the 11th, 12th, 13th, and 14th of September, 2007, but that the firm refused to accept the ruling on the ground that it no longer represented the

plaintiffs-in-error.

We are taken aback by this contention of the plaintiffs-in-error because, in a letter written by Counselor David A.B. Jallah to Attorney Joseph Gibson on September 29, 2009, he clearly stated that the services of his firm were discontinued "prior to the trial of the case and the rendition of the final judgment therein".

So, as we see it, it made no difference whether the ruling was taken to the David A.B. Jallah Law Firm the same day it was entered, the firm would have still refused to accept the ruling on the mistaken belief that it no longer represented the plaintiffs-in-error. Under the circumstance, we accept the statement made under oath by Attorney Joseph Gibson that he took the ruling to the David A.B. Jallah Law Firm on the 11th, 12th, 13th and 14th of September, 2007 but the firm refused it on the ground that it no longer represented the plaintiffs-in-error.

The plaintiffs-in-error also contended that due to pressure brought to bear on them, co-plaintiff-in-error Atlantic Life & General Insurance Company paid the amount of US\$10,000.00 against the bill of cost and that the award of US\$100,000.00 given to the defendant-in-error was quite astronomical.

We see no evidence of pressure brought on the plaintiffs-in-error in this case and in our opinion, the amount of US\$100,000.00 awarded the defendant-in-error as general damages is in keeping with the evidence adduced. The plaintiffs-in-error did not deny that the defendant-in-error, Peter Kroma, was accidentally knocked down by Wilmot Kennedy, an employee co-plaintiff-in-error World Vision, with a motorcycle owned by World Vision, resulting into a broken hip, leg, jaw and several broken teeth. There was no denial, also, that the motorcycle was insured by the Atlantic Life & General, Insurance Company, the other co-plaintiff- in-error in this case.

The accident case was investigated by the Liberian National Police and a report submitted on September 5, 2001, which indicated that the operator of the

motorcycle, Wilmot Kennedy, an employee of co-plaintiff-in-error World Vision, was liable for the occurrence of the accident. The police report was never challenged. Peter Kroma was treated at several hospitals and when World Vision was informed about the accident, it referred the matter to its insurance company, the Atlantic Life & General Insurance Company, who made several payments totaling L\$3,000.00 (Three Thousand Liberian Dollars) and executed a promissory note dated April 17, 2001, to pay all other medical bills for Peter Kroma.

Two medical certificates were issued concerning the condition of the defendant-in-error as a direct result of the accident. The medical certificate from the John F. Kennedy Medical Center dated January 2, 2004 under the signature of Dr. Wm. Taylor Neal who treated defendant-in-error reads:

"The above-mentioned patient was treated at our clinic for injuries sustained as the result of a road traffic accident. Our examination revealed that the patient sustained a fracture of the right mandible, five teeth were fractured and he sustained other abrasions and bruises to the soft tissue."

"The fracture was reduced and the post x-ray shows a proper union. However, the traumatic blow produced some damage in the "temporo-mandibular joint which cannot be corrected surgically. Therefore, the patient has a chronic painful condition similar to arthritic pain. This condition will have to be controlled with regular doses of analgesics and anti-inflammatory drugs. The fractured teeth were extracted and the missing teeth must be replaced with appropriate dental prosthesis to ensure the proper mechanism for mastication and also to restore esthetics."

The medical report from Dr. H. Browne's Clinic dated January 6, 2004 signed by Dr. H. Browne reads:

"The above name patient was involved in a road traffic accident in August 2001 when he sustained a compound fracture (open fracture) of his left leg both tibia

and fibula. He also suffered fracture of his jaw and was sent to Dr. William Taylor Neal for treatment."

"After almost 2 (two years) of treatment, the last X-ray taken on December 29, 2003 shows that the gap within the tibia is becoming smaller and smaller. Mr. Peter Kroma walks with a crutch as he was advised on December 30, 2003. He will eventually walk without crutches in the long run."

"However his balancing on the leg is impaired. He cannot move or walk without a crutch because the lower leg or legs are used for locomotion or walking. He also cannot squat on the leg.."

We are satisfied that the evidence produced by the defendant-in-error in support of his cause is overwhelming. We will therefore not disturb the jury verdict brought in his favor.

We note from the records, that the Atlantic Life & General Insurance Company, co-plaintiff-in-error, made payment of US\$10,000.00 in partial fulfillment of the total bill of cost of US\$106,000.00.

Co-plaintiff-in-error Atlantic Life & General Insurance Company maintained, and this was not denied, that the limit of the insurance coverage it had with co-plaintiff-in-error World Vision was US\$10, 000.00. This been the case, we confirm the jury's verdict in favor of the defendant-in-error and hold co-plaintiff-in-error World Vision liable for US\$106,000.00 less the amount of US\$10,000.00 paid by co-plaintiff-in-error Atlantic General & Life Insurance Company.

WHEREFORE, the judgment of the lower court is affirmed. The alternative writ of error is quashed and the peremptory writ of error sought denied. The Clerk of this Court is mandated to send an order to the court below to resume jurisdiction over this case and enforce its judgment. IT IS SO ORDERED.

Judgment affirmed.

COUNSELLOR MARCUS R. JONES OF JONES & ASSOCIATES LEGAL
CONSULTANT FOR PLAINTIFFS-IN-ERROR. COUNSELLOR COOPER F.
KRUH OF THE HENRIES' LAW FIRM FOR DEFENDANTS-IN-ERROR.