

UNITED LOGGING COMPANY, by and through
its General Manager, Plaintiff-In-Error, v. HIS
HONOUR JOHN MATHIES, Debt Court Judge,
Montserrado County, and KING GEORGE,
Defendants-In-Error.

PETITION FOR A WRIT OF ERROR AGAINST THE DEBT COURT FOR
MONTSEERRADO COUNTY.

Heard: March 31, 2003. Decided: May 9, 2003.

1. An appeal shall be taken at the time of rendition of judgment by oral announcement in open court by the party if he represents himself, or by the attorney representing him, or if such attorney is not present, by a deputy appointed by the court for that purpose.
2. The trial judge is statutorily required to appoint a lawyer for any absent party and/or counsel for the purpose of having him announce an appeal from the judgment or ruling affecting the rights and interests of a party litigant.
3. Where a trial judge assigns a case for hearing but which a defendant or his counsel fails to appear, although served an assignment, and the judge conducts the trial of the case and renders judgment on the same day, he is under an obligation, as required by statute, to appoint a lawyer to take the judgment for the absent party.
4. The failure of a trial judge to appoint a lawyer to take the judgment for an absent party where the case is heard and judgment rendered on the same day constitutes a denial of a party's right of appeal as well as his day in court.
5. A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on the rendition of judgment.
6. A writ of error is the proper and appropriate remedy to review and correct a judgment or ruling of a trial court from which an appeal has not been announced, as well as the proper remedy for a party seeking relief from a judgment rendered in his absence.

Plaintiff-in-error, United Logging Company, sought a

writ of error against the judge of the Debt Court for Montserrado County, alleging that it had been denied its day in court as the judge had failed to appoint counsel to except to, and announced an appeal from, his judgment on behalf of the plaintiff-in-error. The Co-defendant-in-error, King George, had instituted an action of debt claiming that the plaintiff-in-error had wrongfully entered upon his private forest and had cut down and taken away a tree without providing compensation therefore notwithstanding repeated demands for payment. Following the issuance and service of several assignments and the failure of the plaintiff-in-error to attend the same, the trial court, upon application of the co-defendant-in-error entered a judgment by default against the plaintiff-in-error and permitted the co-defendant-in-error to produce evidence in substantiation of his claim. After co-defendant-in-error's production and resting of evidence, the trial judge entered final judgment without appointing counsel to take the said judgment for the plaintiff-in-error for the purpose of enabling the latter to appeal to the Supreme Court.

The defendants-in-error contended that as the plaintiff-in-error had failed to attend upon an assignment for hearing of the case and judgment had been rendered immediately following the production of evidence, the trial judge was under no obligation to appoint counsel to take the judgment for the plaintiff-in-error.

The Supreme Court disagreed with the defendants-in-error contentions, holding that the statute mandatorily requires a trial judge to appoint counsel to take the judgment on behalf of an absent party for the purpose of having that party appeal the judgment to the appellate court. The Court noted that this was particularly essential in the case where the matter was assigned for a hearing and not for a ruling. The Court opined that as the judge had determined to rule in the case on the same day as the hearing, he was under an obligation, as provided by statute, to appoint counsel to take the ruling on behalf of the absent plaintiff-in-error and that his failure to do so was tantamount to a denial of the plaintiff-in-error's right

of appeal and due process of law. Accordingly, the Court granted the petition and ordered that the case be heard anew on its merits.

J. D. Baryougar Junius appeared for the plaintiff-in-error. *James N. Glayenneh* and *Cooper W. Kruah* appeared for defendants-in-error.

MR. JUSTICE JANGABA delivered the Opinion of the Court.

The Co-defendant-in-error herein, King George, instituted on March 20, 2001 in the Debt Court for Montserrado County, before His Honour John Mathies, an action of debt for the sum of US\$6,466.57 against the petitioner herein, United Logging Company by and through its General Manager, S. R. Pratt. The plaintiff in the trial court, co-defendant-in-error herein, alleged in his six-count complaint that the plaintiff-in-error, defendant in the trial court, illegally and wrongfully entered upon his private forest and cut down and took away a Makore Tree, valued at US\$6,466.57, without his acknowledge and consent; and that the said plaintiff-in-error company failed to make payment despite several demands made by the co-defendant-in-error.

A writ of summons was duly served and returned served thereby bringing the petitioner under the jurisdiction of the debt court. The plaintiff-in-error filed a 5-count answer, contending basically that the entry into the co-defendant-in-error's private forest and the extraction of the log was negotiated with him; that a sum of US\$1,000.00 was paid, for which the co-defendant-in-error executed a release on August 26, 1989; and that the plaintiff-in-error was therefore discharged from any further liability and obligation to the co-defendant-in-error. On April 6, 2001, the co-defendant-in-error filed a 7-count reply, upon which pleadings in the case rested. The law issues were disposed of on the 4th day of September, A. D. 2001, and the case was ruled to trial for hearing on its merits upon the respective pleadings filed by both parties.

The records before us show that the case was assigned three times for hearing, as evidenced by notices of assignment, but that it was never heard by the trial court. On the 13th day of February, A. D. 2002, the 4th notice of assignment was issued for hearing of this case on February 19, 2002 at the hour of 10:00 a. m. The records reveal that the notice was duly served and acknowledged by counsels for both parties on the 16th day of February, A. D. 2002.

We further observed from the records that the plaintiff-in-error and his legal counsel did not appear at the call of this case for hearing pursuant to the notice of assignment. Whereupon the co-defendant-in-error prayed the court for a default judgment, which was granted and entered on the record. Thereafter, the defendant-in-error was permitted to make his imperfect judgment perfect by the production of evidence. The trial judge, without any hesitation and appointment of a counsel to take the ruling for the plaintiff-in-error, rendered final judgment on the self-same date, holding the plaintiff-in-error company liable for the sum of US\$5,466.57. A bill of costs was prepared on the 20th day of February, A. D. 2002 for the amount of US\$6,231.53 and L\$2.460.00. The sheriff's returns show that counsel for co-defendant-in-error taxed said bill, but that the plaintiff-in-error's counsel refused to tax the aforesaid bill. However, notwithstanding the foregoing, the trial judge approved the bill of costs on the 27th day of February, A. D. 2002. A writ of execution was issued on the 4th day of March, A. D. 2002 commanding the plaintiff-in-error to satisfy the final judgment of the trial court, failing which its officer would be arrested and detained. On the 29th day of March, A. D. 2002, counsel for plaintiff-in-error filed a 2-count motion for deferred payment to satisfy the judgment. The motion was resisted, heard and granted on the 4th day of April, A. D. 2002. On the 19th day of April, A. D. 2002, the plaintiff-in-error company filed a notice of additional counsel, appointing Counsellor Francis Garlawolu to represent its legal interest. The plaintiff-in-error company then filed a

7-count petition for a writ of error on the 10th day of April, A. D. 2002. This Court deems counts 2 and 4 of the petition to be relevant and quotes them verbatim for the benefit of this opinion.

“2. That co-defendant in error, the trial judge, rendered final judgment in the above debt action without appointing any lawyer to except to and announce an appeal from the judgment, which has denied your plaintiff-in-error the right to an appeal as guaranteed under the Constitution of Liberia, as will mournfully appear from photocopy of court final judgment hereto appended as exhibit “A”.

4. That because of the judge’s failure to appoint a lawyer to except to and appeal from the final judgment, your plaintiff-in-error has absolutely been denied its day in court and its right to an appeal, especially so when the claim asserted against it has been controverted by a release voluntarily signed by the co-defendant-in-error concerning the self-same amount, subject of the action of debt, as will evidently appear from photocopy of said release, marked exhibit “B” and forming a cogent part of this petition.”

On the 7th day of May, A. D. 2002, the defendants-in-error filed a 10-count returns to these error petition. We consider counts 2 and 3 of the returns relevant to the determination of this case, and hereunder quote same for the benefit of this opinion.

“2. That as to count two of the petition, co-defendant-in-error contends that the same is misleading, in that the court was not under any obligation to appoint a lawyer for this ruling because the court did not reserve its ruling after the co-defendant-in-error presented evidence in his favour to make the imperfect default judgment perfect. Once the plaintiff-in-error received regular notices of assignment and failed to appear and both the hearing and the ruling were had the same day the court was not under any obligation to appoint any lawyer to take such ruling. Count two of the petition

should therefore be dis-regarded.”

3. Further to count two above, co-defendant-in-error says that the court could have appointed a lawyer to take the ruling for the plaintiff-in-error if the notice of assignment was for a ruling and the plaintiff-in-error was absent. In the instant case, the notice, which was for a hearing, was served and the ruling also had the same day.”

Both counsels filed briefs and vehemently argued before this court for their respective clients. In its brief, the plaintiff-in-error raised and argued five issues, but we deem the 4th and 5th issues germane for the determination of the case. The plaintiff-in-error submitted that it is a cardinal principle of law that at the rendition of any final judgment that may affect the substantial right of any absent party, a lawyer should be appointed to take the judgment on behalf of the absent party for the purpose of excepting to and appealing from the said final judgment; otherwise, the absent party would have been denied his day in court.

Plaintiff-in-error also contended that the trial judge rendered final judgment without appointing any lawyer to except to and announce an appeal from the judgment, thereby denying the plaintiff-in-error its right of appeal as guaranteed under the Constitution of Liberia. Further, plaintiff-in-error argued that the trial court is duty bound to appoint a lawyer to take the judgment on behalf of the absent party for the purpose of excepting to and appealing from the final judgment. The plaintiff-in-error therefore prayed this Court to reverse the judgment of the trial court and remand this case for a new trial.

The co-defendant-in-error, on the other hand, raised and argued 3 issues. However, we consider only issue 1 to be determinative of the case. The co-defendant-in-error contended that the plaintiff-in-error was given every opportunity to be heard pursuant to three notices of assignments issued December 14, 2001, January 21, 2002 and February 4, 2002, respectively, but that it elected to stay away from court. Thus, he said, the plaintiff-in-error could not claim that it did not have its

day in court or that it was not accorded due process. The co-defendant-in-error also argued that the trial judge was obligated to appoint a lawyer to take the ruling for the plaintiff-in-error only if the notice of assignment was for a ruling and the plaintiff-in-error was absent. The co-defendant-in-error therefore prayed this Court to deny and dismiss this petition and to order the enforcement of the final judgment.

The facts and circumstances in this case present one cardinal issue which this Court deems decisive to the determination of the case. That issue is whether or not the trial judge denied the plaintiff-in-error its day in court when he rendered final judgment without appointing a lawyer to announce an appeal therefrom.

We shall take recourse to the relevant statute which relates to the announcement of the taking of an appeal so as to enable us to decide this important issue. Section 51.6 of the Civil Procedure Law provides that: "An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose."

Defendants-in-error contended that the trial judge was under no obligation to appoint a lawyer at the time of rendition of final judgment for the purpose of announcing an appeal for the plaintiff-in-error due to the failure of the plaintiff-in-error and its counsel to appear for hearing of this case on February 19, 2002. Also, the defendants-in-error argued that the notice of assignment was for the hearing of the case and not for a ruling as would have required the appointment of a lawyer to take the final judgment. We are in total disagreement with the contentions of the defendants-in-error since the provision of the above quoted statute clearly provides that the trial judge is statutorily required to appoint a lawyer for any absent party and/or counsel for the purpose of having him announce an appeal from a judgment or ruling affecting the rights and interests of a

party litigant. The defendants-in-error do concede that the trial judge is required to appoint a lawyer to take the judgment of any absent party when the case is assigned for ruling. We observed from the records that the case was assigned on February 19, 2002 for a hearing, but not for ruling when the trial judge rendered his final judgment on the self-same date of the hearing without appointing a lawyer to take the ruling for the absent party. The trial judge was therefore under an obligation, as required by statute, to appoint a lawyer when he rendered final judgment on the same day that he assigned the case for hearing. Accordingly, it is our holding that the trial judge denied the plaintiff-in-error its right of appeal to this Court as well as its day in court.

Our statute also provides that: "A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on a rendition of judgment." Civil Procedure Law, Rev. Code I: 16.24 (4). Thus, a writ of error is the proper and appropriate remedy to review and correct a judgment or ruling of a trial court from which an appeal has not been announced as in the instant case. A writ of error is also the proper remedy for a party seeking relief from a judgment rendered in his absence. *Union National Bank, Inc. v. Hodge*, 20 LLR 635 (1971)

Wherefore, in view of all we have herein narrated, it is the considered opinion of this Honourable Court that the petition filed for the writ of error is hereby granted. The final judgment is reversed and set aside, and the peremptory writ is ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the Debt Court for Montserrado County commanding the judge presiding therein to resume jurisdiction and proceed with the hearing of the case anew on its merits. Costs are to abide final determination of the case. And it is hereby so ordered.

Petition granted; judgment reversed.

