

NIMBA LOGGING CORPORATION,
Petitioner, v. HON. ALFRED MALLOBE,
Assigned Circuit Court Judge, Eighth Judicial
Circuit, Nimba County, and TALK TIMBER
COMPANY, Respondents.

PETITION FOR A WRIT OF ERROR.

Decided August 20, 1971.

1. A telegram cannot fulfill the functions of a notice of assignment served and returned by a court officer.
2. A notice purporting to notify parties of an intended disposition of issues of law on the date assigned, cannot serve as a notice to render final judgment on the date specified.
3. A certificate of merits must be submitted by counsel at the time of petition for a writ of error.
4. In cases of conflict between a rule of court and statutory law, the statute must prevail.

In a proceeding for cancellation of contract, the lower court judge had telegrams sent to both sides on February 10, 1971, advising them that the issues of law would be ruled upon on February 12. Instead, on the day of assignment, the judge rendered final judgment. The plaintiff therein applied for a writ of error. The Chief Justice acknowledged the correctness of plaintiff in error's position, but for the failure of counsel to submit an affidavit of merits as required by law with the petition the *application* was *denied*.

Appearances not indicated.

PIERRE, C. J., presiding in chambers.

Plaintiff in error has complained that in cancellation proceedings involving a concession agreement between the two logging corporations named as parties herein-

above, which case was filed, heard, and determined on February 12, 1971, its representatives were not notified so that they might have been present at the determination, in order to have been in a position to avail themselves of their right of appeal.

The plaintiff in error has complained that on February 10, 1971, respondent Judge Alfred Mallobe, then presiding over the Eighth Judicial Circuit, Nimba County, sent telegrams informing the parties that law issues in the case would be heard and disposed of on the 12th. A copy of the said telegram sent to both sides was made profert with the petition.

“The case Talk Timber Company versus Nimba Logging Corporation action of injunction and bill in equity for the cancellation of concession agreement because of fraud respectively are assigned for disposition of law issues on Friday, February 12, 1971, at the hour of 10:00 in the morning stop”

The same telegram was sent to Samuel B. Cooper, the representative of Talk Timber Company, and to counsellor Richard Diggs, of counsel, representing the Nimba Logging Corporation. The complaint avers that instead of only passing on the law issues as they had been notified of in the telegram, the judge also proceeded to render final judgment in the cancellation action, without having previously notified the parties that a final determination would be made on February 12.

Defendants in error filed a return in which they raised several defenses, only one of which we deem necessary to mention for the determination of this case, which raises objections to the form of the application made.

The several issues raised in the petition deserve attention, because these issues have been the cause of unnecessary litigation in the past. For instance, before matters are heard in any court of record in Liberia, our procedure requires that written notices of assignment should be issued by the clerk under seal of the court and should

be served and returned by the ministerial officer. A telegram cannot fulfill this requirement, since there is no evidence of service which the returns of the sheriff would show. There is abundant law to support this position, and no court of record should violate this elementary procedure of our practice.

Another issue raised by the petition is that the telegrams which the judge sent notified the parties of the disposition to be made of issues of law. Under the principle of notice, it was irregular for the judge to have rendered final judgment, when the parties had been notified that only issues of law were to be disposed of. I have no doubt in my mind that the telegrams were received by the parties on both sides, because counsel for Talk Timber Company appeared for the hearing, and counsel for the Nimba Logging Corporation have not denied receipt, but on the contrary have made profert of the two telegrams. But as I have said, a telegram sent by the judge is not the legal vehicle to bring parties into court for the hearing of matters.

But as much as we would have liked to pass upon, and settle these issues, count one of the respondents' returns makes it impossible for us to do so, for it raises a statutory requirement not complied with in a certificate of merits to be submitted.

"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." 1956 Code, 6:1231 (d).

The plaintiff in error has contended that it followed the Rule of Court, which does not require that certificates by counsel should be issued only by lawyers residing in the jurisdiction where the case out of which the error arose was tried and determined. In every case where a rule of court is in conflict with a statute, the provisions of the latter prevail. In the interpretation of statutes,

the law requires that the intent of the lawmakers should as nearly as possible be carried out. In doing this the literal meaning of the words which compose the text should be the controlling factor.

In view of the foregoing, I have to deny the petition and refuse issuance of the peremptory writ. Costs against the plaintiff in error.

Petition denied.