

SAID WEBBE, Appellant, v. MAHAMOUD
PARHAT, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
GRAND BASSA COUNTY.

Decided December 22, 1936.

1. It is error for a trial judge to read his judgment in a case and then refuse or neglect to file same in the office of the clerk of court.
2. In such event it is impossible for a copy to be transmitted to this Court on appeal, for which error judgment will be reversed and a trial *de novo* ordered.

This case originated in magistrate's court and was appealed to the Circuit Court of the Second Judicial Circuit, where it was reversed. On appeal to this Court, *reversed and remanded*.

Charles B. Reeves for appellant. *H. Lafayette Harmon* for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

The above entitled cause originated in the Circuit Court of the Second Judicial Circuit of Grand Bassa County, Republic of Liberia.

The case reveals that on the sixth day of September, 1934, in the chamber session of the Circuit Court of the Second Judicial Circuit, said appeal was taken up, at which time appellee, through his counsel, motioned that the court dismiss said appeal because the costs of the magistrate's court had not been paid within the statutory time.

Appellant's counsel contested said motion, setting forth the contentions: that under the strict application of the legal interpretation of the law, there were no costs due to be paid, as appellee had expended nothing to be re-

funded in the trial of said case before the officers of the said municipal court; that the amount for attorney fee could not be legally construed as cost, nor even the fees due the magistrate and other officers, although said amount had been paid and receipt obtained; and that appellee was under such circumstances estopped from raising said issue.

Judge Summerville sustained said motion and dismissed appellant's appeal, to which ruling, appellant excepted and appealed to this Honorable Supreme Court of Liberia.

From a perusal of appellant's bill of exceptions, the same appears to contain two counts, namely:

"(1) Because at the trial of said case before your Honour, the appellee submitted a motion to dismiss said appeal on the grounds, that cost in the Magistrate Court was not paid, in the legal time prescribed by Statute of 1925. The appellant in opposing said motion, submitted to the Court that the amount of \$2.50 (two and 50/100 dollars) and \$1.18 (one and 18/100 dollars) to the Attorney of appellee and the latter amount to the Magistrate could not be considered as cost, the former amount of \$2.50 (two and 50/100 dollars) being a reward to said Attorney, as Attorney fee to be paid on determination of said suit, and not money expended in the action by the appellee during the progress of the action. Your Honour overruled the objection and sustained said motion to which appellee excepted.

"(2) Because thereafter your appellant motioned Your Honour to set aside your ruling or judgment and enter upon a rehearing of said motion of appellee setting up in said motion, although cost and fees were not paid immediately on the exact time when due, the same has been paid and receipted for. (See motion or petition for rehearing.) After argument *pro et con* of said motion by said parties, Your Honour dis-

missed said motion or petition to appellant exception and tendered this bill of exception for Your Honour's approval that an appeal may be had as aforesaid."

From a careful study of the bill of exceptions, it appears that the judge approved of the first count in the aforesaid bill of exceptions but from a further perusal of the records, it appears that after His Honour Judge Summerville had handed down his judgment in the case at bar, appellant being dissatisfied, tendered two (2) motions for rehearing for the consideration of the said Circuit Court, as in appellant's opinion the judge had erred. The same was however overruled by the court, and appellant requested the said judge to reduce said ruling to writing and file same in the said court to form a part of the records in these proceedings, so that the Honorable the Supreme Court might be in a position to review the same.

To this request, the judge apparently agreed, but on the list of documents forwarded, the said judgment does not appear. A footnote is made by the clerk of said court for the information of the Clerk of the Supreme Court which reads as follows:

"You will observe that the Ruling in the case as mentioned on sheet 'V' is not among the batch sent up for the reason that His Honour Judge Summerville did not file it in the Clerk's Office up to the sending of these Records as indicted by him. I suppose that he will file same with you as he is in Monrovia, and has also been informed of the transmission of these records.

"[Sgd.] T. W. JOHNS,
Clerk, etc."

This Court fails to see the reason why the procedure followed during the trial of this case by Judge Summerville was attended by so many flagrant irregularities; especially in view of his failure to complete the records so as to enable this Tribunal to legally adjudicate the same

according to law, as is clearly shown by the certificate of records forwarded by said clerk of court. (See schedule of records forwarded by said clerk.)

For the foregoing reasons, this Court is of the opinion that the judgment of the judge below should be reversed, and the cause remanded to be tried *de novo*, permitting either party dissatisfied to again appeal should such party so desire; and it is hereby so ordered.

Reversed.