PILAR MATHELIER, Appellant, *v.* LUC MATHELIER, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 17, 1965. Decided June 18, 1965.

1. Where the Justice presiding in Chambers issued a mandate to the circuit court to accord priority to the trial of a particular action on remand, the circuit court's alleged disregard of the Justice's mandate could not be asserted on appeal in a bill of exceptions filed by a party who neglected to file a formal submission or information at the time of the alleged disregard of the mandate; the party's neglect would be deemed a waiver of protest.
2. Absence of counsel from the trial of a cause is not a basis for reversal, remand, or reopening of judgment on appeal where counsel's absence was a dilatory tactic designed to subvert the administration of justice.

On appeal from a judgment of the circuit court on a jury verdict in a wife's action for divorce, maintenance, and support, the *judgment* was *affirmed.*

Joseph W. Garber for appellant. *Richard A. Diggs* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The genesis of this case may be succinctly stated as follows. We cull from the records in these proceedings that the parties herein, appellant and appellee, were lawfully joined in holy wedlock in the City of Monrovia, Monserrado County and Republic of Liberia, on the 3rd day of March, 1962, and thereafter lived together in harmony and peace for a period of 2 months, when appellant approached and requested appellee to list all his properties and assign same to her; on the other hand, appellant was requesting her husband to execute a will in which she should be named the sole beneficiary. Appellee rejected

this request of appellant. Two weeks after the request and refusal, appellee was about to go to work one morning when appellant prepared for him a cup of Ovaltine which he drank and immediately became ill. That same day, appellee grew worse even to the point of fainting and becoming unconscious and unaware of his physical condition for several hours. At this time appellant and appellee were living a few miles out of Monrovia-Congotown and, because of this distance, the doctor advised that appellee should be hospitalized. There being no unoccupied bed at the hospital at the time, appellant and appellee's brother decided that appellee should be carried to his brother's house.

One night when appellant and appellee were lying together in bed asleep he awoke and discovered several cuts on his abdomen. How this occurred was a mystery for appellee to explain. Appellee's fever ran so high that he left his brother's house and went on the beach at the coconut plantation, as the plantation was near the home of appellee's brother. Appellant never called nor made any alarm to call appellee's brother's attention to this condition of appellee. Fortunately, appellee's brother went into the room to check on his brother's condition but did not find him. But for this timely search, appellee might have drowned himself because he did not know what he was doing. After this incident, appellee's brother took him to the hospital for treatment and after he had received treatment for the wound and the fever he was taken back to his Congotown home by appellant.

Early one morning, even without giving appellee his usual morning attention, appellant put him in a taxi and took him to the Rehabilitation Center in Paynesville because, as she said, he was crazy. This she also did without any regard or reference to appellee's brother. When the information reached appellee's brother that his brother had been taken to the Rehabilitation Center by appellant, he spared no time in reaching the Center where

the physician in charge told him that appellee was not insane as appellant had represented. However, appellee's brother took him to the government hospital where he remained for some days. The doctor having advised that appellee's physical condition had sufficiently improved to be discharged from the hospital, his brother took him to his home and requested appellant to go along with her husband in order that appellee might tarry with him to gain strength and/or recuperate before they returned to their Congotown home. Accordingly, appellant rode along to appellee's brother's home, but on arriving there she refused to remain or stay with appellee, and, instead, left and went to their Congotown home and sold all of their personal effects, collected all the rents appellee had paid in advance for the house in Congotown and secured another place in Monrovia to live.

After appellee had made all efforts to have appellant come back and live with him, but without avail, appellee filed an action of divorce for desertion against appellant in the September 1963 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, the wife having lived apart from him, appellee, for a period of 12 calendar months.

After having been ruled to trial on its merits, the case was taken up during the September 1963 term of the civil law court with His Honor James W. Hunter presiding, which trial resulted in a verdict for appellee.

In the exercise of her legal rights, appellant filed a motion for new trial which was granted by the trial judge. New trial having been granted, the second trial was conducted by His Honor Roderick N. Lewis during the September 1964 term of the civil law court. A second verdict was unanimously returned in favor of appellee.

On the 13th day of November, appellant filed a motion to set aside said verdict and award a new trial although she had abandoned her defense and did not except to the second verdict. Counsel for appellee resisted said mo-

tion. The resistance being sustained, the trial judge overruled said motion and rendered final judgment confirming and affirming the verdict of the petty jury in said cause. It is from this final judgment that appellant has brought this case before this forum of last resort for review and final adjudication, based upon a bill of exceptions containing three counts. We regard Counts 1 and 2 as being worthy of our consideration, which counts we shall quote hereunder and pass upon in the regular order.

Count 1 of the bill of exceptions herein referred to reads as follows.

> "1. That even though Your Honor had explicit orders which had on the 19th day of October, 1964, issued out of the Chambers of His Honor William E. Wardsworth, that Your Honor give priority to the trial of a maintenance and support suit which defendant-appellant had filed against her husband, plaintiff-appellee, even over and above all cases that had been assigned, Your Honor on the 22nd day of October, 1963, made the following rulings:
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> "'THE COURT: The court observes that on the 20th instant the case Mathelier *versus* Mathelier—Maintenance and Support—was assigned for today at the hour of 11 o'clock. Because of the fact that we are now engaged in another case which comes up for trial prior to our assigning the maintenance and support case, we are suspending said case to be reassigned tomorrow, Friday, to follow the action of the divorce case. The clerk is hereby ordered to issue the relative assignment. To which defendant-appellant, considering the said ruling prejudicial to her interest, then and there excepted.' (See court minutes for October 22, 1964 [24th day's session] page 6.)"

In this count of appellant's bill of exceptions, she complains of the trial judge's disobedience of the orders issued out of Chambers of His Honor William E. Wardsworth, then Justice presiding in Chambers, to the effect that the

trial judge should have given priority to the trial of a maintenance and support suit which defendant-appellant had filed against her husband, even over and above all cases that have been assigned.

We do not understand why appellant at this stage should complain against the trial judge for having disobeyed the orders issued to him by the Justice presiding in Chambers. It is observed that counsel for appellant noted an exception on the minutes of court to the assignment made when the trial judge ruled that the maintenance and support suit was assigned for the 23rd day of October, 1964, to follow the divorce case. At this stage, counsel for appellant should have filed a formal submission or bill of information revealing the disobedient attitude of the trial judge in refusing to carry out the orders of the Justice presiding in Chambers for his judicial attention and action, which undoubtedly would have led to an inquiry into the alleged disobedience of the trial judge to conform to the orders of the Chambers Justice relative to the hearing of the above-mentioned maintenance and support suit.

We consider the neglect and/or failure of the appellant to take the necessary legal steps at the proper time to surround her cause by the safeguards of the law as a waiver. Therefore this Court hereby overrules said Count 1 of the bill of exceptions now under reveiw.

> "2. That, because neither defendant-appellant nor her counsel was present at court during hearing of the case, defendant-appellant filed a motion with Your Honor to declare as a legal nullity the proceedings which had then taken place in the case during her and her counsel's absence, to set aside the resulting verdict that had been brought against her and award her a new trial on the ground that defendant-appellant had been deprived of the opportunity to present her side of the case during the trial and therefore her day in court, but Your Honor denied defendant-appellant's said

motion, and sustained plaintiff-appellee's resistance thereto, to which ruling defendant-appellant, considering the same as prejudicial to her interests, then and there excepted. (See court record dated October 23, 1963 [25th day's session], as well as copy of defendant-appellant's motion dated October 26, 1964, copy of plaintiff-appellee's resistance hereto and copy of court's record dated November 3, 1964 [31st day's session], pages 3 to 5.)"

In Count 2 of the bill of exceptions, appellant complains of the trial judge's denying her motion to declare a legal nullity the proceedings which had taken place in the case during the absence of her counsel as well as herself, to set aside the resulting verdict that had been brought against her and award her a new trial on the ground that defendant-appellant had been deprived of an opportunity to present her side of the case during the trial and therefore her day in Court.

It must be remembered that this is the second trial of the case upon its merits between the same parties and that, in the former trial, although appellant participated in the same, verdict was brought in favor of the appellee. Counsel for appellant, being fully cognizant of the fact that his client had no leg to stand on during the second trial, became desperate and determined to defeat the legal interest of appellee by all means. Hence, although he was duly informed of the assignment of this case, he deliberately absented himself so as to raise the contention that appellant did not have her day in court. The trial judge, during the hearing of the case, thought it wise to make this statement on the record:

"THE COURT: On yesterday, the 22nd instant, when this case was assigned for hearing this morning, Counsellor Joseph W. Garber, who represented the defendant, and Counsellor Jacob N. Willis, of counsel for the plaintiff were in court and mutually agree that

> the trial be proceeded with today. But to our surprise, Counsellor Garber, although being in court this morning left the courtroom without any explanation to us; hence we have thought it expedient to make this notation upon our records."

This statement of the trial judge was confirmed by counsel for appellant when, in his brief submitted in these proceedings, he said:

> "On this date, appellant's counsel went into court where he remained for some time, during which he even borrowed a book from the judge. After the divorce case was not called and another case was called and the witnesses in said case were being qualified to testify, appellant's counsel, in the honest belief that the judge was not ready for the divorce case, left the courtroom. . . ."

It is our opinion that Counsellor Garber, representing his client, the appellant in this case, having gone to court to defend his side of the case, should have ascertained from the trial judge before leaving the courtroom whether or not the divorce case would be called or taken up that day in keeping with the assignment. But, as stated *supra*, Counsellor Garber was bent on defeating whatever proceedings the trial judge or court may have adopted in disposing of the case; hence he quietly withdrew from the court without any reference to the court or judge in order that he might stand his chance to contend and insist on his client being deprived of her opportunity to present her side of the case. It is our opinion that any lawyer who employs delay tactics to divert the normal course of the administration of justice, directly or indirectly, may not be permitted to enjoy any legal benefits which otherwise might have accrued therefrom, even though irregularities may be manifested on the face of the record. In view of the foregoing, Count 2 of appellant's bill of exceptions is overruled.

Having carefully considered all of the surrounding circumstances and facts in these proceedings, we are of the opinion that the judgment of the trial judge should be affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.