

ALHAJI MOMO LARMIE, alias ALHAJI MOHAMMED LARMIE SHERIFF
Petitioner/Appellant, **v. HIS HONOUR JUDGE JESSIE BANKS**, Presiding by
Assignment over the March A. D. 1980 Term of the People's Sixth Judicial Circuit Court,
Montserrado County, and SENE SEE CAREW, Respondents/Appellees.

APPEAL FROM THE CHAMBERS JUSTICE DENIAL OF THE ISSUANCE OF A
WRIT OF CERTIORARI

Heard: March 14, 1985. Decided: June 20, 1985.

1. Where a motion to dismiss an action is denied, the movant may note exceptions and come up on regular appeal after a determination of the main cause, instead of proceeding by certiorari which could create a multiplicity of litigations.
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 court. Civil Procedure Law, Rev. Code 1: 16.21.
3. The writ of certiorari determines whether the conduct of an inferior tribunal was within its jurisdiction and otherwise legal; it is designed to control the actions of an inferior tribunal and to keep it within its jurisdiction.
4. A writ of certiorari will not issue if there is another adequate remedy such as an appeal or a writ of error, an action at or in equity, or intervention with the right of appeal secured. Thus certiorari will be denied where the relator fails to show equity or an injury not remediable at law.
5. It is the inadequacy, not merely the absence of other legal remedies, and the danger of a failure of justice without the writ, that must usually determine the priority of certiorari.
6. Certiorari does not issue as of right, but must be based on the sound discretion of the court to which the application is made.

The petitioner/appellant appealed from the ruling of the Justice in Chambers denying his petition for a writ of certiorari against the ruling of the trial judge dismissing petitioner's challenge to the jurisdiction of the court. In the court below, co-respondent Sene See Carew instituted an action of ejection against the petitioner, praying that he be ejected from a parcel of land claimed by the co-respondent, and asking that petitioner be made to pay damages for his unlawful occupation and withholding of the property from the co-respondent. The petitioner challenged the jurisdiction of the court, contending that he had been granted the property by the Monthly and Probate Court for Montserrado County as part of the estate of his late wife; that the Civil Law Court could not review the action of the probate judge, who had concurrent jurisdiction; and that the proper action should have been one for relief from the judgment filed with the said Monthly and Probate Court. The trial

judge, in ruling on the law issues, disagreed, holding that the court had jurisdiction over the case and that the property awarded by the probate court to the petitioner did not include the property for which the ejectment suit had been instituted. It was from thus ruling that the petitioner sought certiorari.

The Justice in Chambers, agreeing with the contention of the co-respondent that certiorari would not lie to review an interlocutory ruling on the issues of law, dismissed the petition. On appeal to the Supreme Court, the Court affirmed the ruling of the Justice. The Court, after a thorough analysis of the basis for issuance of the writ of certiorari, noted that the writ would not issue where (a) there was another adequate remedy, such as an appeal or a writ of error, available to the petitioner, (b) it sought to review an interlocutory ruling at law where an appeal was an adequate remedy, or (3) where the petitioner failed to show equity or an injury not remediable at law. Certiorari, it said, was not a matter of right, but was left to the sound discretion of the court to which the application is made. The petitioner, the Court observed, should have noted exceptions to the trial judge's ruling and reserve the matter for determination on a regular appeal.

The Court further held that the denial of the motion to dismiss was not such a prejudice as would have so affected the main cause of action to the detriment of the petitioner; and, it said, even if the petitioner had suffered detriment, an appeal would have cured the situation. The Court therefore determined that the Chambers Justice's *denial* of the petition be *affirmed*.

H. Varney G. Sherman of Maxwell & Maxwell Law Firm appeared for appellant. *James Bull* of the Bull Law Firm appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

In 1980, plaintiff, now appellee, Sene See Carew, sued Alhaji Momo Larmie Sheriff in an action of ejectment before the People's Sixth Judicial Circuit in its December Term, praying for judgment against defendant, now appellant, to evict and eject him from Lot No. 58, located on Randall Street, Monrovia. The appellee also prayed that appellant be made to pay general damages for the inconveniences and embarrassments suffered as a result of appellant's illegal occupation of his premises.

The appellant filed both an answer and a motion to dismiss, contending among other things that the court lacked jurisdiction over the subject matter, in that the property in question was part of the estate of the late Madam Mariama Carew Larmie Sheriff, which was awarded her husband, the appellant, for life by the Monthly and Probate Court for Montserrado County in 1977. The appellant concluded that the Sixth Judicial Circuit, being a court of concurrent jurisdiction with the Monthly and Probate Court, could not legally review the latter's decision. Accordingly, the appellant maintained that the proper action to have been filed by the appellee should have been a petition to set aside the disposition of the

intestate estate of Madam Mariama Carew Larmie Sheriff and to seek relief from in the Monthly and Probate Court.

In his resistance, the appellee countered that the matter in litigation was one properly cognizable before the circuit court, especially so since the appellee was never a party to the matter of the intestate estate of Madam Mariama Carew Larmie Sheriff which was filed in the Monthly and Probate Court. The appellee also asserted that when the Probate Court granted appellant a life estate in all property in which his deceased wife had died seized, it did not include lot. No. 58, located on Randall Street, since the deceased merely had a life estate therein. That life estate, appellee said, abated with Madam Mariama Carew Larmie Sheriff's demise, which thereby left the fee in said estate solely to appellee.

The trial judge overruled the defendant/appellant's motion to dismiss, holding that the court had jurisdiction over the matter, and that the decree of the Monthly and Probate Court awarding the property, real, personal and mixed, of Madam Mariama Carew Larmie Sheriff, to her surviving spouse, Momo Larmie Sheriff, did not apply to Lot No. 58, located on Randall Street.

From the foregoing ruling of the judge, the appellant excepted and petitioned the Chambers Justice for a writ of certiorari for a review thereof. The appellee filed resistance to the said petition, in which he prayed the Court to deny the petition, stating as reason that certiorari will not issue to review an interlocutory ruling on law issues. A regular appeal, the appellee averred, was the proper process.

The Justice in Chambers denied the petition, and held that any attempt to grant a writ of certiorari to review an interlocutory ruling on the issues of law raised in the pleadings, would amount to opening a floodgate of endless litigation in our courts. He maintained that the age old practice in this jurisdiction was that in a case where a ruling on the law issues is entered against a party, said party may note exceptions to the ruling and save the point for appellate review, rather than seek review by piecemeal. He concluded that the extraordinary writ would not lie where the remedy of a regular appeal remained available, and where the matter in litigation had not proceeded to hearing.

It is from that ruling that appellant has come to confront the Justices of this Court of last resort for further and final review of his application for the extraordinary writ of certiorari. The appellant contends that an issue of law on a motion to dismiss for lack of jurisdiction is, by its nature, an extraordinary issue that cannot be equated to an ordinary issue of law, and that consequently, the Chambers Justice erred when he equated the ruling on a motion to dismiss to be synonymous with an interlocutory ruling on a question of law in a pleading. If the two rulings were the same, appellant maintains, our statutes would not have required that a motion to dismiss be heard and disposed of prior to the hearing and disposition of the issues of law and facts in the pleadings. The appellant further contends that a motion to dismiss for lack of jurisdiction is superior in nature and fundamental to the rights of the party litigants. Consequently, he says, any erroneous ruling by the trial court imposes a

material prejudice and injury, thereby making it properly reviewable by a writ of certiorari.

The foregoing is the history of this appeal, which grows out of a denial of a motion to dismiss for lack of jurisdiction over the subject matter in an action of ejectment.

From a close scrutiny of the various legal and factual issues presented for our deliberation and determination, the most important issues demanding our attention are two:

1. Whether or not a ruling which denies a motion to dismiss a cause of action for want of jurisdiction can be properly called an interlocutory ruling;
2. What is the office of a writ of certiorari under our law.

We have been compelled to limit ourselves to these two issues because we are basically concerned here with the question of certiorari, and to determine whether it can be granted to review a decision on a motion to dismiss.

Coming to the first issue as to whether the ruling decrying the motion to dismiss was interlocutory, it is imperative that we first enquire as to the object of that motion in the first place, or rather, what did said motion seek to achieve, if granted? Appellant contends and concedes in his brief that a motion to dismiss is a special pleading different from the other pleadings in the main cause of action. In our opinion, what the motion sought to achieve, if granted, was a dismissal of the entire action before the court without further ado. That means, at that point, the only course left open to appellant was a regular appeal to a higher tribunal. By this fact, it becomes clear that the ruling on the motion to dismiss was a final ruling *per se*, and not an interlocutory ruling which can be reviewed by a remedial writ of certiorari.

On the other hand also, since the motion to dismiss was denied, the course opened to the movant/appellant was likewise an appeal. In some cases, however, the movant has a choice of either appealing from the ruling denying the motion or treating the same as an interlocutory ruling by taking exceptions thereto and saving the issue for the regular appeal.

It has therefore been the precedent in our jurisdiction that where such actions as a motion to dismiss are denied, the movant may note exceptions and come up on regular appeal after a determination of the main cause, instead of coming up on certiorari, in order to avoid a multiply of litigations, or he may appeal therefrom. *Raymond Concrete Pile v. Perry*, 13 LLR 522 (1950).

This brings us to the second issue, which is to determine what is certiorari and to show when it lies. Our Civil Procedure Law 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. Civil Procedure Law, Rev. Code 1:16.21.

At common law, certiorari is in the nature of an appellate process used to obtain review to determine from the face of the record, whether the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law. The writ determines whether the conduct at an inferior tribunal was within its jurisdiction and

otherwise legal, that is, to control the actions of the inferior tribunal and to keep it within its jurisdiction. At common law, in the absence of statutory enlargement, only the external validity of proceedings had in the lower court may be examined by the superior court under its supervisory jurisdiction; the supervisory jurisdiction of the court cannot be exercised in order to review the judgment as to its correctness, either on the law or facts of the case. 14 AM JUR 2d, *Certiorari*, § 2. The writ will be denied if the relator does not show equity and an injury not remediable at law. 14 AM JUR 2d, *Certiorari*, § 7.

Under the prevailing practice, a writ of certiorari will not issue if there is another adequate remedy, such as an appeal or writ of error, an action at or in equity, or intervention with the right of appeal secured. However, it is the inadequacy, not merely the absence of all other legal remedies, and the danger of a failure of justice without the writ, that must usually determine the propriety of certiorari. Ordinarily, at common law, the writ will not issue to review interlocutory orders at law which are reviewable on appeal. *The Bassa Brotherhood Industrial and Benefit Society and Gross v. Dennis et. al*, 20 LLR 443 (1971); *Amechi v. Smallwood*, 23 LLR 3 (1974); 14 AM JUR 2d., *Certiorari*, §11.

From that analysis of the writ of certiorari, both at common law and in our statute, four points are worth noting: Firstly, certiorari cannot issue as of right but from the sound discretion of the court to which the application is made; secondly, it cannot issue in a situation where other remedies such as appeal may be available to the relator; thirdly, it cannot issue to review interlocutory rulings at law where an appeal may be an adequate remedy; and finally, it will be denied where the relator fails to show equity or an injury not remediable at law.

From what has been discussed, *supra*, we are convinced that the Chambers Justice used his sound discretion in denying the writ. The injury which appellant complained of and sought to have us review by certiorari can adequately be reviewed by the course of a regular appeal. Further, the denial of the motion to dismiss was not such a prejudice that would have affected the main cause of action, to the detriment of the appellant; and, even if it did, an appeal could have cured the situation.

Therefore, the ruling of the Chambers Justice, being sound in law, is confirmed in its entirety. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction over the original action of ejectment and dispose of it. And it is so ordered.

Petition denied.