

JAMES H. S. LYNCH, Appellant, v. HON. ROBERT  
G. W. AZANGO, Presiding Judge, Sixth Judicial  
Circuit, and ALHAJI V. SHERIFF, Appellees.

APPEAL FROM RULING OF JUSTICE DENYING WRIT OF ERROR TO  
THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued October 7, 8, 1967. Decided January 18, 1968.

1. In the absence of good cause shown, no matter how meritorious the case may seem, an application for a writ of error initiated more than six months after rendition of a judgment in the lower court will be denied.

Six months and ten days after judgment against him by default in ejectment proceedings, defendant applied for a writ of error, contending he was ill at the time of service of the complaint in the court below. When his petition was denied by the Justice presiding in Chambers, this appeal was taken, which was denied and the *ruling* of the Justice *affirmed*.

*William Gisco* for appellant. *The Simpson law firm* for appellees.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

This appeal emanates from the Chambers of Mr. Justice Lawrence E. Mitchell, who ruled that a peremptory writ should not issue due to the failure of the petitioner to conform to the statute affording the benefit of redress by writ of error, as was disclosed by the record on which the Justice based his ruling.

Let us now turn to the record and decide whether or not the ruling should be upheld.

Reviewing in substance the petition already fully recited in the ruling of the Justice, petitioner complained that at the time of service on him by respondent Alhaji

Sheriff, he was helplessly ill and confined to bed and was unable to engage the service of counsel to represent his interest in Court. Regardless of this, the respondent judge proceeded with the hearing of the case, without further notice to him of the trial, resulting in a judgment by default, denying him the right of notice and to be present in court in person or by counsel, contrary to the statutes made and provided, and in violation of the statute particularly relating to ejectment proceedings, which prohibits the court from proceeding with the trial of the case if the defendant has failed to appear and answer on first being summoned until a resummons has been issued, and a copy of the complaint and writ placarded on the property involved for ten days, when a trial date is to be set, at which time, if the defendant still does not appear, judgment by default can be entered against him.

He also contended that his right to a writ of error brought before the Justice to correct the claimed irregularities and illegalities was fully justified, because the judgment rendered had not been fully satisfied.

The other matters complained of as following upon the claimed erroneous and illegal act of the trial judge, such as the demolition, by respondent, of houses and cash crops, and converting same to his own use, seem to be worthy issues to this Court, had the Justice issued the writ and taken under review the entire record made in the lower court. But the respondent attacked the right of petitioner to move by error in view of the expiration of the time within which the dissatisfied party may move for error after final judgment, that is, six months.

In the instant proceedings, it was six months and ten days after final judgment before error proceedings were brought by petitioner, in violation of the statute, as claimed.

Also raised by the respondent was petitioner's failure to state, as the statute requires, "that the application has not been made for the mere purpose of harassment or de-

lay," and the denial that the judgment of the court had not been satisfied.

We consider it necessary to quote from our statutes on this point.

"(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. . . ." Civil Procedure Law, 1956 Code 6:1231 (a).

This is complemented by Rule IV, Part 8, of the Revised Rules of the Supreme Court.

"Where a party has for good reason failed to take an appeal as provided by law, there may be granted to such party by the Justice presiding in chambers a writ of error from any judgment, decree, or decision of any judge or court, at any time within six months from the date thereof, provided that execution thereon is not fully satisfied. The party in whose favor such judgment, decree or decision has been rendered shall be named as defendant in error and shall be served with a copy of the writ of error. Such writ of error shall act as a stay of proceedings; and the plaintiff in error shall be required by the Justice granting the writ to pay all accrued costs; and he may be required to file a bond in such amount, and with such surety or sureties, as he may name, conditioned upon paying such damages, if any should be sustained by the defendant in the event that the judgment, decree or decision complained against should be affirmed. The Court may, in addition to costs, award the defendant in error his reasonable disbursements made in connection with such writ of error."

While we do not have the record before us which the Justice presiding in Chambers did inspect, as the law permits him to do, so as to determine whether or not a writ should issue, the petitioner has, in his answering

affidavit, attempted to inject into these proceedings what appears to be a legally untenable theory.

The learned counsel admits an excess of ten days beyond the six months' period provided in the statute within which error proceedings may commence after the rendition of final judgment, but holds that so long as the judgment, which these proceedings seek to contest, has not, by an action, been enforced, § 50(b) of our Civil Procedure Law applies. 1956 Code 6:50(b) :

"In an action to enforce a judgment rendered in a previous action, twelve years."

Though it is inapplicable to the instant cause, he argued that the life of a judgment is twelve years before limitation of the right to enforce it, and, therefore, that any time within twelve years after the rendition of this judgment he was authorized by the statute to prevent its enforcement.

Judgments of courts are enforceable for a twelve-year period before the statute of limitation can be invoked. This bears no analogy to the time within which error proceedings can be brought.

Since petitioner failed to rebut the contention that error proceedings were initiated by petitioner, before the Justice presiding, ten days beyond the six months allowed after rendition of a final judgment, we must conclude that the Justice was correct in his ruling.

In view of the foregoing, we have no alternative but to affirm the ruling of the Justice presiding, with costs against the petitioner. And it is so ordered.

*Affirmed.*