# LIBERIA OVERSEAS VENTURES CORPORATION (LOVCO), represented by its President, R. G. QUINTIN, Plaintiff-In-Error, *v.* FULTON W. YANCY, JR., Assigned Circuit Judge, People's Seventh Judicial Circuit, Grand Gedeh County, November Term, A. D. 1980, JOE BENSON et al., Defendants-In-Error.

AN APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING A PETITION FOR A WRIT OF ERROR.

Heard: June 1, 1982. Decided: July 8, 1982.

1. A receipted bill of costs by the sheriff is the best evidence of the payment of the costs.
2. The ruling on the disposition of law issues in general is interlocutory in nature unless the action is dismissed; hence, it constitutes no irreparable injury to any party to warrant the issuance of a writ of certiorari.
3. Error cannot lie to review a ruling on the disposition of law issues. The proper remedy is appeal.
4. Where an appeal is announced by a court appointed counsel, due to the absence of counsel of record, the failure on the part of counsel of record to prosecute the appeal announced, cannot be cured by a writ of error.
5. The conduct of a party along with his counsel to absent themselves from the trial after it has commenced, without notice to, or excuse granted from the court, or to fail to appear upon a notice of assignment, constitutes abandonment.
6. Issues not raised in the court below and not presented in proper and timely manner on appeal, will not be determined by the Supreme Court.

These proceedings emanate from an action of damages for wrong instituted in the Seventh Judicial Circuit, Grand Gedeh County. During the trial, counsel for plaintiff-in-error abandoned the proceedings without notice or excuse granted from the court. The trial concluded and a verdict returned in favor of plaintiff now co-defendant-in-error. At the rendition of final judgment, affirming and confirming the verdict, counsel for plaintiff-in-error was again absent, whereupon the court's appointed counsel took exceptions and appealed to the Supreme

Court. Plaintiff-in-error, however, failed to perfect the appeal, but subsequently applied to the Justice in Chambers for a writ of error. When the alternative writ was issued and served, defendant-in-error filed a resistance in which it prayed the Court to deny the application on grounds that the plaintiff-in-error failed to pay the accrued costs as required by statute.

Upon arguments *pro et con*, the Justice in Chambers denied the application, and quashed the alternative writ, from which ruling, plaintiff-in-error appealed to the Supreme Court. The Supreme Court affirmed the ruling of the Justice in Chambers.

*George E. Henries* appeared for plaintiff-in-error. *J. Emmanuel R. Berry* appeared for defendants-in-error.

MR. AD-HOC JUSTICE KOROMA delivered the opinion of the Court

Judge M. Fulton W. Yancy, Jr., presiding by assignment over the November, A. D. 1980 Term of the People's Seventh Judicial Circuit Court, Grand Gedeh County, heard and decided an action of damages filed by the defendants-in-error against the plaintiff-in-error. Failing to prosecute an appeal from the final judgment of the trial judge to this Forum of dernier resort, the plaintiff sought relief in a petition for a writ of error. The alternative writ of error having been issued and quashed, the peremptory writ was denied by Mr. Justice Morris in Chambers. From this ruling of our learned colleague, the plaintiff-in-error has appealed to this Forum for review and final determination. Before reviewing the ruling handed down by the Justice Presiding in Chambers, judicial prudence demands that we briefly summarize the background of the case.

During the May, A. D. 1979 Term of the Seventh Judicial Circuit Court, the Chief and representatives of the people of Kotenbo Chiefdom, Webbo District, Grand Gedeh County, instituted an action of damages against Liberia Overseas Venture Corporation (LOVCO) represented by its President, G. R. Quintin. On June 30, 1979, His Honour A. Benjamin Wardsworth passed upon the issues of law and ruled the facts to jury

trial. At this disposition of the law issues, the announcement of repre-sentations showed that the plaintiffs were represented by the Berry Law Office, while the defendant was represented by the Krakue and Cole Law Firm in person of Attorney William A. Boyenneh. More than a year later when this case was called for trial on November 28, 1980, Counsellor Krakue, for the defendant, now plaintiff-in-error, requested a postponement until December 10, 1980 on the ground that his client, for whom he had announced representation at the disposition of the law issues more than a year ago, had just handed him the file containing the records in the case. This request which was not resisted by the plaintiffs, now defendants-in-error, and therefore granted by the court, was the commencement of a professional slothfulness on the part of the counsel for the defendant, now plaintiff-in-error, which eventually culminated into the determination of the case against the defendant in the court below.

At the call of the case on December 10, 1980 in conformity with the postponement, a motion for the trial judge to recuse himself and a letter introducing Attorney Boyenneh as a member of the Krakue and Cole Law Firm were on the court's file. A legal irony in this letter that deserves a special mention in this opinion is that Attorney Boyenneh was introduced to argue the motion only and his mandate from the Krakue and Cole Law Firm did not extend to his participation in the hearing of the facts. That motion was denied and the trial ordered proceeded with. Attorney Boyenneh, in the enforcement of his firm's mandate, threatened to leave the court and, in the drama that followed, the court held him in contempt and fined him $100.00. The trial was proceeded with the first witness for plaintiffs who was examined by both parties and discharged. Attorney Boyenneh waived cross examination of plaintiffs' second witness, after his request in the midst of the trial to leave for Monrovia was denied. Following the discharge of plaintiffs' second witness, the trial was suspended until the next day, December 11, 1980. The court also adjourned thereafter to resume December 11, 1980.

Attorney Boyenneh, having left the court without excuse, upon the resumption of the trial the next day, the defendant was

neither represented in person nor by counsel until the trial was concluded and verdict returned in favor of the plaintiffs. Six days thereafter, December 17, 1980, the court confirmed the verdict and entered final judgment against the defendant. Counsellor Francis G. Doe, who was appointed by the court, took the final judgement for the defendant, now plaintiff-in-error, entered exceptions and announced appeal to this court sitting in its March Term, A. D. 1981. The appeal having not been prosecuted nor the final judgment enforced, the defendant, now plaintiff-in-error petitioned the then Chamber Justice, Roosevelt S. T. Bortue of sacred memory, for a writ of error. Justice Morris, who was presiding for Justice Yangbe, ordered the issuance of the writ of error, subsequently disposed of it against the plaintiff-in-error who has now appealed from the ruling of our colleague to the Bench *en banc*.

An interesting aspect of this case which deserves a slight mention while passing, is that at the call of the case for argument before this Bench, counsel for plaintiff-in-error informed the court that he had filed a submission and would desire its disposition prior to passing upon the appeal from the error proceedings. Our holding after hearing arguments *pro et con* on the submission was that same should have been filed before the Chambers Justice at the time the writ of error was being disposed of and from his ruling an appeal would have been taken and brought before this Court. Failure on the part of the counsel for plaintiff-in-error to have properly filed and argued this submission before the Chambers Justice left the Bench with no alternative but to dismiss the submission on the ground of laches. This Court has persistently held that issues not raised in the court below and not presented in proper and timely manner on appeal will not be determined by the Supreme Court. *Flood v. Alpha,* 15 LLR 331 (1963). In the ruling of our colleague in chambers, no mention is made of a submission calling for the disposition of an information filed by the plaintiff-in-error prior to the disposition of the writ of error nor is there any showing on the minutes of the Chambers proceedings indicating the filing and disposition of a submission. Rather, in his argument before this Court, the counsel for plaintiff-in-error strongly contended that

he informed the Chamber Justice of a bill of information before him but that a perusal of the Court's files proved futile of any evidence to justify and support this averment. The Chamber Justice therefore could not have determined a proceeding that did not exist and was never before him at the time of the disposition of the writ of error and the mere verbal notice given by the counsel for the plaintiff-in-error at that point, legally fell short of sufficiency to constitute a stay to the hearing and disposition of the writ of error.

Counsel for the parties argued their petition and returns with professional proficiency. The main issues passed upon in the ruling of the Chamber Justice, which were also argued before us are: (1) the payment of accrued costs; (2) the passing on law issues in the action of damages; (3) the question of abandonment; and (4) the announcement of an appeal.

Commencing with the first count, the defendants-in-error attacked the plaintiff-in-error for violating the statute controlling the issuance of a writ of error by its failure to pay the accrued costs as a prerequisite to the issuance of said writ, and cited the Civil Procedure Law, Rev. Code 1: 16.24(d) for legal support. The plaintiff-in-error argued that in addition to the fact that the accrued costs were paid, the order from the Chambers Justice for the Clerk to issue the alternative writ was in itself a manifestation of his satisfaction that all the requirements had been met to warrant the issuance of the writ. Recourse to the records in this case, including the original file from the Seventh Judicial Circuit Court, which was brought down by a special bailiff, the petition and the ruling of the Chambers Justice, showed that the petition as filed on January 6, 1981, was void of any receipt and for that matter, any averment either by reference or otherwise indicating that the accrued costs had been paid. The returns to the writ of error filed by the defendants-in-error on April 30, 1981 attacked this violation of the statute and prayed for the quashing of the alternative writ and the dismissal of the petition. During the argument before the Chambers Justice, the counsel for plaintiff-in-error referred to a photo copy of a handwritten receipt for $34.00 under the signature of the clerk of the trial court which was dated on the 19th day of January 1981, 13 days

after the filing of the petition and almost two months before the alternative writ was issued on March 13, 1981, upon orders of His Honour Justice Boima K. Morris who was then presiding in Chambers. The returns, having been served on the plaintiff-in-error in which it had been attached for non-payment of the accrued costs, no effort was ever made to file an answering affidavit to rebut this averment of the violation of the statute. More than a year after the filing of both the petition and the returns, plaintiff-in-error decided to argue before us that the photocopy of a Thirty Four Dollar ($34.00) handwritten receipt under the signature of the clerk of the trial court (which had found its way in the file of the Supreme Court by no route known to anyone), constituted sufficient evidence of the payment of the accrued costs. Even as the plaintiff-in-error argued before us, the defendants-in-error claimed that they had not received the alleged paid accrued costs up to that point, which could not be rebutted by the plaintiff-in-error. Hence, it is our candid opinion that the accrued costs have not been paid in accordance with law. A receipted bill of cost by the sheriff is the best evidence of the payment of the costs, says the legal authorities. *East African Company v. McCalla,* 1 LLR 292 (1896) and *Richards v. Coleman,* 3 LLR 401 (1933). There is no evidence that this requirement was met; hence, we are in full agreement with the ruling of our colleague in sustaining the position of the defendants-in-error.

The second point which the plaintiff-in-error argued strongly before this Forum is that the trial judge, in ruling on the law issues failed to pass upon all the issues of law in the answer of the defendant in the court below and, hence, this assignment of error. The defendants-in-error, in resisting this point argued that the Court should not entertain this point of argument on the part of the plaintiff-in-error since it was incumbent upon it to take advantage of the law provided and applied to this Court for the remedial writ of certiorari. Since this Court has unequivocally avowed not to uphold the idea of reviewing cases by piecemeal, we are in accord with the plaintiff-in-error that it could not move the Supreme Court on certiorari. In *Daniel v. Compania Transmediterranea,* 4 LLR 97 (1934), this Court held that a

remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable, or without which the ordinary method of appeal may not give an adequate remedy. Certainly, passing upon the law issues in a case which ruling is generally interlocutory, unless the action is dismissed, constitutes no irreparable injury to any party to warrant the application of extraordinary remedy. In ruling out the remedy of a writ of certiorari in light of the above citation, the ample and complete remedy that was left opened to the plaintiff-in-error in this case was the prosecution of a regular appeal. This would have allowed this Court to examine upon the merits, the decision and ruling, both as to law and facts, of the proceedings of the court below; and also to affirm, modify, or, and reverse the judgment or ruling complained against, or give such judgment as the trial court should have given for the promo-tion of substantial justice as the exigency of the case might demand. This not having been done, the assignment of error by the plaintiff-in-error to the failure of the trial judge to pass upon all the issues of law in the answer cannot be upheld by this Court.

Plaintiff-in-error's third point of contention which the counsel strenuously argued before this Court is that of the question of abandonment.

The records before us from the court below reveal facts to the effect that Attorney Boyenneh, who was introduced as a member of the Krakue and Cole Law Firm that was representing the defendant in the court below, participated in the jury trial of this case on the first day by cross examining the first witness and waiving the cross examination of the second witness of the plaintiffs in the court below. Upon the suspension of the trial of the case and the subsequent adjournment of the court for that day, December 10, 1980 until the next day, Attorney Boyenneh, without any notice to or excuse granted from the court, left Zwedru and came to Monrovia. He never returned until the trial was concluded the next day, December 11, 1980, when a verdict was brought in by the trial jury in favor of the plaintiff below. Strikingly surprising to this Court is the fact that there is no showing by either the records of the court below or otherwise, that the defendant below, represented by its President, G. R.

Quintin, was ever present in court at any stage of the trial although the assignment for the trial had extended over a period of thirteen days, November 28, to December 10, 1980. Six days after the verdict was brought, the court entered a final judgment on December 17, 1980. At the judgment, the court appointed Counsellor Francis G. Doe to take the judgment for the absent party, now plaintiff-in-error, who excepted to the judgment and announced appeal to this Forum.

The absence of the plaintiff-in-error and its counsel on the second day of the trial was treated as an abandonment of their defense by the court, whereupon the trial proceeded to its conclusion in their absence. Now, the fact that the court appointed a lawyer to take the judgment for the plaintiff-in-error, who registered exceptions and announced an appeal on their behalf, is the aspect of the proceedings which the counsel for the plaintiff-in-error strongly feels the court did not treat as an abandonment. What a total legal and professional ingratitude and disregard of judicial prudence and wisdom! The court wonders what would have been the argument if the appeal so announced and granted had been duly prosecuted by the plaintiff-in-error? Could there have been any injurious intent or a denial of the plaintiff-in-error's day in court by this act of both the court and the appointed lawyer and therefore the assignment of error? If the questions could ever be answered positively, the law writers would have to resolve to the re-writing of the law on the point. Black's Law Dictionary defines 'abandonment' as the voluntary relinquishment of one's possession or right to a thing, leaving it to itself with intention of terminating the possessor's ownership or right but without vesting it in any other person. BLACK'S LAW DICTIONARY 9 and 10 (4th ed). It is crystal clear from the above legal definition, that both Attorney Boyenneh and the plaintiff-in-error, relinquished their right in the midst of the trial in which the said counsel had fully participated without vesting that right in any other person to carry their interest during their absence. Hence, the act of abandonment was conclusively committed by the plaintiff-in-error.

As to whether the court committed any error in its treatment of this act on the part of the plaintiff-in-error, our answer lies in

the negative without reservation. Error, as defined by Henry Campbell Black, is a mistaken judgement or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law. *Ibid*, at 637. The application of a rule that is provided by law, when such a rule is activated by a situation could not be construed as error in view of the legal definition above. The appointment of a lawyer by the court to take the judgement of an absent party and the announcement of appeal from such judgement could not warrant the assignment of error, especially so when all of such acts on part of both the judge and lawyer are not repugnant to law or prejudicial to the party assigning the error. It is our considered opinion, therefore, that the plaintiff-in-error abandoned their cause and such abandonment was treated according to the exigency that the case demanded.

The final point argued before us by the plaintiff-in-error was that there was no announcement of appeal by them in that they were neither present nor represented in person or by counsel at the time the final judgement was rendered, because there was no notice to them for the rendition of the judgement. The legal citation in *Bracewell v. Cavalla River Co.*, 7 LLR 18, 20 (undated), to which this Court's judicial attention has been called in support of this argument is not applicable; the situation there and the one now before us for settlement bear no similarity. In *Bracewell v. Cavalla River Co.,* 7 LLR 18, 20 (undated), the trial judge dismissed a motion for continuance in the absence of the movant and his counsel and thereafter without disposing of the law issues in the pleadings, empanelled a jury to hear the facts. In passing on this act of the judge, this Court held that the trial judge committed a reversible error, especially where he had refused to recognize the announcement of representation for the movant by a counsel not of record, failed to dispose of the law issues in the pleadings and proceeding to hear the facts without any notice to the movant. This episode is completely different from the one before us.

According to the original records in this case before us, an appeal was duly announced by the court appointed counsel who took the judgment for the defendant below. The failure on the

part of the plaintiff-in-error to prosecute that appeal without any reason whatsoever cannot gain the assignment of error.

One issue raised in the petition for the writ of error, argued and passed upon by the Chambers Justice but not argued before us is that the final judgment failed to show when the verdict was delivered by the trial jury. Because we are in full agreement with the disposition made of this issue by our colleague in Chambers settling this issue, we confirm his position.

In view of the circumstances herein above stated, it is our considered opinion that the ruling of the Chambers Justice should be and the same is hereby confirmed. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering it to resume jurisdiction and enforce its judgment. Costs are ruled against plaintiff-in-error.

*Petition denied; ruling affirmed.*