

THE INTERNATIONAL TRUST COMPANY OF LIBERIA, by and thru its President, Petitioner, *v.* **HIS HONOUR VARNEY D. COOPER**, Assigned Debt Court Judge, and **IMANI HOUSE**, by and thru its Executive Director, BISI IDERABDULLAH, Respondent.

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

Heard: November 15, 1995. Decided: January 25, 1996.

1. A debt is civil in nature.
2. An action of debt is cognizable before a debt court, which has the exclusive original jurisdiction of all civil actions to obtain payment of a debt in which the amount is \$2,000.01 or more.
3. Forgery is criminal in nature and is an indictable offense cognizable before a criminal court; it is tried by a jury, unlike an action of debt which can be tried without a jury.
4. The broad general principle is that two or more persons cannot be grouped together and joined in one suit either as plaintiffs or defendants where there is no privity of contract or mutuality of interest.
5. No one should be joined as a party defendant unless there exists genuine controversy between such person and the plaintiff.
6. A depositor's funds in a bank are unaffected by an unauthorized payment, and a banking institution paying such funds by mistake has a remedy at law for the recovery of said money.
7. A depository bank is a debtor of the plaintiff depositor in a banking transaction; and a breach of the contractual relationship by the drawee bank is ground for an action of debt or damages against the bank.
8. Where the lower court has jurisdiction, a writ of certiorari will not ordinarily be granted until the conclusion of proceedings, and then only if it appears that the lower court has abused such jurisdiction to the extent of entering an illegal judgment or order.

These certiorari proceedings emanate from the ruling of the Debt Court for Montserrado County denying a motion for joinder of parties. Plaintiff instituted an action of debt against

the International Trust Company for encashing two checks amounting to US\$12,000.00 that were issued and presented to the bank without the authority of the plaintiff/respondent or fault attributed to it. The defendant/petitioner appeared and moved the court to have the perpetrators in the forgery of the check joined as party defendants on grounds that they perpetrated the fraud and benefited from the proceeds realized from the transaction, and that they, and not the petitioner bank, should be liable for the amount. The Court denied the motion, from which ruling petitioner applied to the Chambers Justice for a writ of certiorari. From a ruling denying the petition, petitioner appealed to the Full Bench.

The Supreme Court held that certiorari cannot lie to review a ruling on law issues, and that where the lower court has jurisdiction, a writ of certiorari will not ordinarily be granted until the conclusion of proceedings, and then only if it appears that the lower court has abused such jurisdiction to the extent of entering an illegal judgment or order. No such abuse was found in the instant case. The Supreme Court however found upon review of the records, that the conduct of the parties sought to be joined as party defendants, are criminal in nature, which is distinct and separate from an action of debt, and that there is no genuine controversy between the plaintiff and the perpetrators of the fraud to warrant them to be joined as party defendants. Accordingly, the Supreme Court *denied* the *petition* and *affirmed* the ruling of the Chambers Justice.

Wynston Henries and Salia A. Sirleaf appeared for petitioner/appellant. *Snonsio E. Nigba* appeared for respondents/appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The petitioner in these certiorari proceedings, the International Trust Company of Liberia, is the defendant bank in an action of debt instituted by respondent Imani House in the Debt Court for Montserrado County, presided over by His Honour Varney D. Cooper, assigned judge.

The facts in this case as gathered from the records certified before this court, reveal that there exists a banking relationship between the party-plaintiff, Imani House, as depositor, and the party-defendant, International Trust Company, as the drawee bank. Plaintiff Imani House, Inc. is a not-for-profit corporation which engages in charitable and humanitarian activities in Liberia and maintains a checking account No. 04-00-000-145 with the defendant bank.

It is alleged that one Sekou Iderabdullah, the son of the executive director for the respondent corporation, made two checks amounting to twelve thousand United States

dollars (US\$12,000.00) to George Dankwah and Christopher Wreh which were presented to and paid by the defendant bank without the authority of the respondent corporation or fault attributed to the depositor.

The petitioner herein, the defendant bank, filed an answer along with a motion to join Sekou Iderabdullah, Christopher Wreh, George Dankwah and Semni Carter as party defendants in the debt action on grounds that they perpetrated the fraud and benefitted from the proceeds realized from the transaction and should be liable for the amount but not the petitioner bank. The motion was resisted, heard, and denied on the 23rd day of February, 1995 by Judge Varney D. Cooper on grounds that a criminal action of forgery cannot be joined with a civil action of debt, and that the petitioner bank has a remedy at law against the perpetrators.

The petitioner being dissatisfied with this ruling, fled to the Chambers of Mr. Justice Frank W. Smith, where it filed an application for the issuance of the writ of certiorari to review said ruling. An alternative writ was accordingly ordered issued and served. The petition was resisted, argued, and denied by Mr. Justice Frank W. Smith. We herewith quote the relevant parts of the opinion.

“In my opinion, the ruling of the respondent judge denying the action to join is not prejudicial to warrant a review and correction of the ruling. There is no privity between those who skillfully forged the signature of the executive director of Imani House and themselves in the banking transaction where nothing is shown to the contrary for them to be joined as party defendants in a civil action of debt. The petitioner alleges that the parties sought to be joined have committed forgery which is an action cognizable before a criminal court and not a civil court. Further, the ruling was on the issue of law, and certiorari will not lie to review a ruling on the question of law.”

It is from this ruling that the petitioner appealed to this Court *en banc* for final review and determination. During the pendency of this appeal, petitioner’s counsel filed a nine-count bill of information which was resisted and subsequently withdrawn without reservation.

Petitioner contended that those sought to be joined as defendants in the action of debt were those who allegedly committed the forgery against the account at the defendant’s bank, as revealed by an investigation of the alleged forgery and an identification of those illegally involved in said act. Petitioner also argued that the judge’s ruling denying the motion to join is harmful, erroneous, damaging and prejudicial to the petitioner. Petitioner therefore requested this Court to grant certiorari to review and correct such illegal acts complained of in these proceedings.

Respondents, in their returns, contended that the acts of those sought to be joined as defendants in an action of debt constitute a forgery, a criminal offense under our penal statute and that the debt court has no jurisdiction over the subject matter as the jurisdiction of a court is prescribed by law and not by the consent of the parties. Respondent also argues that the trial judge did not err in denying petitioner's motion to join persons accused of a crime to be tried in a civil action as defendants, where there is no privity of contract or a genuine controversy existing between the parties sought to be joined and the plaintiff. Further, respondent maintains that certiorari cannot lie to review a disposition of a question of law.

The issues relevant to the determination of this certiorari proceeding are:

1. Whether or not a defendant in a debt action can request that other parties accused of forgery which occasioned the debt being joined in the debt action?
2. Whether or not the ruling of the trial judge denying the motion to join other party defendants is prejudicial to warrant its correction?

A debt is civil in nature and its action is cognizable before a debt court, which has the exclusive original jurisdiction of all civil actions to obtain payment of a debt in which the amount is \$2,000.01 or more. INA Decree No. 6, amending Chapter 4, Subsection 4.2 of the Judiciary Law, Rev. Code 17:4.2.

Forgery is criminal in nature and is an indictable offense cognizable before a criminal court which is tried by a jury, unlike an action of debt which can be tried without a jury. Penal Law, Rev. Code 26:15.70, *Forgery and Counterfeiting*.

The two statutory provisions quoted *supra* clearly indicate that a debt and a forgery are two distinct and separate actions; and each is cognizable before a proper tribunal as prescribed by statute in our judicial system. Further, the banking transaction between the respondent as depositor, and the petitioner as a drawee bank, creates a privity of contract and a genuine controversy between the petitioner bank and the respondent depositor for any money withdrawn from the account of the respondent fraudulently.

We cannot perceive the contention of petitioner's counsel that those who have been accused of the commission of forgery should be joined as party defendants in an action of debt at the debt court. It is held that: "The broad general principle is that two or more persons cannot be grouped together and joined in one suit either as plaintiffs or defendants where there is

no privity of contract or mutuality of interest.” 59 AM JUR 2d., *Parties*, § 92, *Joinder of Parties*. Law writers further say that: “while it is normally good practice to name as parties defendant all who may properly be so designated, as a general principle, it may be said that one should not be joined as a party defendant unless there exists genuine controversy between such persons and the plaintiff. *Id.*, *Parties*, §112.

The respondent also has an election to sue either the bank as a debtor for the deposit or the receiver of the money which has been paid by the drawee bank without the authority of the depositor. A depositor’s funds in a bank are unaffected by an unauthorized payment, and a banking institution paying such funds by mistake has a remedy at law for the recovery of said money. 10 AM JUR 2d., *Banks*, §508 & 509.

Petitioner’s request to join those persons who allegedly perpetrated the commission of forgery of the respondent’s account at the petitioner bank is not sound in law as there exists no privity of contract or a genuine controversy between the depositor and the perpetrators that warrants them to be joined as party defendants.

The second issue for the determination of this case is: whether or not the ruling of the debt court judge denying the motion to join other parties defendant is prejudicial to warrant its correction?

The answer to this question is in the negative. This Court cannot invade the limits of the jurisdiction of any trial court and do what the law enjoins that such court should do, unless such inferior court has acted so erroneously to materially prejudice or injure the rights of a party. The defendant bank is a debtor of the plaintiff depositor in a banking transaction; and a breach of the contractual relationship by the drawee bank is a ground for an action of debt or damages against the bank as a debtor for the deposit. The exclusion of those who perpetrated the forgery of respondent’s deposit at the drawee bank does not injure the rights of the petitioner bank, as there is no privity of contract, mutuality of interest or a genuine controversy between the perpetrators and the respondent depositor which justifies their inclusion as defendants in the debt action pending before the Debt Court for Montserrado County. This Court has held that:

“The issuance of a writ of certiorari is discretionary and is dependent on a showing of special ground therefor. Where the lower court has jurisdiction, a writ of certiorari will not ordinarily be granted until the conclusion of proceedings, and then only if it appears that the lower court has abused such jurisdiction to the extent of entering an illegal judgment or order.” *Dennis v. Hamidi and Tecquah*, 13 LLR 34, 35 (1957).

The denial of the motion by the debt court to join those who were allegedly involved in the forgery, as defendants in the debt action pending before it, does not constitute an illegal order or abuse of its jurisdiction. The writ of certiorari will not lie where the ruling of a lower court, as in the instant case, is not manifestly prejudicial to the rights of the petitioner bank.

In view of the foregoing, it is the opinion of this Court that the ruling of the Chambers Justice denying the petition of certiorari appealed from, should be and the same is hereby affirmed and confirmed with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction and proceed with the hearing of the action of debt in keeping with law. And it is hereby so ordered.

Petition denied.