ABDULAI BARRY, SOLE AND AMADOU BARRY, Plaintiffs-In-Error, *v.* HIS HONOUR VARNEY D. COOPER, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and MOHAMED MASON, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: December 6, 1994. Decided: February 16, 1995.

1. Any party who fails for good cause, to timely announce an appeal from a final judgment made against him, may, within six months after such final judgment, apply to the Supreme Court for a writ of error to review said judgment.
2. The error and the appeal statutes have a common objective, which is to afford a party against whom a final judgment has been rendered, the right to have said final judgment reviewed for alleged errors attributed to the trial judge.
3. The significant difference between the appeal and the error statutes, is the time limit within which one may use either of these statutes to have a final judgment reviewed by the appellate court; an appeal must be perfected within sixty days from the date of final judgment, whilst a writ of error may be obtained within 180 days after final judgment.
4. One can only avail himself of a writ of error, if there exists good reason why an appeal was not timely announced.
5. "Good reason" within the contemplation of the error statute, may be defined as any reason over which a party may have no control; that it was impossible for an appeal to be taken by the party seeking a writ of error, and that there is no fault that can be attributed to him for his failure to timely announce an appeal.
6. A Writ of error cannot lie where the petitioner was duly served with an notice of assignment but did not appear on the day the case was assigned and heard
7. A writ of error cannot lie where the court appointed a counsel to deputize for the absent party, and where the counsel so appointed noted exceptions to the judgment and announced an appeal therefrom.
8. Circuit Courts are all courts of record. Any order made by a Circuit Judge must appear on the record of court, and all lawyers should ensure that all orders which affect the interests of their clients are made a matter of record. To permit otherwise, amounts to negligence on the part of counsel.

These error proceedings grow from a final judgment rendered against plaintiffs-in-error by the Civil Law Court, Sixth Judicial Circuit, Montserrado County, during the

September A. D. 1994 term, in an action of summary proceeding for the recovery of real property. Plaintiffs-in-error alleged in their petition, that after they had remained in court from 9:45 a.m. to 12:30 p.m. on the day the case was assigned, the respondent judge advised counsel and their clients to leave and that another assignment for the hearing of the case would be ordered and served upon them; but that while they were awaiting a new notice of assignment, they were served with a writ of possession and were ousted and evicted from the subject premises without being heard. Hence they did not have their day in court.

Upon review of the records the Supreme Court found that the plaintiffs-in-error were cited to appear in court for the continuation of the summary proceeding matter on the day the trial ended. The records show that a notice of assignment was issued, and served on all of the parties but that when the case was called, plaintiffs-in-error and their counsel were not within the premises of the Court. The record further revealed that when the judge delivered his final judgment, he appointed a counsel to deputize for plaintiff-in-error and that the said appoint-ed counsel received the judgment for plaintiff-in-error's counsel and announced an appeal from said final judgment.

Upon review of the records, The Supreme Court held that error cannot lie where an exception was noted and an appeal announced from the final judgement. The Court also held that it can only be guided by the records certified to it and that on the basis of the record, plaintiff in error cannot legally contend that they did not have their day in court. Accordingly, the Court denied the petition.

George S. B. Tulay appeared for plaintiffs-in-error. *Flaagwaa R. MacFarland* appeared for defendants-in-error.

MR. CHIEF JUSTICE BULL delivered the opinion of the court.

A provision of our Civil Procedure Law states that for good

reason any party who fails to timely announce an appeal from a final judgment made against him, may, within six months after such final judgment, apply to the Supreme Court for a writ of error for this Court to review said judgment.

It is upon reliance on this provision of the statute that plaintiffs-in-error filed this error proceeding before us, seeking a review of the final judgment rendered against them by His Honour Varney D. Cooper, the presiding judge of the Sixth Judicial Circuit Court, during the September A. D. 1994 Term, in an action of summary proceeding for the recovery of real property. Civil Procedure Law, Rev. Code 1:16.21(1)

According to the records certified before this court, the parties to the summary proceeding matter were cited to appear before Judge Cooper on the 25th day of October, 1994, at the hour of 10:00a.m. for the continuation of the trial of the summary proceeding action. When the parties and their lawyers arrived at the appointed hour, the presiding judge was in the middle of the trial of a jury case. Plaintiffs and defendants' counsels argued before us that the judge then called both counsels up at the bench and told them that their case could not be called at the appointed hour. However, plaintiffs-in-error further argued, as alleged in their petition, that after they had remained in court from 9:45 a.m. to 12:30 p.m. on that 25th day of October, the respondent judge advised counsel and their clients to leave the court room and that another assignment for the hearing of the case would be ordered and served upon them; but that while they were awaiting a new notice of assignment, they were served with a writ of possession and were ousted and evicted from the subject premises without being heard. Hence they did not have their day in court. Counsel for defendants-in-error argued to the contrary, that the judge below advised both counsels to remain in court and that their case would be called after the on-going jury trial was suspended; that notwithstanding such order, plaintiffs-in-error and their counsel abandoned their case when they left the court room without the permission of the trial judge and without reference to counsel for defendants-in-error.

It is important to stress at this juncture that we have given

special attention to the contentions and arguments of both counsels in this matter now under review, as well as the records which were certified to us from the trial court, in determining this error proceeding. We must decide whether defendants in the court below, had no opportunity to timely announce an appeal from the final judgment of the trial court for the errors which they complained were committed by the trial judge, to be reviewed by us.

The writ of error and the appeal statutes have a common objective which is to afford a party against whom a final judgment has been rendered, the right to have said final judgment reviewed for alleged errors attributed to the trial judge. The significant difference between these two statutes is the time limit within which one may use either of these statutes to have a final judgment reviewed by the appellate court. An appeal must be perfected within sixty days from the date of final judgment, whilst a writ of error may be obtained within 180 days after final judgment. However, one can only avail himself of this extended period for a review of a final judgment, by a writ of error, if there exists good reason why an appeal was not timely announced. Good reason in the statute may be defined as any reason over which a party may have no control; that it was impossible for an appeal to be taken by the party seeking a writ of error, and that there is no fault that can be attributed to him for his failure to timely announce an appeal.

The records of the case on review before us reveal that plaintiffs-in-error were cited to appear in court for the continuation of the summary proceeding matter on the 25th of October, the day the trial ended. This court can only be guarded by the records certified to it. These records show that a notice of assignment was issued, and served on all of the parties in this case but that when the case was called, plaintiffs-in-error and their counsel were not within the premises of the court. We are not persuaded by plaintiff-in-error's contention that the judge permitted him to leave. The Civil Law Court is a court of record and therefore counsel for plaintiff-in-error who is not only an experienced lawyer but also a former circuit judge, should have asked the presiding judge to record in the minutes

of court, the permission counsel alleged was granted to him and his client to leave the premises of the court, and to return upon a new notice of assignment. More than this, the record further reveals that when the judge delivered his final judgment, the counsel appointed by the court, as the rule provides, received the judgment for plaintiff-in-error's counsel and announced an appeal from said final judgment. Plaintiffs-in-error have not denied these facts. Plaintiffs-in-error cannot now contend that they did not have their day in court when counsel did not appear after service of notice of assignment on him to appear on the day the case was heard. Also, exception to the judgment by a court appointed counsel who announced an appeal from said judgment is a factor against the issuance of a writ of error. *Mulbah et al. v. Dennis et al.,* 24 LLR 46 (1973); *Benson v. Shafi Brothers,* 18 LLR 285 (1968).

We deem it timely, however, to comment in this opinion on an usual practice concerning some of our circuit court judges in this jurisdiction which has contributed to the continuous misuse of the remedial writs. These writs are intended to be used only in instances where to follow the prescribed rules of procedure as laid down in our statutes, would, for some unforeseen reason, render their use impracticable. But it is important that the party who seeks the use of a remedial writ show to the court, without any doubt whatsoever, that reasons do exist which entitles such person to use these important writs.

This case in particular has brought to our attention the habit adopted by most judges when making assignments of cases to be heard before them. For example, these judges would assign a case for jury trial; one for disposition of law issues; and another for trial without jury for the same day and time. When all of the parties arrive, they will be told by the judge to wait for their matter to be called later or to come back on another date upon a new assignment. Such orders are usually not recorded on the court records. Lawyers and the judges must realize that our circuit courts are all courts of record and that this Supreme Court must rely only upon the records of court when engaged in the review of cases brought up before it either

on appeal or error. This matter now on review is no exception.

We strongly urge all circuit court judges to embark upon a more orderly and systematic manner of assigning matters to be heard. These judges will have to devise a new plan for assigning cases for hearing. Such plan must be practical and workable. In the main time, until a proper rule can be adopted to regulate the assignment of cases in our circuit courts, we herewith advise all judges of courts of record to allow a separate hour for the hearing of such cases. Further, any order made by a circuit judge must appear on the record of court. All lawyers should ensure that all such orders which affect the interests of their clients be made a matter of record. To permit otherwise, amounts to negligence on the part of counsel.

This error proceeding does not conform with the statute which allows for a party to seek review of the final judgment rendered against him. Hence, we must deny the plaintiffs-in-error's petition for a writ of error. The petition is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction of this case and enforce its final judgment. Costs against plaintiffs-in-error. And it is hereby so ordered.

Petition denied.