

REPUBLIC OF LIBERIA, Appellant, v.
A. C. WRIGHT, Stipendiary Magistrate, and
A. BAA TOOMEY, Associate Stipendiary Magistrate,
Nimba County, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
NIMBA COUNTY.

Argued April 21, 1970. Decided June 12, 1970.

1. The absence due to illness of a material witness duly subpoenaed is a ground for granting a continuance.
2. A motion for continuance is addressed to the discretion of the trial court, but such discretion may not be indiscriminately used, and when so exercised by the trial court, it will be deemed the abuse of judicial discretion.

A complaint had been filed by the plaintiff in the present proceeding against stipendiary magistrates for alleged impropriety in the conduct of another proceeding. At the time of trial of the issues presented by the complaint, an application for postponement was made by the complainant, on the ground that a subpoena served upon a material witness had disclosed that the witness so served was ill and unable to attend as directed. The court denied the application and dismissed the application. The appeal arose from the judgment entered against the complaint. *Judgment reversed; case remanded.*

Department of Justice for appellant. *J. Dossen Richards* for appellees.

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

This is a case filed by the Republic of Liberia in the Circuit Court of the Eighth Judicial Circuit, Nimba County, against A. C. Wright, Stipendiary Magistrate,

and his associate, A. B. Toomey. It is alleged in the complaint that on April 10, 1969, one Mamadee Kroma entered an action of debt before the magistrate against one Karpar, and on the day assigned in the writ of summons, the defendant appeared before the magistrate and was informed that the case could not be heard on that day because the plaintiff had gone to attend an official funeral. Defendant was told he would be informed when another assignment was fixed. It is further alleged that the defendant, relying upon his information given him by the magistrate, left the court in expectation of receipt of the assigned date promised him, but that the magistrate, in violation of the assurance given the defendant, entered judgment by default against him and ordered his incarceration until the amount of the debt was paid. Whereupon, the proceedings were instituted before the Circuit Court for Nimba County. It is further alleged that the trial judge dismissed the action brought by the plaintiff herein upon its failure to appear although a request for postponement had been filed by the complainant on the ground of illness of a material witness, which had been duly proved by said plaintiff.

This Court has held in *Bryant v. African Produce Co.*, 7 LLR 93 (1940), that among the causes for granting a continuance is the absence of a material witness, duly subpoenaed, which has been established in the case.

While it is an accepted fact that the motion is addressed to the discretion of the trial court, unless it can be shown that the motion was filed for the express purpose of delay, the denial thereof is an abuse of judicial discretion.

The motion for postponement in these proceedings should have been granted.

In view of the foregoing, the judgment of the court below is hereby reversed and the case remanded for re-docketing and trial. And it is hereby so ordered.

Reversed and remanded.