

BESSEE and **JIMMIE**, Petitioners, *v.* **HIS HONOUR JAMES KENNEDY BELLEH**,
Assigned Circuit Judge, People's Civil Law Court, Sixth Judicial Circuit, Montserrat
County, March Term, A. D. 1984, and **G. M. DUKULY**, Respondents.

PETITION FOR A WRIT OF CERTIORARI FROM THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided August 4, 1984.

1. No court has the authority to assume jurisdiction over defenses not pleaded or properly raised before it.
2. A court should not *sua sponte* raise issues upon which it must pass.
3. In order to give a court jurisdiction over an issue, it must have been raised in the pleadings by the contending parties.

Petitioners, defendants in the court below, in an action for damages for wrong instituted by the co-respondent G. M. Dukuly, sought review by certiorari of the ruling of the co-respondent judge on the law issues. In the petition, the petitioners contended that in his ruling, the trial judge raised and ruled upon issues not raised by the parties in the pleadings; and that on the basis of the issues so raised by the trial judge, he had proceeded to dismiss petitioner's answer on the grounds that counts three, four and five were evasive, contradictory, inconsistent and set forth defenses which both denied and avoided.

The respondents denied that the judge had *sua sponte* raised or passed upon issues not raised in the pleadings. They also challenged the petitioner's right to certiorari, stating that the petitioner should have reserved the alleged acts of the judge for review on regular appeal.

The Chambers Justice disagreed with the respondents. The Justice held that an examination of the records revealed that the trial judge had raised and passed upon an issue which was not raised by the parties in their pleadings. He opined that such action by the trial judge was not only error but was also prejudicial to the interest of the petitioner. The Justice noted that no court has the authority to assume jurisdiction over defenses not pleaded or properly raised before it, or to *sua sponte* raise and dispose of issues not before it. The Justice concluded that when a court *sua sponte* raises an issue, passes upon the same, and dismisses a defendant's answer, which act is irregular and to the prejudice of the defendant, certiorari will lie.

The petition for certiorari was therefore *granted*, the writ ordered *issued*, and the trial court *directed* to rehear and properly dispose of the issues of law.

Appearances not indicated.

MORRIS, J., presiding in Chambers

The petitioners are defendants in an action of damages for wrong instituted by co-respondent G. M. Dukuly in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Pleadings progressed to the reply and rested. During the March Term of the Sixth Judicial Circuit Court, presided over by His Honour James K. Belleh, the case was regularly assigned for the disposition of the law issues. After entertaining arguments, the judge dismissed the defendants' (now petitioners in these proceedings) answer and ruled them to a bare denial. The petitioners' main contention, among other things, for filing this petition, is that the judge dismissed their answer on an issue that was never raised in the pleadings by the parties but by the judge himself.

The petitioners have filed a twelve-count petition but we feel that only counts five, six and seven, which relate to the dismissal of the defendants' answer in the court below, are pertinent for the determination of this petition. The petitioners are contending that the issue for which the co-respondent judge dismissed their answer was never raised in the pleadings by any of the parties. According to the judge's ruling on the law issues, counts 3, 4 and 5 of the answer were evasive, contradictory, inconsistent and they both denied and avoided which, he said, was a bad plead. We quote counts three, four and five of the answer referred to above:

"3. That defendants say that to substantiate that plaintiff's allegation in count 2 of the complaint is base-less and false, plaintiff on February 28, 1984, while the criminal action of theft of property was pending in the People's Special Court for Theft, Related Offences and Narcotic Drugs, procured a guarantor, Col. Isaac J. Dorbor who guaranteed to Messrs. Hussein Jawad Company, of which defendants are partners and co-owner, to give plaintiff 500 bags of rice on credit to be paid for by plaintiff. Defendants asked if they removed 549 bags of rice from plaintiff's store without his consent why would the plaintiff come back to the same people he had charged with theft of property for the same 549 bags of rice begged them to give 500 bags of rice on credit based upon the guarantee posted by Col. Dorbor? Defendants proferted copy of the said guarantor letter for Mr. G. M. Dukuly in favor of Hussein Jawad Company, marked exhibit "D" to form part of this answer.

"4. That as to count 3 of the complaint, defendants say that the averment contained is a

mere sentiment and courts do not consider sentimental issues. But more than this, the averment cannot be sustained for the decision of the People's Special Court on Theft and Related Offences and Narcotic Drugs on the false, malicious and wicked accusation of plaintiff that defendants had stolen the same rice establishes that defendants never committed any unlawful act against plaintiff, and as such, no act of theirs is responsible for plaintiff's children not going to school or the deprivation of support and maintenance for them. Under the law for an action of damages to be sustained, it must be proved to be the result of the act of a person against whom the action is brought; hence, said count 3 should be dismissed.

"5. That defendants also say that plaintiff's averment in count 3 of the complaint that the sale of rice is the source of income earned therefrom by him to support and maintain his family, educate and medicate his children is also a mere falsehood. Defendants say that contrary to the averment, plaintiff owns and operates a fleet of taxi cabs under the name "G. M. DUKULY" from which he makes more daily income than from sales of rice. Defendants challenge plaintiff to deny that he does own taxis which yield comfortable and sizable income for him to enable him to support his family and educate his children and build houses in Montserrado County, Republic of Liberia."

The respondents have filed a four count returns in which they contend that the respondent judge did pass on all the issues of law raised in the pleadings and deny that the judge ever *sua sponte* raised any issue and passed upon any issue which was not raised by the plaintiff in his pleadings. They also argued that the petitioners should have reserved the alleged act of the judge for a review by an ordinary appeal. We shall also quote counts four, five and six of the reply to see if the issue of denial and avoidance, evasiveness, inconsistency and contradiction was raised by the plaintiff:

"4. Also because plaintiff says that as to count three of defendants' answer which denies entering plaintiff's rice store and taking and carrying away 549 bags of rice without his knowledge and consent, the same is false and patently designed to mislead this Honourable Court. Plaintiff submits that defendants in the presence of several persons did enter plaintiff's rice store and took and carried away his 549 bags of rice which they admitted at the Temple of Justice in the presence of other persons, and to appease plaintiff, defendants again in the presence of several persons promised to return plaintiff's 549 bags of rice and to give him on credit an additional 500 bags of rice, but although Col. Dorbor became guarantor for the additional 500 bags of rice, as can be seen in defendants' exhibit "C" attached to their answer, the defendants have not returned plaintiff's 549 bags of rice which they unlawfully took, nor have they given the 500 additional bags of rice, which is again an outright manifestation of defendants' continued unlawful act.

"5. And also because as to count four of defendants' answer wherein they referred to the dismissal of the case of property theft, upon the application of the county attorney, by the Theft Court, as the decision of the Court, this assertion presents a misconception of the law. Plaintiff submits that defendants in the case of property theft were never arraigned nor did witnesses for the prosecution as well as those for the defendants testify so as to afford the Theft Court an opportunity to render a valid and binding judgment. The dismissal of the case of theft of property referred to in defendants' answer does not put finality to the case of property theft nor does it preclude the prosecution from instituting a subsequent prosecution against the same defendants for the same offense.

"6. And also because plaintiffs say that as to count five of the answer, which states that plaintiff has other sources of income, this assertion does not vitiate the action of damages nor does it serve as a valid defense for the unlawful act committed by the defendants against the plaintiff. Plaintiff therefore confirms and affirms his position taken in his entire complaint."

We have carefully perused the entire seven-count reply but have not found in any of the counts where the issue on which the judge dismissed the defendants' answer in the lower court was raised.

The Supreme Court, in the case *Pennob v. Brown*, 15 LLR 237, 239-260 (1963), held that ". . . no court has authority to assume jurisdiction over defenses not pleaded or properly raised before it; nor should a court *sua sponte* raise issues upon which it must pass. In order to give a court jurisdiction over an issue, it must have been raised in the pleadings.... "

Also in the case *Weeks v. Ketter and Gurley*, 13 LLR 546, 554 (1960), this Court maintained:

"The procedure of the probate commissioner in declaring the homestead exemption notice invalid and a forgery in the absence of an issue being properly raised by either party in respect of any legal aspect of the said document for the court's due consideration and judicial action, is not only a dangerous precedent but question-able. This Court has held that it is the province of courts only to decide issues when raised in the pleadings of the contending parties, and not to (raise) issues. *Pratt v. Phillips*, 9 LLR 446, 453 (1947)."

The issue on which the judge dismissed the answer not being pleaded by any of the parties, the judge erred and his ruling was prejudicial for which certiorari will lie.

The respondents argued before us that certiorari will not lie because petitioners had a remedy by an appeal and cited the cases of *Johns v. Morris*, 13 LLR 101 (1957) and *Raymond*

Concrete Pile Company v. Perry, 13 LLR 522 (1960). In *Johns v. Morris*, Blackstock Johns was indicted for embezzlement in the Circuit Court for the First Judicial Court for Montserrado County. The case was called several times for hearing but each time the defendant would file a motion for continuance. The last motion for continuance was denied and the case assigned for hearing the next day at 9:00 o'clock a.m. However, before the time of the hearing could reach, the defendant filed a petition for certiorari and prayed this Court to review the records, when in his own petition he alleged that trial had not commenced. Hence, there were no records for the court to review. This Court therefore held that certiorari will not lie to review a case which did not proceed to trial. In the case of *Raymond Concrete Pile Company v. M. M. Perry*, unlike the instant case, even though the judge dismissed the answer as in the case at bar, he did not dismiss the defendant's answer on an issue that was not pleaded; rather, he confined his ruling to the issues raised by the parties in their pleadings. These two cases are not therefore analogous to the instant case. We are of the opinion that the raising of an issue by a court and passing upon the same is prejudicial for which certiorari will lie as remedy.

In view of the laws cited, and the facts, as culled from the records, it is our holding that the judge's act in *sua sponte* raising an issue, upon which he relied to dismiss the defendants' answer, when such issue was not raised by the parties, was irregular and therefore certiorari will lie. The petition ought to be and the same is therefore granted and the peremptory writ is ordered issued. The Clerk of this Court is instructed to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction and proceed with the trial of this case commencing with the disposition of the law issues as presented in the pleadings. Costs to abide final determination. And it is so ordered.

Petition granted.