

DECORIS OIL PALM CORPORATION, by and thru its General Manager, A. J. MEMON, Petitioner, v. **THIRD WORLD CONSTRUCTION AND COMMERCIAL ENTERPRISES, LTD.**, by and thru its President, H. M. JAWHARY, and **HIS HONOUR HALL W. BADIO**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, March Term, 1986.

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

Heard: June 21, 1988. Decided: July 29, 1988.

1. A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matters excepted to on the trial and relied upon for an appeal, together with a statement of the basis of the exceptions.
2. Certiorari is defined as a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity or to review an intermediate or interlocutory judgment.
3. The disposition of the law issues shall be the first duty of a court or judge.
4. A party against whom a ruling on the law issues is entered may except thereto so that the alleged erroneous ruling may be reviewed by the appellate court.
5. A writ of certiorari will not be granted if the matter forming the ground of complaint was determined more than thirty days before the filing of the petition for the writ.
6. A writ of certiorari is not regarded as one of right but rather is one which is discretionary in order to promote the end of justice as effectively as possible.
7. The Court will not issue a writ of certiorari on the mere suggestion of either party that there is error in the records regarding the proceedings in the lower court; a special cause must be shown to the Court to which the petition is made, based mostly on the absence, excess or usurpation of jurisdiction by the tribunal from which the proceedings were removed.
8. A remedial writ is an extraordinary remedy usually applied for in order to prevent an injury to a party which may be irreparable or without which an ordinary method of appeal may not give an adequate remedy.

Petitioner, against whom an action of damages for breach of contract had been instituted, sought certiorari in the Supreme Court against the respondents, claiming primarily that the co-respondent judge had committed errors in his disposition of the issues of law. Although petitioner's counsel was not present when the ruling was made, the trial judge had appointed counsel to take the ruling and exceptions had been noted on the minutes of the trial court. More than two months after the said ruling and after the jury had been selected, sworn and empanelled, and the trial had progressed, the petition sought certiorari to review the judge's ruling. The Justice in Chambers denied the petition and ordered that the trial be proceeded with. From this ruling, an appeal was taken to the bench en banc.

The Supreme Court en banc affirmed the Chambers Justice ruling denying the petition, holding that the petition for the writ of certiorari was filed more than thirty days after the date of the ruling of the trial judge which the petition sought to have the Court review. The Court noted that exceptions had been taken to the ruling on behalf of the petitioner and that therefore the petitioner should have availed itself of the statute within the allowable time. The Court therefore dismissed the petition and ordered that the case proceeded with.

J. Emmanuel R. Berry and Carlos B. Z Smith appeared for petitioner. Roger K Martin and Pei Edwin Gausi appeared for respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

The above entitled cause is before this Court en banc for final determination from the ruling of the Justice presiding in Chambers.

During the December, A. D. 1985 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Third World Construction & Commercial Enterprises, Ltd., as plaintiff, by and thru its president, H. M. Jawhary, of the City of Monrovia, instituted an action of damages for an alleged breach of contract against Decoris Oil Palm Corporation, as defendant, by and thru its general manager, A. J. Memon, of the City of Harper, Cape Palmas, Maryland County. The pleadings progressed and rested with the reply.

During the aforesaid December, A. D, 1985 Term of the said court, the case was assigned for the disposition of the issues of law by His Honour Hall W. Badio, who was then presiding by assignment over the said court. At the call of the case, legal

representations for both sides were announced and duly noted on the minutes of court, and counsel representing both parties argued their respective sides. On March, 4, 1986, the presiding judge ruled on the matter as follows:

"Any expenses incurred by a party to a contract apparently allegedly breached by the other, constitutes specific damage which is claimable under law of damages. Therefore count 10 of the answer is overruled and count 11 of the reply sustained.

It is a well settled principle that where an offer is made through a particular channel or agency, the offeror impliedly authorizes its acceptance. Plaintiffs bid, made through the agency of government, the defendant's consultant, the bidding committee, constitutes an acceptance and therefore a binding contract.

The question of nationality of plaintiff having been established by preponderance of evidence or written communication, the contention indicated in count 8 of the answer is overruled and counts 7 and 8 of the reply sustained."

The trial court observing the absence of defendant's counsel, designated Attorney Theophilus Gould to take the ruling for and on behalf of the defendant In obedience to said appointment by the court, Attorney Gould excepted to the judge's ruling on the law issues. The exceptions were ordered noted by the court and same was duly noted on the minutes of the court. This in our opinion served a legal basis for an appeal. In that connection, our statute provides that the exceptions be contained in the bill of exceptions. The statute states:

"A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after the rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Civil Procedure Law, Rev. Code 1:51.7.

The records show that on the 30th day of May, A. D. 1986, after the trial jury had been selected, sworn and empanelled, and the plaintiff had produced evidence and rested, when the third witness for the defendant had taken the stand and commenced to depose, defendant fled to the Chambers Justice for a writ of certiorari alleging in substance that during the disposition of the issues of law on March 4, 1986, His Honour Hall W. Badio, the presiding judge, had prejudicially and erroneously ruled

against its interest.

The Chambers Justice having heard the petition for the writ of certiorari, denied same on the 24th day of October, A. D. 1986, ordered the alternative writ quashed, and directed that a mandate be sent to the trial court to resume jurisdiction over the case and to proceed with the trial thereof. The appellant, not being satisfied with the ruling of the Justice presiding in Chambers, has brought the case before us for our consideration and final determination.

Certiorari is defined "as a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity or to review an intermediate or interlocutory judgment. Civil Procedure Law, Rev. Code 1: 16.21.

The issue presented is whether or not the writ of certiorari is the proper remedy for a prejudicial or erroneous ruling on issues of law made by the trial court, to which an exception had been taken and duly noted on the minutes of the court.

Our statute specifically provide that "the disposition of law issues shall be the first duty of a trial court or judge, and that the party against whom the ruling on the law issues is entered may except thereto, so that the said alleged erroneous ruling may be reviewed by the appellate court, in whose province it is to examine the merits of every decision or proceeding of an inferior tribunal, both as to law and fact. It is also within the province of the appellate court to affirm, revise, and reverse the judgment complained of by any party or give such judgment as the trial court should have given for the promotion of substantial justice as the exigency of the case might demand.

We have quoted earlier in this opinion the relevant portion of Judge Badio's ruling on the issues of law which petitioner in certiorari considered erroneous and prejudicial to its interest and for which reason the petition in certiorari was filed. We observe from the records that even though the law issues in the pleadings were disposed of on March 4, 1986, and that exceptions were duly noted on the minutes by the court, yet, the petition in certiorari was not filed by appellant until the 30th day of May, A. D. 1986.

In the case *Markwei v. Amine et al.*, found in 4 LLR 155 (1934), this Court held that "a writ of certiorari will not be granted if the matter forming the ground of complaint was determined more than thirty days before the filing of the application for the writ.

A writ of certiorari is not regarded as one of right but rather it is one which is discretionary in order to promote the end of justice as effectively as possible. This Court will not issue such a writ upon the mere suggestion of either party that there is error in the records of the proceedings in the lower court, but a special cause must be shown to the court to which the petition is made, based mostly upon the absence, excess, or usurpation of jurisdiction by the tribunal from which the proceedings were removed.

In the instant case, the presiding judge was in perfect order when he designated a counsel to take the ruling on the issues of law in the absence of petitioner's counsel, which the designated counsel did. The exceptions taken were duly noted on the minutes of the court on behalf of the petitioner. But in an attempt to baffle and delay the trial, counsel for petitioner fled to the Justice in Chambers for a writ of certiorari against the trial judge for alleged erroneous acts said to have been committed by the trial judge some two months earlier. In our opinion, this could have been saved and brought up on appeal if the trial jury had brought a verdict against the petitioner.

A remedial writ is an extraordinary remedy usually applied for in order to prevent an injury to a party that may be irreparable or without which an ordinary method of appeal may not give an adequate remedy.

THEREFORE, it is our considered opinion that the ruling of the Justice presiding in Chambers should not be disturbed. This Court sitting en banc therefore affirms the same. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over the case and to proceed with the trial of said case. And it is hereby so ordered.

Petition denied.