

MULLEY YANGAH, Appellant, v. JACOB S. MELTON, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued October 13, 1954. Decided December 10, 1954.

1. Where statutory regulations governing service of summons are not substantially complied with, the court has no jurisdiction over the person improperly served.
2. A defendant who has not been summoned at least fifteen days prior to the first day of the term of court to which the writ of summons is made returnable has not been legally summoned and is not required to answer the complaint.

Plaintiff's action of ejectment was dismissed by the court below on the ground that timely service had not been effected upon the defendant, and that jurisdiction over the defendant was therefore lacking. On appeal to this Court, judgment *affirmed*.

Nete Sie Brownell for appellant. *Momolu S. Cooper* and *K. S. Tamba* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

On February 28, 1952, the instant appellant, Mulley Yangah, instituted an action of ejectment against the instant appellee, Jacob S. Melton, before the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for the recovery of a certain tract of land situated within the Kakata District.

Process having been issued, served and returned, appellee filed an answer, Count "1" of which presents an issue of law as follows:

". . . the complaint should be dismissed as materially defective, in that upon inspection of the returns to the writ of summons which purports to place the defendant under the jurisdiction of this court, it will be seen that said defendant was not summoned until March 5, 1952, although the said case of ejectment is venued in the March, 1952 term of this court. The defendant submits that, in keeping with the practice of this jurisdiction, he should have been summoned and returned *fifteen days before* the opening day of the March, 1952 term of the court at which he is required to appear and answer the complaint of the plaintiff. March 17 being the third Monday, and hence the opening day of the March term of this court, it is patent that plaintiff

has ignored and violated this statutory provision. Because of this the defendant prays that the complaint be dismissed."

The pleadings progressed as far as the rejoinder and there rested.

On May 8, 1952, Judge Richards proceeded to hear and dispose of the issues of law, and sustained Count "t" of defendant's answer, dismissing the action with costs against plaintiff. From this ruling the plaintiff has appealed.

In support of appellee's contention that the trial court had no jurisdiction over him, in that he had not been legally summoned because he had not been summoned fifteen days prior to the opening day of the term of court, he relied upon *Modderman v. Roberts*, 1 L.L.R. 217 (1888). Appellee contended further that the statute construed by this decision is mandatory and not discretionary, and that its provisions must be strictly followed.

Appellant contended, in substance, that appellee's plea was insufficient because the statute provides that every complaint in law shall be filed at least fifteen days before the opening of the ensuing term of court; hence, the records having shown that the complaint was filed within fifteen days before the opening day of the term of court to which defendant was summoned, it was immaterial whether defendant was summoned a week or so before the opening of said term of court so long as it could be shown that the complaint had been regularly filed fifteen days before the opening day of the said term of court.

Upon the surface, and at first blush, both arguments seem plausible. But let us for a moment go beneath the surface, and, by examination of the law controlling, unearth the legal soundness of one argument, and the fallacy of the other—for evidently both cannot be legally correct, since they are inconsistent with each other, that is, one insisting that it is imperative that a defendant should be summoned fifteen days before the opening day of the term of court to which he is summoned to appear, and the other contending that it is not material whether he is summoned fifteen days before the opening day or not, so long as the plaintiff's case is filed fifteen days before the opening day of court.

The syllabus of the decision of this Court cited and relied upon by defendant reads in part as follows :

"A defendant who has not been summoned at least fifteen days prior to the first day

of the term of court to which the writ is made returnable shall not be deemed as legally summoned and will not be compelled to answer the complaint." *Modderman v. Roberts, supra*.

We shall now examine the writ of summons and sheriff's returns made thereto. The writ of summons shows on its face that it was issued on February 28, 1952, and returned on March 4, 1952. It also shows on its face that the sheriff was commanded to notify the defendant to file his formal appearance in the office of the clerk of court on March 4, 1952. Moreover the writ of summons required the defendant to appear and defend himself against plaintiff's complaint at the March term of the Circuit Court of the Sixth Judicial Circuit on the third Monday in March, 1952, that being March 17, 1952. Defendant was returned summoned on March 4, 1952. The opening day of the March term of court to which he was cited to appear and defend was March 17, 1952. Consequently defendant had only thirteen days between the day on which he was summoned and the opening day of court, and not the fifteen days required by law. We are of the considered opinion that the trial Judge committed no error in sustaining Count "1" of defendant's answer and dismissing plaintiff's case, because it is evident from the foregoing computation that the defendant was not summoned fifteen days before the opening day of the March term of court to which he was required to appear and defend. From the decision of this Court quoted above, it is imperative that a defendant, except in cases of injunction be summoned at least fifteen days prior to the opening day of the term of court to which the writ is made returnable, or in other words the term of court to which he is required to appear and answer the complaint of the plaintiff. Defendant was therefore illegally summoned. This Court in the *Modderman* case, *supra*, laid down the following rule at 1 L.L.R. 218 :

"It is obvious that the court could have no jurisdiction over a person not legally summoned under the statute above quoted, consequently it could exercise no power in such a case."

The reason for the foregoing rule is plain and the principle elementary. The statutes allow a defendant four days after being summoned to appear and give notice of his intention to contest the suit brought against him, and ten days within which to file an answer. Adding these together, and taking into consideration the day on which he is summoned, we have fifteen days. Therefore, if a defendant does not have fifteen days from the day he is summoned to the day of the opening of the term of court to which he has to defend himself, or answer the complaint of plaintiff, the law presumes that he has not had sufficient time to prepare an adequate defense, and

therefore disfavor his being ushered into court in such a state of unpreparedness.

In the light of the foregoing, we hereby express and record our full accord with the ruling of the trial judge dismissing the case, which ruling we now affirm with costs against the appellant. And it is hereby so ordered.

Affirmed.