

MERCHED G. BAAKLINI, Chairman, Board of Directors and Managing Director, METROPOLITAN BANK, AND METROPOLITAN BANK, s.a.l.,
Petitioners, v. **HIS HONOUR WYNSTON O. HENRIES**, Resident Circuit Judge Presiding, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and
JOSEPH H. YOUNIS, et al., Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS
GRANTING THE PETITION FOR A WRIT OF CERTIORARI.

Heard: November 4, 1998. Decided: January 21, 1999.

1. Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court.
2. Certiorari is corrective and not an end in itself; it is intended to correct errors, intermediate orders or interlocutory judgments complained of and send the appropriate order to the court below. Certiorari is not intended and cannot be used to render final judgment on the merits of a case not heard in the trial court.
3. The Justice in Chambers commits error in including in his determination matters of evidence which were not testified to, confirmed and admitted into evidence by the trial court.
4. Certiorari cannot be used as a substitute for appeal.
5. For certiorari to lie, the order must be intermediate or the judgment interlocutory; that is, it must still be pending undetermined in that court.
6. Interlocutory is defined as "provisional, interim, temporary, not final. Something intervening between the commencement and the end of a suit which decides some point or matter but is not decisive of the controversy; one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.
7. Intermediate order is defined as an order made between the commencement of the action and its final determination incident to and during its progress, which does not determine the cause but only some intervening matter relating thereto; one that is not directly appealable.

8. The trial court must necessarily pass upon all issues of law raised in the pleadings.
9. Every court must first determine its jurisdiction over a cause.
10. For the Supreme Court to pass upon pleadings, issues and evidence, they must have first been passed upon by the trial court and come up only for review before the Supreme Court.
11. The Supreme Court generally sits in an appellate position and does not take cognizance of matters not of an appellate nature.
12. The Supreme Court cannot pass on a complaint, answer and reply, or pre-trial motions relating thereto, or decide the issues raised therein.
13. The Supreme Court cannot take and pass upon evidence.
14. The original jurisdiction of the Supreme Court is very narrow, being restricted by the Constitution.
15. In order for the Supreme Court to render such ruling or judgment which the lower court should have rendered, the trial court must have first rendered an erroneous ruling on the issue, and such ruling by the Supreme Court is always by way of review and not an initial ruling.
16. Where the trial court has not rendered any ruling on an issue, the most the Supreme Court can do is to remand the case and instruct the trial court on what to do; but that principle of law does not authorize the Supreme Court to assume original jurisdiction and pass on the issues itself.
17. The Justice in Chambers errs in entering judgment on issue not passed upon by the trial court.
18. The withdrawal of a complaint does not deprive the court of jurisdiction so long as the writ was issued, served, returned, and which brought the parties before the court, remain undisturbed.
19. The withdrawal of plaintiff's entire action deprives the court of jurisdiction over the case where the previous writ of summons and the entire action are no longer pending before the trial court to be amended.

20. A civil action is commenced in a court of record by the filing of a complaint with the clerk and the issuance of the writ of summons.

21. The filing of a new complaint and the issuance of a new writ of summons by the plaintiff, after withdrawal of his previous action, constitutes the commencement of a new action.

Co-respondent Joseph Younis instituted an action of damages against Petitioners Merched G. Baaklini and the Metropolitan Bank s.a.r.l. of Lebanon. Following service of the complaint, the petitioner filed an answer and a motion to dismiss the complaint on the ground that the trial court lacked jurisdiction over the persons of the petitioners and the thing involved. Thereafter, the co-respondent withdrew his action and refiled an amended complaint, with new written directions, upon which a writ of summons was issued and served on the petitioners. In response thereto, petitioners filed an answer and a motion to dismiss the complaint. The co-respondent then filed a reply and resistance to the motion to dismiss, which was followed by a motion to strike the co-respondent reply for reason that the said reply was allegedly served beyond the time provided for by statute.

On hearing of the motion to dismiss, the trial judge ruled that he could not entertain the said motion because it was not denominated "amended motion", and accordingly denied the motion, without ruling on the other issues raised therein, but instead ordering that the case be proceeded with. From this ruling, the petitioner filed a petition for a writ of certiorari. The certiorari was granted, the Justice in Chambers holding that the trial judge had erred in not passing on all of the issues raised in the motion to dismiss. The Chambers Justice also ruled and determined issues which, although raised in the pleadings, were never passed upon by the trial court, and which went into the merits of the case.

On appeal to the Supreme Court, the Court determined that the Justice in Chambers had erred in passing on issues which were not first determined by the trial court, noting that the Supreme Court was without the constitutional no authority to hear evidence initially or to take cognizance of matters which were not of an appellate nature. These, the Court said, included the complaint, answer, reply and the issues raised therein, or motions relating thereto, observing that the original jurisdiction of the Court was very narrow and restricted by the Constitution. The Court opined that where the trial court had failed to pass on an issues, the most that the Court can do is to remand the case for the lower court to pass on the issue.

The Court also ruled that because the many issues presented in the petition were in appropriate, except as to the single issue of whether the petitioners' second answer should have been denominated "amended answer", the petition should be denied. On that single issue, the Court upheld the ruling of the Justice in Chambers, noting that once the plaintiff in a case withdraws his complaint and the entire action, the trial court loses jurisdiction over the action, and that therefore the response to any new complaint filed is not required to be denominated "amended answer".

Moreover, the court opined that the trial judge had erred in not ruling on all of the issues of law raised in the pleadings. The Court therefore reversed the ruling of the trial court, remanded the case, and ordered that the judge proceed with the disposition of all of the issues of law raised in the pleadings.

H Varney G. Sherman and *Momodu B. T Jawandob* of Sherman & Sherman, Inc. appeared for petitioners. *William A. N Gbaintor* of Gbaintor & Associates and *Isaac C. Nyepflu* appeared for respondents.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This case is before the Full Bench on appeal from a ruling of the Chambers Justice granting the alternative writ of certiorari and reversing the ruling of the trial judge which denied a mot on to dismiss filed by appellees.

On June 25, 1998, Co-respondent Joseph Younis, by and thru his attorney-in-fact, Mohammed El Housseni, filed an action of damages for wrong against Merched G. Baaklini, chairman of the board of directors and managing director of Metropolitan Bank, s.a.l. and the Metropolitan Bank s.a.l., of Antelias, Lebanon, petitioners herein, praying the court for US\$2,789,000.00 as special damages, and such general damages as deemed fit by the jury commensurate with the eight years the co-respondent and his family had suffered at the instance of the petitioners.

The writ of summons was issued and returned unserved the same day due to the absence from the country of the petitioners. A writ of re-summons was prayed for and granted on July 6, 1998, and issued but returned unserved the same day for the same reason stated with regard to the writ of summons. On July 13, 1998, the writ of summons was ordered served by publication. On July 18, 1998, copies of the re-summons and the complaint were mailed to the last known address of petitioners in Lebanon via DHL.

The petitioners on July 21 1998 appointed Sherman and Sherman "and all its lawyers as their attorneys-in-fact, to appear and make all necessary legal representations for and on their behalf to provide and present evidence, if necessary, and to do any and all such things, which we would have and have the power to do in denial of the complaint and in defense of both Metropolitan Bank s.a.l., Antelias, and the undersigned Merched G. Baaklini)."

On July 28, 1998, Sherman & Sherman filed their answer and, along with it, a motion to dismiss for lack of jurisdiction over the persons of petitioners and over the thing involved. On August 6, 1998, Co-respondent Younis withdrew his case with reservation to refile, and, on the same day, filed an amended complaint containing 16 counts, accompanied by new written directions, for which a new writ of summons was issued and served on Sherman & Sherman the next, August 7, 1998.

The petitioners, on August 17, 1998, filed a forty-eight count answer to the co-respondent's amended complaint, along with a thirty-seven count motion to dismiss the co-respondent's cause of action for lack of jurisdiction over the persons of the petitioners, over the thing involved, because there were cases pending in the courts of Lebanon between the same parties for the same subject matters, and because of the defectiveness of the written directions and writ of summons, among others.

On August 27, 1998, the co-respondent filed his reply containing eighty-one counts, along with a forty-nine count resistance to petitioners' motion to dismiss. On August 31, 1998, petitioners filed a motion to strike the co-respondent's reply because the reply, although filed on August 27th, was not served on petitioners until August 28th 1998, which was eleven days after the co-respondent was served with petitioners' answer. The co-respondent resisted this motion on September 2, 1998, and pleadings rested.

The trial court heard arguments on the motion to dismiss on September 11, 1998, and handed down its ruling on September 17, 1998, denying said motion and ordering that the case be proceeded with. In his ruling, the judge held that the petitioners should have denominated their second motion "amended motion", since the co-respondent had withdrawn his first action and had filed an amended complaint with new written directions, to which petitioners had filed a new answer and motion to dismiss. The judge did not consider or rule on the other issues raised in the motion to dismiss since, according to him, it was irregularly before court.

Petitioners, being dissatisfied with this ruling denying their motion, fled to the Chambers of this Court on the next day, September 18, 1998, with a fifty-eight count petition for a writ of certiorari, praying the Chambers Justice to review the lower court's ruling, issue the writ, reverse the ruling of the judge, and grant petitioners' motion to dismiss.

The alternative writ was issued the same day thus staying all further proceedings. The respondents filed their returns of forty-two counts on September 24, 1998, along with a motion to dismiss the petition for petitioners' failure to pay accrued costs. Petitioners, on September 25, 1998, filed an answering affidavit containing nineteen counts in response to respondents' returns as well as a resistance to respondent's motion to dismiss petitioner's petition. Pleadings rested.

The Chambers Justice consolidated the respondent's motion to dismiss petitioners' petition with the petition for a writ of certiorari, conducted one hearing of all the respective contentions on September 30, 1998, and handed down his ruling on October 7, 1998.

The Chambers Justice ruled on all of the issues raised by the parties in, the pleadings an the motion to dismiss, including the jurisdictional issues as well as the substantive issues on the merits of the case, and which issues, though raised in the court below, did not form a part of the trial judge's ruling. It must be noted that the judge held that he would not even consider the jurisdictional issue nor any other issue raised in petitioners' motion to dismiss because said motion was not before the court since it was not denominated "amended motion".

The Chambers Justice stated five issues which he considered germane to the determination of the certiorari proceedings. We recite them hereunder verbatim.

1. Whether or not petitioners paid accrued costs as a precondition for the issuance of a writ of certiorari.
2. Whether or not petitioners were legally obligated to designate their motion to dismiss as an "amended motion" subsequent to the withdrawal of the entire action and the filing of a new complaint and issuance and service of a writ of summons.
3. Whether or not the trial court acquired jurisdiction over the persons of the defendants when the new writ of summons was served on one of the lawyers at Sherman & Sherman Law Firm.

4. Whether or not the trial court had jurisdiction over the defendants and the savings accounts for which plaintiff Younis instituted an action of damages for wrong.

5. Whether or not the court below should have assumed jurisdiction over the matter when sufficient evidence was submitted showing that the matter was already pending in a court in Lebanon."

The Chambers Justice answered all the jurisdictional questions and all the defects in the institution of the action, and passed on evidentiary matters which even the trial court had not reviewed and passed on nor admitted into evidence.

The petitioners came to this Court by certiorari. Under our law, "certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court." Civil Procedure Law, Rev. Code 1: 16.21(1). "If the issue is determined in favor of the petitioner, the justice *issues the writ shall direct such order to the court, judge, administrator, or administrative board or agency below as may be necessary to carry out the ends of substantial justice.* "Id, 16.23(6). (Emphasis supplied).

Certiorari is corrective and not an end in itself; it is intended to correct errors complained of and send the appropriate order to the court below. Certiorari is not intended and cannot be used to render final judgment on the merits of a case not heard in the trial court on its merits. We hold that it was error for the Chambers Justice to have included in his determination matters of evidence which were not testified to, confirmed and admitted into evidence by the trial court. This Court has held over and over again that certiorari is not a substitute for appeal.

The statute provides that certiorari is intended to review and correct intermediate order or interlocutory judgments and then send down the appropriate orders to the lower court and not for the Supreme Court to retain jurisdiction and render final judgment on the merits. For certiorari to lie, the order must be intermediate or the judgment interlocutory; that is, the case must still be pending undetermined in that court.

Interlocutory has been defined as "provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of

action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." BLACK'S LAW DICTIONARY 815 (6th ed. 1990).

Intermediate order is defined thus: "An order made between the commencement of the action and its final determination, incident to and during its progress, which does not determine the cause but only some intervening matter relating thereto; one that is not directly appealable. *Id.*

What was before the Chambers Justice was the ruling of the trial court and not the pleadings filed in that court, not yet passed upon. Even in the petition for a writ of certiorari, petitioners stated that it is the denial of the motion to dismiss that gave rise to the certiorari petition, and therefore, it was only that ruling that could have been subject of these certiorari proceedings. What was that ruling? The judge, in denying petitioners' motion to dismiss, ruled that he would not rule on the issues raised in the motion because the motion was not properly before the court. The most that could be done was to order the court below to resume jurisdiction and pass upon all the issues raised in the motion and its resistance, and not to have passed upon them for the first time in this Court, as was done by the Chambers Justice. This was a reversible error and we so hold. Indeed, the action of the Justice in Chambers was tantamount to the Supreme Court assuming original jurisdiction, contrary to law. *Stubblefield v. Nassab*, 25 LLR 152 (1976).

The petitioners successfully but erroneously employed measures taking a short-cut to the disposition of the case. Petitioners conceded in their petition that the trial court's ruling was interlocutory and that they were quite aware of the meaning of something being interlocutory; yet, they prevailed on this Court "to ensure that the party will not go through the onerous task and expenses of a full-blown trial." *See count 7, page 3, of the petition.*

Even in their brief and arguments before the Full Bench, petitioners contended that consistent with a cardinal principle of law, hoary with age in this jurisdiction, trial judge was compelled to pass on all issues raised in the pleadings and it was error for the court to have passed on only one issue as the basis for denying the motion. Petitioners contended that the court could not ignore the jurisdictional issue raised but must rule on it before going to any other issue in the case. See pages 12-14, issues number 1 and 2 of the petitioners' brief as well as counts 51, 52, 56 of the petition.

This Court agrees with petitioners' contention and this Court has held over the years that the trial court must of necessity pass upon all issues of law raised in the pleadings, *Morris v. Johnson*, 26 LLR 73 (1977) Sy1.1; *Gallina Blanca S. A. v. Nestle Products*, 25 LLR 116 (1976), *Clara Town Engineers Inc. v. Tucker*, 23 LLR 211 (1974), and that every court must first determine its jurisdiction over a cause. It is for this reason that this Court agrees with the contention of the petitioners that the ruling of the trial court was erroneous when it failed to pass on all the issues of law and is reversible; however, we do not agree with our very distinguished colleague, the Chambers Justice, when he assumed the authority to enter a ruling on the issues which he said the trial judge did not rule on. It is for this reason that we hereby reverse the ruling of the Chambers Justice and remand the case to the trial court ordering that body to resume jurisdiction and pass on the law issues raised in the pleadings. Our colleague violated and exceeded the bounds of certiorari and ruled as if this case was before the Court on a full regular appeal.

It is observed that petitioners in their petition at count 53, page 11, and in their brief, at issue number 3, page 15, asserted that the Supreme Court has the power to render the ruling which should have been rendered by the trial court once the pleadings, and the issues and evidence in support of said ruling, are clearly before the Court.

While we agree with that proposition in principle, let us hasten to point out certain prerequisites. First, the law they have relied on says that "once the pleadings, the issues and evidence in support of said ruling, are clearly before the Court." The question. to answer is, are the pleadings and issues and evidence before this Court? Secondly, how do pleadings and issues, and evidence in particular, get before the Supreme Court?

In our view, for the Supreme Court to pass upon pleadings, issues and evidence, they must first have been passed upon by the trial court and come up only for review before the Supreme Court. The Supreme Court generally sits in an appellate position and does not take cognizance of matters not of an appellate nature. The Supreme Court cannot pass on the complaint, answer and reply, and pre-trial motions relating thereto, and decide the issues raised therein. The Supreme Court cannot take and pass upon evidence. The original jurisdiction of the Supreme Court is very narrow, being restricted by the Constitution.

Petitioners have misapplied the law and attempted to mislead this Court to the effect that the Supreme Court has the power to render that ruling which the trial court ought to have rendered. In the instances where the Supreme Court has rendered the

ruling which ought to have been rendered by the trial court, the said trial court must have first rendered an erroneous ruling on the issue and the Supreme Court then renders the proper ruling by reversing or modifying the ruling rendered by the trial court. That is the situation in all the cases in which the Supreme Court has given the ruling which the trial Court should have given; it is always by way of review and not an initial ruling. *Williams v. Tubman*, 14 LLR 109 (1960) Syl 2, and *John v. Republic*, 13 LLR 143 (1958), and *Wright v. Reeves*, 26 LLR 38 (1977), text at 40, 41 and 42. But where the trial court has not rendered any ruling on the issues, the most that the Supreme Court can do is to remand the case and instruct the court what to do, but that principle of law does not authorize the Supreme Court to assume original jurisdiction and pass on the issues itself.

Of the five issues discussed and relied on by the Chambers Justice in his ruling, the only one which is in line with the position we have hereinabove taken is issue number two and we shall discuss that issue and review his ruling thereon. It is our view that this was the only issue raised by the Petitioners that warranted his attention and review because that was the only point ruled on by the trial judge to deny petitioners' motion to dismiss for lack of jurisdiction.

The issue is whether or not the petitioners were legally obligated to designate their motion to dismiss as an "amended motion" subsequent to the withdrawal of the entire action and the filing of a new complaint and issuance and service of a new writ of summons?

In spite of our general position that the Chambers Justice erred when he entered judgment on the issues that had not been passed upon by the trial court, we are nevertheless in complete agreement with the Chambers Justice's ruling on the issue of the designation of the answer of the petitioners, in response to the co-respondent's amended complaint. Therefore, for purposes of this opinion, we shall quote verbatim from the Chambers Justice's ruling and same shall form our holding on the issue:

"As to the issue of defendants designating their motion to dismiss as an amended motion, this Court observes from the records in this case that the plaintiff on the 6th day of August, A. D. 1998, filed a notice of withdrawal which we hereunder quote verbatim for the purpose of this ruling.

NOTICE OF WITHDRAWAL

Mr. Clerk of Court

Sixth Judicial Circuit

Civil Law Court for
Montserrado County
Temple of Justice
Monrovia, Liberia

Dear Mr. Clerk:

Upon the receipt of this notice of withdrawal, you will please spread on the records of court that the plaintiff in the above entitled cause of action hereby withdraws this case with reservation to refile.

Very truly yours,

Isaac C. Nyeplu

COUNSELOR-AT-LAW.'

From the above quoted notice of withdrawal, it is clearly shown to this Court that plaintiff withdrew his entire action from the trial court on the 6th day of August, A. D. 1998 with reservation to refile. We also observe plaintiffs subsequent new written directions, amended complaint and a new writ of summons after said withdrawal, commanding the defendants to again appear before the trial court. We further observe that defendant filed an answer to the amended complaint and a motion to dismiss said complaint. The trial judge basically denied the motion filed by the defendants on ground that it was not designated as "amended motion", and as such, it was not legally and properly before him.

In the case *Cooper v. Cooper-Scott*, 15 LLR 390 (1963), text at 392, this Court held that "The withdrawal of a complaint does not deprive the court of jurisdiction so long as the writ which was issued, served and returned, and which brought the parties before the court, remains undisturbed.

In the *Cooper-King* case, only the complaint was withdrawn and an amended complaint filed without the withdrawal of the entire action, and as such, the trial court was not deprived of the jurisdiction over the defendants because the writ of summons, which brought them under the jurisdiction of the trial court remained undisturbed before said court. In the instant case, the entire action was withdrawn by plaintiff due to the defectiveness of his written directions and the writ of summons, with reservation to refile upon a motion filed by the defendants. A new action was instituted upon a new written directions, and a new writ of summons subsequently issued and served on the defendants. Thus, the withdrawal of plaintiffs entire action deprived the trial court of jurisdiction over the case because the previous writ of summons and the entire action

were no longer pending before the trial court to be amended. It is an elementary principle of law hoary with age in our jurisdiction that a civil action is commenced in a court of record by filing a complaint with the clerk and the issuance of the writ of summons. Civil Procedure Law, Rev. Code 1: 3.31 and 3.32. We therefore hold that the filing of a new complaint and the issuance of a new writ of summons by the plaintiff after withdrawal of his previous action, constituted the commencement of a new action in contemplation of the above statutory provision relating to commencement of a civil action. The ruling of the trial judge denying defendants' motion to dismiss plaintiffs amended complaint for the sole reason that it was not designated "amended motion" was therefore erroneous, prejudicial, unwarranted and is reversible."

We hereby uphold this portion of the Chambers Justice's ruling on amendment of pleadings, and reverse the rest. The trial court's ruling denying the defendants' motion is reversed and the motion reinstated. Since the trial court has all the papers/pleadings before it, there is thrust upon that court the duty to pass on all the law issues raised in all of them and thereafter let the law take its course.

Accordingly, the case is remanded to the trial court with orders that that court resumes jurisdiction over the case and conduct a hearing of the case, commencing from petitioners' motion to dismiss filed on August 17, 1998 and the corespondent's resistance thereto, filed on August 27, 1998. Depending on the outcome of that ruling, then the law issues raised in the pleadings can be disposed of, and again depending on the outcome of that ruling, the court can then proceed to hear the facts, and we so hold.

Wherefore, and in view of the all that has been stated above, this Court now rules that the ruling of the Chambers Justice appealed from is hereby reversed, except as to that portion on the designation of petitioners' motion as "amended motion." Accordingly, the petition for the writ of certiorari is denied except as to that portion relating to the trial judge being required to pass on all the law issues instead of on only one issue. The alternative writ is quashed, peremptory writ is refused and the pleadings are reinstated and the case is remanded to the trial court to rehear the motion to dismiss and its resistance and make a ruling on all the law issues raised therein, and thereafter to let the law takes its course. Costs are to abide final determination of the case. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge presiding therein to resume jurisdiction over the case and to

rehear the motion to dismiss and its resistance thereto, and pass on all of the law issues raised in both pleadings. And it is hereby so ordered.

Ruling reversed.