KOFIE BRAZIE and AYE KOBINA, Appellants, *v.* KWEKU GYNNEH, KWESI AMISHA, and HON. JOHN A. DENNIS, Circuit Judge, Fourth Judicial Circuit, Maryland County, Appellees.

APPEAL FROM DENIAL BY JUSTICE OF A WRIT OF ERROR TO THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued March 13, 1971. Decided May 28, 1971.

1. An application for a writ of error made more than six months after rendition of the judgment from which relief is sought, cannot be entertained.

Plaintiffs in a debt action obtained a judgment, and defendants thereafter, upon application to the court, were allowed to undertake satisfaction of the judgment by installment payments. Subsequently, a judge of the same court set aside the ruling made by his predecessor in settlement of the judgment and further entertained a suit against the successful plaintiffs, brought by the judgment debtors, which was entitled "involuntary proceedings," for which no process appeared in the record sent to the Supreme Court in these proceedings. The defendants in the involuntary proceedings applied for a writ of error, contending they were not in the country at the time judgment was taken against them by default. The peremptory writ was denied to them by the Justice presiding in chambers. They appealed to the full Court. The Supreme Court characterized the actions of the successor judge as without foundation and highly improper, but it upheld the denial of the writ of error because application therefor had been made more than six months after judgment was rendered.

O. Natty B. Davis for appellants. *J. Dossen Richards* for appellees.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

Kofie Brazie and Aye Kobina, two Fanti fishermen, presently residents of the City of Monrovia in Montserrado County, sued on an action of debt against Kweku Gynneh and Kwesi Amisha, before the Commissioner of Labor for Maryland County, to recover the sum of $2,000.00 allegedly owed them. After trial, judgment was rendered in their favor by the aforenamed Commissioner and an execution by him issued and made returnable before the Circuit Court for the Fourth Judicial Circuit, Maryland County, then being presided over by Hon. Daniel Draper, Circuit Judge, presiding by assignment.

The judge, in enforcement of the execution, had the defendants in error imprisoned. These defendants, having procured the services of counsellor W. Fred Gibson, importuned the court to accept of them a one-fourth payment in partial liquidation of their obligation and grant to them additional time during which they would, through installment payments, satisfy the residual obligation remaining of the money judgment obtained against them. The trial judge saw fit to favorably entertain this application and required of the applicants that they effect monthly payments each of $147.00 until such time as they had fully satisfied their obligation.

Subsequently, when Hon. John A. Dennis, Resident Circuit Judge, for the Fourth Judicial Circuit, Maryland County, took jurisdiction, he proceeded to set aside the ruling made by his colleague, Judge Daniel Draper, and ordered the sheriff for Maryland County to cease and desist from the collection of any further monthly payments from defendants in error, now appellees. In addition, Judge Dennis entertained a suit against plaintiffs in error, now appellants, which he styled involuntary proceedings. It should be here observed that no formal ac-

tion was filed against appellants nor was a writ of summons served upon them to place them under the jurisdiction of the court.

In point of fact, appellants only knew of this second suit and the summary change of events regarding the suit in which they had obtained judgment, when the judgment in the involuntary proceedings was sent to Monrovia by Judge Dennis for enforcement against them. Upon obtaining information of what had transpired, and thereupon apprising their counsel thereof, the latter proceeded to get in touch with Judge Dennis who was then presiding over the Sixth Judicial Circuit Court, Montserrado County, and requested of him that he seek for and preclude the enforcement of this illegal judgment. In the event he should not, no cause would be left appellants other than to make application to this Court for the issuance of remedial process to cause a suspension of further action on the matter against the plaintiffs in error.

Appellants, moreover, contended that they were constrained in seeking remedial process since any decision of Judge Dennis to suspend further proceedings in respect to the involuntary proceedings would not insure the resumption of payments in the debt action. It was further contended that the action of Judge John A. Dennis in setting aside the ruling of his colleague possessed of identical jurisdiction with that of Judge Dennis constituted error. Predicated upon these enumerated facts that gave rise to the issuance of an alternative writ of error, returns were filed by the defendants in error. The returns, containing seven counts, and the petition, were considered by the assigned Justice in chambers, who denied the issuance of the peremptory writ. Thereupon, an appeal was taken to the bench *en banc* for a review of the Justice's ruling. Let us first turn to the returns. Initially, the returns averred that the petition contained a material defect by virtue of an omission in stating why an appeal was not taken, which is required by statute. These returns

continued by contending that this violation was predicated upon the fact that exceptions were taken to the final judgment of the lower court and intention to appeal announced to the March Term, 1968, of this Court. At this juncture we should like to state that the announcement of this appeal was in accordance with the record purportedly made by the then attorney, Wellington K. Neufville, now a counsellor of this Court. In respect to this issue, the record denominated attorney Neufville an auxilliary lawyer. Quite inconsistently, however, the very same record showed that appellants were called by the sheriff three times at the door of the court room but that they failed to answer, at which time plaintiff thereat applied to court for judgment by default. In the selfsame sentence the trial court held that since it had not heard from the defendants and since the assignment of the case was made in the presence and hearing of auxilliary lawyer Neufville, who appeared but failed to follow the rule of court in making application for postponement or continuance of the cause, the court in the circumstances had to grant the judgment by default.

Nowhere in the record has it been shown that attorney Neufville was counsel of record for defendants in the lower court. Moreover, the record as transmitted to us, showed that writs of summons and resummons were issued against the defendants, but that the sheriff for Montserrado County had filed returns to the effect that the defendants were not within the Republic. Immediately thereafter, with the same record proferted with the returns of defendants in error, an affidavit of Judge John A. Dennis was recited.

> "Whereupon the court instructed the clerk of the court to issue notice of assignment of the case for today by telegram which has been done and the defendants had not appeared."

At first blush, one would wonder why a judge who is a nominal party in remedial proceedings, would prepare

and file returns of a purely legal and technical nature to defeat the issuance of a peremptory writ, submitting in addition, his affidavit. However, upon further delving into the misty clouds, sent aloft to obscure the issues involved, the mist is removed and all becomes increasingly clearer. Our Civil Procedure Law, L. 1963–64, ch. III, § 340, is clear and unequivocal on the matter of bringing parties under the jurisdiction of the courts of this country where the resummons shows by the return that the parties therein named defendants are outside the Republic. In the case at bar, although the court itself held that the returns to the resummons had shown the absence of the defendants from the Republic, the court proceeded immediately to order the issuance of assignment for hearing and disposition of the cause without first ordering service by publication. The actions of the court constituted patent error.

The returns, continuing, raised the issue that the application for the issuance of the alternative writ of error had been made beyond the allowable time and by statute was contrary to the provisions contained in the Civil Procedure Law, L. 1963–64, ch. III § 1624. It was contended that although the petition bears the date of May 7, the alternative writ was not issued before July 11, 1968. Additionally, even in the event that the date of the petition itself and not the date of the issuance of the alternative writ governs, the six-month period granted by law expired April 10, 1968, almost one complete month prior to the actual date found on the petition.

In *Wodawodey* v. *Kartiehn et ano.*, 4 LLR 102 (1934), it was held that initially this Court entertained writs of error by implication from section seven on page twenty-seven of the Judiciary Act found in the compilation of 1857–61, and from section five of the Acts of 1875. However, with the passage of the statute of 1894, which specifically provided the steps to be taken in removing a cause to the Supreme Court on writs of error, such pro-

cedural steps require strict compliance therewith, and where there is no such compliance the court has no authority to grant the application. This Court's holding in *Wodawodey* has been strictly complied with by us in all other matters where a procedural issue has been properly raised.

Before closing this opinion, we feel it appropriate to quote from the ruling of our colleague who heard this matter in chambers.

> "It is, therefore, our considered opinion that we are unable to continue the review of the blatant and glaring errors prejudicially committed by the trial judge in setting aside a judgment of his colleague and in rendering final judgment against parties who had never been brought under the jurisdiction of the court. It shocks our modesty and our sense of justice to see such injustice perpetrated with apparent impunity. We would like to do much to rectify here what appears to be a travesty of justice and were it not for this Court's strict interpretation of the procedural aspects of writs of error, we would continue a review of the several prejudicial errors committed by the trial judge."

Therefore, the ruling of the Justice in chambers shall be and the same is here affirmed and the Clerk of this Court is hereby ordered to send a mandate to the lower court informing it of this judgment. Costs are disallowed.

Affirmed.