E. SUMO JONES, Petitioner, v. **HIS HONOUR EUGENE L. HILTON**, Assigned Circuit Judge for the Sixth Judicial Circuit, Montserrado County, **MURSOBI GAS COMPANY**, represented by its President, WARREN H. COOPER, **KANNEH AND KELLEH TRADING CORPORATION**, represented by its President, SELLEKE KELLEH, and **P. EDWARD NELSON**, **II**, Sheriff for Montserrado County, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE WRIT OF MANDAMUS.

Heard: April 5, 1989. Decided: July 14, 1989.

1. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty and will lie to compel an inferior judge to grant an appeal *nunc pro tunc*.

2. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of a case, but does not adjudicate the ultimate rights of the parties.

3.A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits; or, after trial, by rendering judgment either in favor of plaintiff or defendant.

Plaintiff in the lower court, now petitioner, filed an action of summary ejectment against the Kantel Gas Company, by and through its general manager, who was at the time operating the petitioner's filling station. The petitioner having obtained judgment in its favor, a writ of possession was issued and served on the defendant, and petitioner was placed in possession of the premises without an appeal being taken by the defendant corporation.

Thereafter, Mursobi Gas Company, represented by its president, Warren H. Cooper, and Kanneh & Kelleh Trading Corporation, represented by its president, Selleke Kelleh, filed a bill of information in the trial court. In passing upon the information, the respondent judge ruled in favor of the informants, rescinded his previous ruling in the summary ejectment case, and ordered the issuance of another writ of possession to have the informants placed in possession of the gas station. This ruling of the respondent judge was excepted to and an appeal was announced to the People's Supreme Court, but the respondent judge outrightly denied the appeal on the ground that the ruling was interlocutory and therefore the petitioner could not appeal the ruling. The petitioner nonetheless excepted to the decision and filed this petition for a writ of mandamus to compel the judge to grant his appeal for appellate review of the ruling.

The Chambers Justice heard and granted the petition and ordered the issuance of the peremptory writ of mandamus, ordering the respondent judge to grant the appeal *nunc pro tunc* and to have the petitioner placed in possession of his property or, to leave the *status quo*

until the final disposition of the matter. To this ruling of the Chambers Justice, the respondents/ appellants excepted and appealed to the Court *en banc.*

After reviewing all the records and entertaining arguments *pro et con,* the Court *en banc* held that the ruling of the corespondent judge was a final ruling from which an appeal would lie. The Court therefore affirmed the ruling of the Chambers Justice granting the petition.

Francis Y. S. Garlawolu and *J. L. Supuwood* appeared for petitioner. *Moses K White* appeared for respondents.

MR. JUSTICE KPOMAKPOR delivered the opinion of Court.

During the October, 1984 Term of this Court, an application was filed before Mr. Justice B. K. Morris, our former colleague, then presiding in Chambers, praying for the issuance of an alternative writ of mandamus against His Honor Eugene L. Hilton, Assigned Circuit Judge for the Sixth Judicial Circuit, Mursobi Gas Company of the City of Monrovia, represented by its president, Warren H. Cooper and Kanneh and Kelleh Trading Corporation, represented by its president, Selleke Kelleh and P. Edward Nelson, II, Sheriff for Montserrado County, Republic of Liberia. This application was made by E. Sumo Jones, Petitioner, also of the City of Monrovia.

The refusal of the co-respondent judge, His Honour Eugene L. Hilton, to grant petitioner an appeal in an action of summary ejectment after judgment had been rendered gave rise to these mandamus proceedings. The mandamus proceedings were authorized by His Honour, Mr. Justice Morris, presiding in Chambers. The relevant process having been issued, returns to the petition were filed by respondents. The petitioner's application and the corresponding returns having been duly examined, and the Justice being satisfied with the legal sufficiency of the petition vis-a-vis the returns, a ruling was rendered in petitioner's favor. The co-respondent circuit judge was ordered, *inter alia,*to grant the appeal *nunc pro* tunc which he had denied. Specifically, the Chambers Justice mandated the trial judge presiding in the court below to resume jurisdiction over the case and approve the bill of exceptions and other relevant documents, *nunc pro tunc,* that would be presented to him by the petitioner relating to the appeal. To this ruling the respondents excepted and prayed for an appeal to this Court *en banc.*

In our view, there are two salient issues for our determination and these have to do with (1) the purpose and scope of the writ of mandamus, and (2) what constitutes an interlocutory ruling. The ruling of our distinguished colleague herein referred to contains the facts in detail. Therefore, we deem it appropriate to incorporate some excerpts from it, as follows:

"RULING

The genesis of this case reveals that the petitioner filed an action of summary ejectment against the Kantel Gas Company, by any through its General Manager of Paynesville City,

who was at the time operating the petitioner's gas station. The petitioner obtained judgment in his favour and a writ of possession was issued and, served on the defendant and petitioner placed in possession without any appeal.

Thereafter Mursobi Gas Company of the City of Monrovia, represented by its president, Warren H. Cooper, and Kanneh and Kelleh Trading Corporation, represented by its president, Selleke Kelleh, also of Monrovia, filed an information to the court below. The petitioner, then respondent, filed his returns. The judge ruled in favour of the informants by rescinding his previous ruling in the summary ejectment case and ordered the issuance of another writ of possession to have the informants placed in possession of the gas station. This ruling of the respondent judge was excepted to and an appeal announced therefrom to the People's Supreme Court, but the respondent judge outrightly denied the appeal on the ground that it was an interlocutory ruling. The petitioner therefore filed this petition to compel the judge to grant his appeal for appellate review.

The respondents have filed an 18 count returns but we feel that the issue germane to the determination of this mandamus proceeding is whether or not the judge rightly denied the appeal. That is, we are mainly concerned with whether or not mandamus will lie to compel the judge to grant the appeal. The question as to the ruling being interlocutory or not should be decided at the hearing of the appeal by the full bench."

Reverting to the word "mandamus" we find that the word is of Latin origin, literally meaning in the English translation, "we command." This command is generally from a superior tribunal to an inferior one, ordering the latter to perform a particular act imposed upon it by law. Traditionally, it has been held that this great writ will not lie to order an inferior court to perform a discretionary act and that the writ will only lie to compel an inferior court or judicial officer to perform a ministerial act. *See King v. Randall and Gittens, 10* LLR 225 (1949); *Johnson, et al. v. Johnson,* 27 LLR 351 (1978); *The Liberian Air Taxi, Inc. v. Meissner,* 18 LLR 40 (1967); Civil Procedure Law, Rev. Code 1:16.21(2); *Marbury v. Madison,* 1 Cranch (U.S.) 137 (1803).

Moreover, as the Chambers Justice correctly found, the denial of the appeal was baseless. In this regard, the co-respondents themselves conceded in count 11 of their returns that the trial judge had grossly erred in concluding that his judgment in the bill of information proceedings was an interlocutory ruling and therefore an appeal from it could not lie. The obvious implication is that if the judgment rendered in the information proceedings was not interlocutory, then an appeal will lie. Indeed, this is the contention of the respondents. This Court held in *Cole-Larston et al. v. Thompson,* 20 LLR 339 (1971), that a final judgment puts an end to a suit unless an appeal is taken therefrom.

With respect to what constitutes "finality" in determining a case, this Court addressed the issue in *Hunter v. Hunter,* 22 LLR 87 (1973), text at page 98, as follows:

"As a general rule, the face of the judgment is the test of its finality. The fact that other proceedings of the court may be necessary to carry into effect the rights of the parties, or that other matters may be reserved for considerations, the decision of which one way or another cannot have the effect of altering the decree by which the rights of the parties have been declared; does not necessarily prevent the decree from being considered final unless there is some further judicial action contemplated by the court."

For the benefit of this opinion, we quote here the concluding portion of the trial judge's ruling which he characterized as "interlocutory":

"therefore, and in view of the foregoing, the previous ruling or judgment rendered against Informant Kantel & Kelleh, the said judgment is hereby recalled and rescinded, and the sheriff of this county is hereby ordered to proceed on the property above to repossess the informant herein of the said property... [A]ccordingly the clerk of court is hereby ordered to issue a writ of possession and have the same placed in the hands of the sheriff for execution."

It is difficult for us to comprehend how the learned judge could describe this judgment as being interlocutory.

Even in instances where the law provides that an appeal serves not as a stay, when the judgment puts a finality to the suit as in the instant case an appeal is granted by the trial judge as a matter of right. This is one of the basic rights of party litigants under the law. Civil Procedure Law, Rev. Code 1: 51.2, 51.6 and 51.20. *See* also LIB. CONST., Art. 20(b). An interlocutory ruling is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of the trial, but without adjudicating the ultimate rights of the parties. BLACK'S LAW DICTIONARY 731 (5t h ed).

In concluding this opinion, we are in agreement with the Chambers Justice that the pivotal issue on this appeal is only whether in ruling on the bill of information as he did the trial judge was warranted in denying the petitioner an appeal. We are precluded from deciding the other issues raised by the appellants touching on the merits of the case.

In the case of *Sheriff v. The Estate of the Late Alhaji S. Carew,* 34 LLR 3 (1986), one of the issues before this Court was whether the ruling appealed from was final or interlocutory. In deciding this issue, the Court, relying on Ballentine's Law Dictionary (3rd ed.), defined an interlocutory judgment as a judgment which "speaks between" or which does not speak the last word which the court may be required to speak in the case; or a judgment which is only intermediate and does not finally determine or complete the suit. In the *Sheriff* case, *supra,* the Court defined a "final judgment" as one which declares that the plaintiff is or is not entitled to recovery by the remedy chosen, or completely disposes of a cause; that a final judgment terminates the litigation between the parties on the merits and leaves nothing to be done but

to enforce by execution what has been determined. From the above definitions, it is clear and convincing that the judgment rendered in the case at bar was a final and not an interlocutory one.

In their brief, the respondents raised, for the first time, the issue that the Chambers Justice, after he had signed his ruling, had written in his handwriting an order that the property should remain in *status quo*. The respondents argued strenuously that in reversing the trial judge's ruling in the bill of information proceedings, the Chambers Justice committed a reversible error. Respondents contended that the bill of information having been granted, the property should have remained in co-respondents' possession until the mandamus proceedings were determined on appeal by the bench *en banc*. We are bewildered by what appears to be careless error and charge made by the respondents against the Chambers Justice, to the effect that the latter had given his order regarding the status of the property only after he had signed his ruling in the mandamus proceedings. Apparently, the respondents have the facts on this point confused. According to the records certified to us, in the prayer as contained in the petition for a writ of mandamus, dated February 15, 1985, there is the following clause:

"Wherefore and in view of the foregoing, petitioner respectfully prays for the peremptory writ of mandamus, and to have the petitioner restored to his property or to leave the *status quo* undisturbed until final disposition of the matter, and any other remedy as justice and right demand." Despite this clear request in the prayer of the petition for mandamus, the corresponding returns of the appellants failed to comment on or traverse this issue. This neglect on the part of respondents was a waiver, because the Justice's order for the issuance writ of mandamus, also dated February 15, 1985, contained the following clause:

"Include a clause commanding the respondent judge to have the parties placed in their original positions prior to this ruling." In the writ dated February 15, 1985, the Clerk also couched the clause: ". . . and the respondent judge is also ordered to have the parties placed in their original positions prior to this ruling." Under our practice, the rule has been, and still is, that only points raised in the lower court and argued in the brief may be considered in the appellate court. The reason for the rule is simple: to give the adversary notice and to give the lower court an opportunity to pass on the question or issue. Civil Procedure Law, Rev. Code 1: 51.15. The failure of the respondents in the mandamus proceeding to raise this issue constitutes a waiver for which they have themselves to blame and we so hold.

In view of the above, it is the determination of this Court that the ruling of our former distinguished colleague be, and the same is hereby affirmed with costs against the respondents. And it is so ordered.

Petition granted.