HARI'S, by and thru **HARI NANWAI,** Petitioner, v. **HER HONOUR C. AIMESA REEVES,** Judge, Debt Court for Montserrado County, and **MUKHI IMPEX**, by and thru its Managing Director, **MOHAN HORHI,** Respondents.

APPEAL FROM RULING OF CHAMBERS JUSTICE GRANTING A WRIT OF CERTIORARI

Heard: December 15, 1988. Decided: December 30, 1988.

1. Certiorari will not obtain in a case where final judgment has been rendered.

2. 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 trial court.

3. Certiorari only affects those orders and judgments made by trial courts before it renders its final judgment in a matter.

4. Certiorari does not affect final judgment, or serve a litigant who has been denied his day in court.

5. Certiorari is only granted to review and correct prejudicial errors of a trial court while a case is pending.

6. Where a final judgment is entered by a trial court, a writ of error is the proper recourse where a litigant cannot appeal for any reason.

7. 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 rendition of judgment.

8. A writ of error is available to anyone who has been denied the opportunity by the court to announce an appeal from the final judgment.

9. A writ of error will lie instead of a writ of certiorari where an appeal is not announced because the litigant was absent and the judge failed to designate counsel to receive final judgment and announce an appeal on behalf of the absent party.

This case originated in the debt court, where Co-respondent Mukhi Impex, appellant herein, brought an action of debt. The case was ruled to trial, and after presentation of co-respondent/ appellant's case, petitioner filed a motion for judgment during

trial. Co-respondent did not resist the motion, and failed to appear for its hearing. The trial judge nonetheless denied the motion, and set a date for hearing on the record, observing that since both counsels were in court, no further notice of assignment would be served on the parties. When the case was called for hearing, neither petitioner nor his counsel was present. The Co-respondent requested judgment in conformity with Rule 7 of the Rules of the Circuit Court. The trial judge accordingly rendered final judgment for co-respondent but did not appoint counsel to take the ruling and announce an appeal on behalf of the absent party. Subsequently, a bill of costs was prepared and taxed by co-respondent, but petitioner's counsel refused to tax the said bill of costs. After final judgment was rendered, petitioner petitioned the Chambers Justice for a writ of certiorari, without disclosing that final judgment had been rendered. The Chambers Justice granted the writ, instructing the trial judge to resume jurisdiction and allow petitioner the opportunity to take the initial steps in filing an appeal. Co-respondent appealed to the Supreme Court. On review, the Supreme Court held that the writ of certiorari was improperly granted since final judgment had been rendered. Instead, a petition for a writ of error would have been the proper recourse. The Court therefore reversed the Chambers Justice ruling and denied the petition.

Johnnie N. Lewis for petitioner. Joseph P. H. Findley for respondents.

CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This matter is on appeal from a ruling of the Justice in Chambers who granted a writ of certiorari to the petitioner, now appellee, and thereafter remanded the case to the trial court to resume jurisdiction, cite the parties and permit the petitioner to announce and perfect its appeal, nunc pro tunc, to a judgment of that court rendered against it on March 31, 1987. Petitioner did not announce an appeal because it was not represented in court at the time of the said judgment. Corespondent, now co-appellant, excepted to the ruling of the Justice in Chambers and announced this appeal, which is now being determined.

The case originally started in the Debt Court of Montserrado County where the co-respondent brought an action of debt by attachment against the petitioner for an outstanding debt of $21,038.45, from an original debt of $42,000.00, for goods petitioner earlier credited from the co-respondent. Defendant, now petitioner, appeared and only filed a one-count general denial as its answer.

Thereafter, the judge ruled the matter to trial on the facts in both the complaint and

the answer, there being no issues of law. On March 4, 1987, plaintiff presented its side of the case and rested evidence. On March 10, 1987, defendant filed a motion for judgment during trial, contending that the evidence produced by the plaintiff, both oral and documentary, failed to establish any showing of value received, a promise to pay or any obligatory contract, or a breach between the parties. The plaintiff did not resist the motion, nor did it appear for the hearing of same. Notwithstanding, the judge denied the motion, ruling that the failure of plaintiff to resist the motion or to appear for its hearing, after first stating a case with evidence which tends to show the existence of some business transactions between the parties, does not mean that plaintiff waive its rights, and there-fore, she could not grant the motion before hearing defendant's side of the matter. Hence, the judge ordered defendant to proceed with its side of the case.

On March 27, 1987, when the case was called for hearing, defendant's counsel requested for a postponement of the matter for two weeks, because his client was in Togo on some urgent and unavoidable business transaction, and expected to return shortly. Plaintiff resisted this motion as being merely intended to baffle and delay the trial, and requested that it be denied. The judge denied the defendant's request for lack of sufficient reasons to convince the court. However, the judge postponed the case to March 31, 1987, and since both counsels were present in court, it was placed on record that there will be no need for another notice of assignment for the said hearing on March 31, 1987, at which time defendant was expected to present its own side of the case.

Accordingly, on March 31, 1987, the case was called for hearing as per the notice, but while the plaintiff was fully represented, neither defendant nor its counsel was present at the trial. The plaintiff thereupon requested court for judgment in conformity with Rule 7 of the Rules of the Circuit Court. The trial judge complied and rendered final judgment for the plaintiff on its complaint and evidence before the court. A bill of costs was prepared by the court and taxed by the plaintiff's counsel, but the sheriff's returns showed that although same had been served on defendant's counsel, he refused to tax same.

However, on April 7, 1987, after the final judgment was rendered, the defendant petitioned the Justice in Chambers for a writ of certiorari, but without stating therein that a final judgment had already been rendered. The petitioner alleged that the trial judge should have granted its motion for judgment during trial, especially when plaintiff had neither resisted the motion nor appeared for hearing of same. The petition concluded that the judge had therefore acted in violation of the Civil

Procedure Law, Rev. Code 1:10.7, since she had no alternative in the circumstances but to grant the said motion as prayed for by the petitioner, defendant therein. The co-respondent, on the other hand, filed his returns to the petition and maintained that it should be denied, because the statute cited, supra, could not apply where the judgment sought during trial is under Civil Procedure Law, Rev. Code 1:26.2. The co-respondent also maintained that the said petition was filed in bad faith, as it had even failed to reveal that final judgment had been rendered and that the matter was no longer pending, an indispensable condition for granting certiorari. The co-respondent concluded that as a matter of law, certiorari is not the proper remedy available to petitioner, and if anything, it should have proceeded on a writ of error.

The Justice in Chambers issued the writ of certiorari, heard and granted same and directed the following order to the trial judge: "In view of the foregoing, the judge presiding in the trial court is ordered to resume jurisdiction, cite the parties, and permit the petitioner to take the initial steps in filing an appeal; that is, taking exception to the judgment, announcing appeal and filing a bill of exceptions nunc pro tunc, etc. And it is hereby so ordered."

The co-respondent, being dissatisfied with the above ruling, announced this appeal to the full bench, contending that the justice should have denied the writ of certiorari, since it was filed after final judgment in the matter and that, in any case, where the petitioner had no opportunity to announce an appeal, its remedy was the writ of error, and not certiorari.

From the briefs and the other records in the file, we have reasons to conclude that there is only one issue to be determined on this appeal: whether or not the writ of certiorari was the proper remedy available to appellee on April 7, after the final judgment had been rendered on March 31, 1987.

The Justice in Chambers whose ruling is now under review answered that question in the positive, and he concluded his ruling as follows:

"This Court has held in several of its opinions that the enforcement of the ruling or judgment or the payment of cost in the inferior courts will put finality to the controversy. The case at bar where final judgment was rendered in the absence of the defendant without designating a lawyer to take the ruling in his behalf, and where the returns of the sheriff shows on its face that the bill of costs was served on counsel for defendant, now petitioner, but that he refused to accept same, a doubt has been created especially so where the counsel has contended that he was informed for the

first time that a ruling has been made in the case when the returns to these proceedings were served upon him. The returns of respondents does not state positively but rather by inference that the petitioner was informed of the fact that the case was finally decided on March 31, 1987. Giving the circumstances of this case and the laws we have cited, the only remedy available to the petitioner was certiorari."
Before we decide whether or not to uphold our colleague's ruling, it in pertinent to enquire why the appellee resolved to petition for a writ of certiorari after the final judgment. Appellee' s petition was in four counts and from the third and fourth counts, we find that appellee had resorted to certiorari in order to review and correct the ruling of the trial court rendered on March 10, 1987, denying its motion for judgment during trial and ordering it to proceed with its side of the case.

The most important ground for the petition is the denial of the motion for judgment during trial by the judge. The said motion was filed by the appellee on March 10, 1987, heard and denied and thereafter, with the judge ordered the defendant to proceed with its side of the case. Subsequently, on March 27, 1987, the defendant's counsel appeared in the court and prayed the court for a two-week postponement to allow defendant to return from a foreign business trip. This request was made to the court about sixteen (16) days after the said motion for judgment during trial was denied. Up to that time, no petition for certiorari was filed. The court denied the two-week postponement, but granted a four day adjournment instead, until March 31, 1987.

On March 31, 1987, defendant and/or his counsel did not show up for the hearing according to the notice given by the court, and since the petitioner had adequate prior notice to appear, the co-respondent pursued the necessary formalities and thereafter moved the court for judgment, under Rule 7 of the Circuit Court Rules, on the ground of abandonment. The court then granted co-respondent's request and gave judgment in its favor. Of course, for obvious reasons, no appeal was announced from this final judgment.

On April 2, 1988, the bill of costs was prepared and was later taxed by the plaintiffs' counsel, but the sheriff s returns indicated that it was served on defendant's counsel who refused to honor same.

It was five days after the said bill of costs was sent to petitioner's counsel the petitioner petitioned the Justice in Chambers for a writ of certiorari in order to review and correct the ruling of the trial judge which was handed down since March 10, 1987, denying petitioner's motion for judgment during trial. The Justice in Chambers

granted the writ on the grounds that the matter from which the petition arose was still pending in the trial court undetermined, since there was convincing evidence that petitioner, defendant then, was not earlier aware of the final judgment. The Justice in Chambers concluded that the writ of certiorari, and not error, was the proper remedy available to the petitioner at the time, especially when the trial judge failed to designate counsel to note exceptions and announce an appeal for petitioner.

Interestingly, however, in his ruling the Justice remanded the case for the judge to resume jurisdiction, cite the parties to appear, and then allow the petitioner to take exceptions and to announce and perfect its appeal nunc pro tunc, since the trial judge had proceeded wrongly by refusing to designate counsel to announce an appeal on petitioner behalf. However, considering that in the contemplation of the Justice in Chambers, the matter was still pending and undetermined, it is just doubtful, or rather contradictory, that the appellee herein had to return to the trial court to announce appeal to a final judgment which the Justice in Chambers had refused to recognize as such. One would have expected that if indeed the matter was still pending undetermined when the petition for certiorari was filed as held by our colleague, then the petition would have been determined, remanding the case to the trial court to resume jurisdiction and to grant petitioner's motion for judgment, or else to proceed from the point where it was earlier denied on March 10, 1987, and to allow petitioner to proceed with its side of the case before a final judgment.

However, to remand the case for petitioner to take exceptions and to announce and perfect an appeal to the final judgment is an open admission of the existence of the said final judgment, while at the same time granting certiorari is recognizing or saying that the matter is still pending, undetermined.

For the foregoing reasons, we have refused, herein, to uphold our colleague granting the writ of certiorari in this case. We are convinced that from the circumstances of this case, a writ of error, and not certiorari, was the proper remedy available to the petitioner.

This is the fact of the matter, in spite of appellee's denial of any prior knowledge of any final judgment before filing its petition. We are further of the opinion that appellee had no one to blame for the failure of the trial judge to designate counsel to take the ruling on its behalf and announce appeal. After having been duly notified in court of the date of the hearing, he still defaulted.

For several other reasons, we are of the opinion that certiorari will not obtain in this

case, especially after we have conceded that final judgment was rendered by the trial court which the Justice in Chambers had tacitly admitted when he remanded the case to the trial court for petitioner to be allowed to obtain an appeal from said final judgment nunc pro tunc

Our statute defines certiorari as "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." (Our emphasis).Civil Procedure Law, Rev. Code 1:16.21(1). As far as this statute relates to our courts of law, certiorari reviews and corrects the intermediate orders or interlocutory judgments of our trial courts. The key words therein are "intermediate" and "interlocutory", both meaning that certiorari only affects those orders and judgments made by the trial court before it renders its final judgment in a matter. Therefore, certiorari does not affect final judgment, or serve a litigant who has been denied his day in court, as in this case.

Several opinions of this Court are in support of this provision of the Civil Procedure Law cited, supra, and have always emphasized that certiorari is only granted to review and correct prejudicial errors of a trial court during the pending of a case. (Our emphasis). Vandevoorde v. Morris and Mirza, 12 LLR 323 (1956); Wright v. Reeves, 26 LLR 38 (1977); Maritime Transport v. Koroma, 25 LLR 371 (1976); Liberia Insurance Agency; Inc, v. Mansour N Ghossen and Bros et al., 24 LLR 411 (1976); Doe v. Yancy and Dweh, 29 LLR 455 (1982).

Where final judgment is entered by the trial court before a litigant decides to resort to a remedial writ because he cannot appeal for other reason, the writ of error is the proper remedy open to him in this jurisdiction. Our statute 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 rendition of judgment. Civil Procedure Law 1: 16.21(4). The said statute is plain and needs no further explanations, but to say that it is available to anyone who did not announced an appeal from the judgment of an inferior court. Nowhere in the foregoing statement or any other statute is it provided that, where the appeal is not announced because the litigant was absent and the judge failed to designate counsel to receive final judgment on his behalf and to announce an appeal, certiorari will suffice instead of the writ of error.

This Court has held in many cases before now that the writ of error is available to all party litigants who for any reason were not able to announce an appeal from a final

judgment; that is, it is granted where the court has denied a litigant his day in court. Teewia v. Urey 27 LLR 91 (1978); Jallah v. Sheriff, 25 LLR 226 (1976); and Brown Boveri Corp. v. Lewis, 26 LLR 170 (1977).

From all we have said above, the ruling of the Justice in Chambers granting certiorari is hereby reversed, and the writ is hereby quashed. The judge in the lower court is ordered to resume jurisdiction over the case and to enforce her judgment of March 31, 1987. Costs are assessed against the appellee. And it is so ordered.

Ruling reversed.