

**MS. AISHA SEYSAY, by and thru her Agent,
DWEH, Plaintiff-In-Error, v. HIS HONOUR M.
WILKINS WRIGHT, Resident Circuit Judge, Civil
Law Court, Sixth Judicial Circuit, Montserrado
County, and MRS. BEATRICE MILLER, by and
thru her Attorney-In-Fact, MS. MESSIE B. ALLEN,
Defendants-In-Error.**

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

Heard: November 17, 1997. Decided: January 22, 1998.

1. The prerequisite for the issuance of a writ of error is a jurisdictional issue which must claim the attention of the Supreme Court notwithstanding other issues are raised in the pleadings and argued before the Court.
2. The requirement for posting of a bond by an applicant for a writ of error is permissive rather than mandatory, and is therefore within the discretion of the Justice in Chambers to determine whether to require or waive the same.
3. Where the Justice in Chambers does not require that a bond be posted by an applicant for a writ of error, the petition cannot be dismissed on that ground.
4. The payment of accrued costs by a party applying for the issuance of a writ of error is not discretionary with the Justice to whom the application is made, but is a mandatory requirement for the granting of the writ.
5. A party applying for a writ of error may be required to file a bond in such amount and with such surety or sureties as he may name, conditioned upon paying such damages, if any, sustained by the defendant-in-error, in the event that the judgment, decree or decision complained of is affirmed.
6. The Supreme Court will not issue a writ of error unless the applicant has satisfied the statutory prerequisites of payment in the trial court of all costs accrued in the case out of which the error application grows.
7. The Supreme Court lacks jurisdiction to entertain any error proceedings where the statutory prerequisites have not been met.

An action of summary proceeding to recover possession of real property was instituted in the trial court against the plaintiff-in-error. The records revealed that the writ of summons was served on one of the dependents of the plaintiff-in-error. No answer was filed and no appearance was made by the

plaintiff-in-error at the call of the case. Therefore, on application of the co-defendant-in-error, the trial court entered a judgment by default against the plaintiff-in-error and permitted the co-defendant-in-error to prove her case. Following proof of the allegations, the trial court entered final judgment against the plaintiff-in-error. It was from this judgment that the plaintiff-in-error filed a petition for a writ of error before the Supreme Court.

When the case was called for hearing, the attention of the Court was called to a motion to dismiss the petition for failure of the plaintiff-in-error to pay the accrued costs of the proceedings in the trial court and to file a bond conditioned on paying damages to the co-defendant-in-error, should the judgment of the trial court be affirmed.

On the question of the posting of a bond, the Court held that the use of the word "may" by the statute made it permissive and not mandatory, and hence, within the discretion of the Justice in Chambers to decide whether to require or waive the posting of bond by the plaintiff-in-error. The Court therefore held that there was no merits to the contention of the defendants-in-error.

However, as to the issues of the payment of accrued costs, the Supreme Court sustained the contention of the defendants-in-error, holding that the payment of accrued costs was mandatory and not within the discretion of a Justice to require or waive. The Court opined that the requirement was a prerequisite to the Court acquiring jurisdiction over the case and to the issuance of the writ or error, without which the Court lacked the authority to entertain the proceedings. The Court therefore *denied* the application and ordered the writ quashed.

Harper S. Bailey appeared for the plaintiff-in-error. *Blamo Dixon* appeared for the defendants-in-error.

MR. JUSTICE SACKOR delivered the opinion of the Court.

These error proceedings originated from an action of

summary proceedings to recover possession of real property filed by the co-defendant-in-error, by and thru her attorney-in-fact, Ms. Messie B. Allen, against the plaintiff-in-error, Ms. Aisha Seysay, on January 14, 1997, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its December Term, A. D. 1996. Co-defendant-in-error claimed the possession of National Housing Authority Unit-23, located in the Old Matadi Estate, and expenses for failure of the plaintiff-in-error to voluntarily vacate the said premises. A writ of summons was issued and served upon the plaintiff-in-error and received by Margaret Momolu, one of the dependents of the plaintiff-in-error, as shown by the sheriff's returns, dated the 18th day of February, A. D. 1997.

The records transmitted to this Court showed that the plaintiff-in-error had failed to file her personal appearance and returns to the petitioner's petition to recover the subject property. At the call of the case for hearing on February 8, 1997, upon a notice of assignment, neither plaintiff-in-error nor her counsel appeared. Counsel for co-defendant-in-error prayed for a default judgment, which was granted, and subsequently made perfect upon the production of evidence. A writ of possession was accordingly issued, served, and returned served.

On the 9th day of May, A. D. 1997, plaintiff-in-error filed a six-count petition for a writ of error before the then Chambers Justice, Mr. Justice Pei Edwin Gausi, who forwarded same to the Bench *en banc* due to his inability as a single Justice to hear and determine error proceedings in our jurisdiction.

Plaintiff-in-error contended that she was never served personally with a writ of summons, as required by the statute relating to service of process, and that Margaret Momolu, who received the summons, was never a dependent of the plaintiff-in-error. She claimed therefore that she was denied her day in court. She maintained that the National Housing Authority's letter of introduction of July 17, 1996 was her genuine tenancy of Unit C-23 at Old Matadi Estate, which was under her supervision, and which was superior to and superceded the claims of the co-defendant-in-error. Plaintiff-in-error argued further that on the 9th day of February, A. D. 1997, the co-

defendant-in-error took certain individuals to her unit, in her absence, forcibly broke into her bedroom and other apartments therein, and threw her chattels outside, causing her to sustained losses and damages to the amount of L\$25,000.00 and US\$15,000.00. Plaintiff-in-error therefore prayed this Court to grant a writ of error and reverse the judgment of the trial court.

On June 3, 1997, defendants-in-error filed a nine-count returns to the error petition. In their returns, the defendants-in-error contended that Co-defendant-in-error Miller was entitled to the possession and custody of Unit C-23 at Old Matadi Estate predicated upon two letters, dated September 17, 1996, and October 10, 1996, under the signature of the managing director of the National Housing Authority, Honourable Fulton Dunbar, re-assigning said unit to her as a previous occupant of same and a tenant of the National Housing Authority since 1992. The defendants-in-error contended that plaintiff-in-error was never denied her day in court, in that she was served with process, as required by statute, but that she elected and failed to file a personal appearance and/or an answer, for which a default judgment was entered against her. The defendants-in-error further contended that the sheriff and the bailiffs of the trial court ousted, evicted and ejected the plaintiff-in-error from the subject property in her presence and took an inventory of her belongings, and that as such, plaintiff-in-error sustained no losses or damages as alleged in her petition. Defendants-in-error also averred that plaintiff-in-error had failed to comply with the procedure regarding the application and hearing of a writ of error, in that plaintiff-in-error had failed to pay all accrued costs and had refused to file a valid bond, as required by section 16.24 of the Civil Procedure Law, Rev. Code 1. Defendants-in-error further contended in their returns and argued before this Court that the payment of accrued costs and the filing of a valid bond are prerequisites for the issuance of a writ of error. Defendants-in-error therefore requested this Court to deny and dismiss the error proceedings for want of jurisdiction.

While this Court wishes to delve into the merits of these error proceedings, it has to decline doing so as its attention has

been called to the failure of plaintiff-in-error to meet the legal requirements for the issuance of the writ in our jurisdiction. The prerequisite for the issuance of this remedial process is a jurisdictional issue which must claim the Court's serious attention, notwithstanding other issues are raised in the pleadings and argued before this Court by both parties.

During the hearing of the case at bar, Counsellor Harper Bailey, counsel for plaintiff-in-error, argued that the statute does not require an applicant for a writ of error to pay accrued costs and file a bond. On the other hand, Counsellor Blamo Dixon, counsel for defendants-in-error, argued that this Court should refuse to grant said writ for lack of jurisdiction, as the plaintiff-in-error had failed and neglected to meet the legal requirements governing the issuance of the writ. The only issue which we deem proper for our consideration in determining this case is whether the payment of accrued costs and the filing of a bond are prerequisites for the issuance of a writ of error?

Section 16.24 (1)(d) of the Civil Procedure Law, Rev. Code 1, provides:

"As a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff-in-error, should be required to pay all accrued costs, and may be required to file a bond in the manner prescribed in section 51.8. Such bond shall be conditioned on paying the costs, interests, damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed."

The above quoted statute clearly shows that before the writ of error is issued by this Court, the party applying for such writ *shall pay all accrued cost and may file a bond*, if required, in keeping with section 51.8 of the Civil Procedure Law. The word "may", as used in the statute, is permissive and therefore discretionary, but the word "shall" is not discretionary but mandatory. This Court has held in a long line of opinions that it "lies within the sound discretion of the Justice to whom application is made in error proceedings to require the posting of a bond by the plaintiff-in-error, for such bond is not mandated by statute as the appeal bond is in the appellate

procedure". *Paterson, Zochonis and Company v. Flomo*, 20 LLR 404 (1971), text at 407-408; *Sawyer v. Freeman*, 17 LLR 374 (1966), text at 278-279; *Teewia v. Sokan*, 27 LLR 91 (1978), text at 95. We disagree with counsel for defendants-in-error that the writ of error should be denied because of the plaintiff-in-error's failure to file a valid bond, as the records certified before us are devoid of any evidence indicating that the Justice to whom this application was made required the posting of a bond by the petitioner.

As to the issue of accrued costs, this Court says that the payment of accrued costs by any party applying for the issuance of a writ of error is not discretionary with the Justice to whom the application is made, but it is a mandatory requirement in granting of a writ of error. This legal requirement is hoary with age and practice in our jurisdiction, and goes as far back as 1912. The Supreme Court Revised Rules, Rule IV, Part 4, thereof, provides that "the plaintiff-in-error shall be required by the Justice granting a writ to pay all accrued costs and may be required to file a bond in such amount and such surety or sureties as he may name, conditioned upon paying such damages, if any should be sustained by the defendant, in the event that the judgment, decree, or decision complained of against the defendant be affirmed".

In the case *Morris v. Reeves*, 27 LLR 334 (1978), text at 337, this Court held that "the Supreme Court will not issue a writ of error unless the applicant has satisfied the statutory prerequisite of payment in the court below of all costs accrued in the case out of which the error application grows".

It is regrettable that a counsellor of this Honorable Court is not aware of the statutory requirements regarding the application for the issuance of a writ of error in our jurisdiction. The records before us show that the plaintiff-in-error has not satisfied the statutory prerequisite of paying all accrued costs in the trial court from which the error proceedings emanated. As such, this Court does not have jurisdiction to entertain the error proceedings filed by the plaintiff-in-error. The petition is therefore denied and dismissed and the alternative writ which was ordered issued is hereby quashed.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the petition for a writ of error should be and the same is hereby denied and dismissed for lack of jurisdiction, and the alternative writ issued is hereby quashed. The Clerk of this Court is hereby ordered to send a mandate to the court below, informing the judge presiding therein to resume jurisdiction and enforce its judgment. Costs are assessed against the plaintiff-in-error. And it is hereby so ordered.

Petition denied.