

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT
APRIL TERM, 1939.

WILLIAM N. WITHERSPOON, Plaintiff-in-Error,
v. WEST & CO., LTD., and E. A. MONGER, Resident
Circuit Judge of the Circuit Court of the Third Judicial
Circuit, Sinoe County, Defendants-in-Error.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE GRIGSBY.

Argued April 18-20, 1939. Decided May 5, 1939.

Where records submitted with petition for writ of error and return failed to show that (1) after judgment by default in lower court, evidence was adduced to prove debt alleged, or that (2) several motions alleged to have been filed by petitioner from one session of the lower court to another were actually filed, a Justice, sitting in chambers, should not have dismissed petition, but should have granted leave to parties to amend petitions and return.

Plaintiff-in-error petitioned the Supreme Court for a writ of error to be issued to the judge of the circuit court to review a judgment by default rendered in that court against plaintiff-in-error. Petition denied by Justice sitting in chambers. On appeal to Supreme Court *en banc*, petition granted.

William N. Witherspoon, assisted by *S. David Coleman*, for himself. *William E. Dennis* for defendants-in-error.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case comes up before us on an appeal from the chambers of His Honor Mr. Justice Grigsby on a judgment given denying the petition of the plaintiff-in-error for the issuance of a writ of error. From the records it appears that said case had its origin or genesis in the Circuit Court for the Third Judicial Circuit, Sinoe County, and that it was instituted by West & Co., Ltd., one of the defendants-in-error, against the plaintiff-in-error for debt; that during the November term, 1936, of the said Circuit Court for the Third Judicial Circuit, Sinoe County, presided over by His Honor E. A. Monger, Resident Circuit Judge, the other defendant-in-error, the said plaintiff-in-error, who was the defendant below, after having filed both his appearance and answer, moved the court for the continuance of the said cause to the February term, 1937, of said court, which motion was granted; and that, at the following August term, 1937, of said court the plaintiff-in-error, defendant below, not further appearing either in person or by counsel to defend against the action, West & Co., Ltd., one of the defendants-in-error and the plaintiff below, prayed the court, His Honor Judge Monger again presiding, for a judgment by default which was granted and subsequently perfected. In this, the plaintiff-in-error submits that the said presiding judge committed manifest error, as is shown by the record, and prays to have the record reviewed and corrected.

During the hearing of the petition before this Judicature sitting *en banc*, on an appeal from the decision given by the Justice presiding in chambers who originally heard the petition for a writ of error, it was discovered that there were very serious omissions by both the plaintiff-in-error and the defendant-in-error in submitting their respective sides to the Justice aforesaid who heard the petition in that, in his petition, plaintiff-in-error made no profert whatever of the several motions for continuance which he alleges he filed at the several terms of

court from February to August 1937, inclusive, and did not otherwise attempt to prove that he did; and the defendant-in-error did not establish by extract from the records that, after the judgment had been rendered by default, evidence was adduced to prove the debt alleged.

In view of the above, we are unwilling to agree with the opinion of Mr. Justice Grigsby, presiding in chambers, in his opinion and his judgment denying the petition and are therefore of opinion that Mr. Justice Grigsby's judgment should be reversed and that the matter should be remanded to said Justice, who is to assume jurisdiction, with leave granted to the plaintiff-in-error to make application to the said Justice for permission to amend his petition within three calendar months certain in such manner as will be in harmony with law and practice, especially by making profert of copies of such parts of the record of the Circuit Court for the Third Judicial Circuit, where the case was originally handled, as will be relevant and pertinent to the issues which plaintiff-in-error submitted as herein indicated, and with leave granted to the defendant-in-error, in such an eventuality, to amend its returns if it so desires; and costs of this Court should be ruled against the plaintiff-in-error and all other costs should abide the final determination of the matter of the petition for a writ of error; and it is hereby so ordered.

Petition granted.