SAMUEL KYNE, Appellant, *v.* JAMES MULBAH, et al., Appellees.

APPEAL FROM RULING OF JUSTICE.

Argued April 27, 1976. Decided June 17, 1976.

1. A party cannot apply by writ of error in the first instance to the Supreme Court from the Magistrate Court or a Justice of the Peace Court. The grievance must first be brought before the Circuit Court, from which an appeal can be taken to the Supreme Court.

Judgment was rendered by default against appellant in the Magistrate Court, and counsel claimed he had never been served with a notice of assignment. He applied to the Justice presiding in chambers for a writ of error. The petition was denied, and an appeal was taken.

The Court held that an appeal cannot be taken, nor an appliciaton made to a Justice of the Supreme Court from the Magistrate Court or a Justice of the Peace Court, but the grievance must first be brought before the Circuit Court. It is the latter from which an appeal can be taken to the Supreme Court. The ruling was *affirmed*.

Joseph J. F. Chesson for appellant. *O. Natty B. Davies* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

These proceedings are the result of an appeal from the ruling of our distinguished colleague, Mr. Justice Wardsworth, then presiding in chambers, denying a petition for a writ of error growing out of an action of breach of contract.

It is not necessary to recite the facts in the case which

originated in the Magisterial Court in Bong Mines, except to mention that the plaintiff in error applied to the Justice for a writ of error on the ground that the Magisterial Court never served a notice of assignment on him or his counsel and, therefore, he was unable to announce an appeal from the final judgment which was rendered against him. The defendants in error contended in their returns that the plaintiff in error should have sought redress first in the Circuit Court in Bong County before applying for a review to the Supreme Court.

The only issue before the Justice presiding in chambers was whether it is proper for a party in an action before a Magisterial Court to apply to the Supreme Court for a writ of error without first complaining of the alleged irregularities in an action of summary proceedings before a Circuit Court.

Because we are in accord with the ruling of the Justice in chambers, we quote that portion of the ruling which is addressed to this issue:

> "Although not specifically expressed by co-defendant in error, James Mulbah, in his returns, we wonder if it is permissible for a writ of error to be issued and served on a Magistrate or Justice of the Peace whose court is one of non-record? A writ of error partakes of the nature of an appeal from a court of record, in that the plaintiff in error is required by law to make assignment of errors as in the case of an appellant, who is required in his appeal from a court of record to the Supreme Court to file a bill of exceptions.
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> "The Civil Procedure Law provides with reference to the procedure on application for a writ of error:
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> "'*1. Application.* A party against whom a 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:

"'(a) An assignment of error, similar in form and content to a bill of exceptions, which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;

"'(b) A statement why an appeal was not taken;

"'(c) An allegation that execution of the judgment has not been completed; and

"'(d) A certificate of a counsellor of the Supreme Court, or of any attorney of the Circuit Court if no counsellor resides in the jurisdiction where the trial was held, that in the opinion of such counsellor or attorney real errors are assigned. . . .

"'2. *Issuance of Service.* The Supreme Court or an assigned justice shall grant or deny the application. As soon as an application for a writ of error is granted, the clerk of the Supreme Court shall issue the writ, a copy of which, together with a copy of the assignment of error, shall be served by the marshal on the party in whose favor the judgment is granted and on the judge who rendered the judgment in the lower court. Such parties shall be known as the defendants in error. . . .

"'4. *Hearing and judgment.* The assignment of error shall be dealt with in the same manner as a bill of exceptions and the hearing of the writ shall be upon certified copies of the record transmitted by the trial court. The Supreme Court hearing a matter on writ of error may grant such judgment as it may grant on appeal. If the judgment is affirmed, the court may, in addition to costs, award the defendants in error their reasonable disbursements made in connection with the hearing of the writ.' Rev. Code 1:16.24."

The returns made by co-defendant in error James Mulbah are hereby sustained for the reason that the Judiciary Law provides the procedure to be as follows:

"Summary proceedings against Stipendiary magistrate and justice of the peace.

"Any person or party litigant in a judicial proceeding before a magistrate or justice of the peace whose rights shall be abridged by the arbitrary action of such magistrate or justice of the peace shall be entitled to institute summary proceedings against such magistrate or justice of the peace in the circuit court of the county where the action occurs; if such action occurs in any of the territories summary proceedings shall be instituted in the Provisional Monthly and Probate Court. As used in this section, 'Arbitrary Action,' shall be an act or action on part of a magistrate or justice of the peace which violates the legal right of a party litigant or which is not in keeping with law or judicial practice under the statutes." Rev. Code 17:8.12.

It is obvious, therefore, that all matters touching the operation of magistrates or justices of the peace courts should first be referred to the Circuit Court and not appealed in the first instance to the Supreme Court.

The Stipendiary Magistrate's court is not a court of record, but the Supreme Court is a court of record and, in the exercise of its appellate jurisdiction, hears matters that are of record certified to it from the lower court. The provisions of the Civil Procedure Law governing the hearing of writs of error, Rev. Code 1:16:24(4), require that the hearing of the writ be upon certified copies of the record transmitted by the trial court. It follows then that since the Magisterial Court is not a court of record, it would not be able to transmit the records necessary for review by the Supreme Court and, therefore, a writ of error would not lie from that court directly to the Supreme Court. This Court, in affirming a ruling denying certiorari to a Justice of the Peace Court, held that a Justice of the Peace Court, not being a court of record, its judgments are reviewable only on appeal to the Circuit Court and not by certiorari to the Supreme Court. See

Nyornnie v. *Onanuga,* 16 LLR 102 (1964). See also *Ajavon* v. *Bull,* 14 LLR 178 (1960).

Aside from the statutory provision on summary proceedings quoted above, this Court has always held that it has no immediate jurisdiction over irregularities of Magistrates and Justices of the Peace until such irregularities have first been made the subject of investigative review before the Circuit Court in summary proceedings. The Supreme Court assumes appellate jurisdiction only after the Circuit Court has heard the charges of irregularities and misconduct involving a Magistrate or Justice of the Peace. See *King* v. *Ledlow,* 2 LLR 283 (1916); *Smith* v. *Stubblefield,* 15 LLR 338 (1963); and *Fahnbulleh* v. *Anthony,* 16 LLR 118 (1964).

Appealing directly to the Supreme Court to hear irregularities of courts not of record tends to deprive the Circuit Courts of some of their jurisdiction and to overburden the Supreme Court's chambers' docket.

In view of the legal reasons stated above, we hold that the Justice presiding in chambers was legally correct in denying the petition for a writ of error, with costs against plaintiff in error. And it is hereby so ordered.

Ruling affirmed.