

**THE MINISTRY OF JUSTICE, FLOMO WASHINGTON, JAMES SUMO and KORTO WASHINGTON, Appellants, v. HIS HONOUR FRANCIS N. TOPOR and ZEIN KASSIR, Appellees.**

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

Heard: December 7, 1994. Decided: February 17, 1995.

1. 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(1).
2. The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or others while a matter is pending when such error materially prejudice or injures the rights of a party.
3. The corrective competence of a writ of certiorari ends with the determination of the case out of which it grows.
4. Certiorari will not lie where there is no main suit pending undetermined from which it grows.

Flomo B. Washington, was the owner of a Perkins generator. Upon his departure from the country, he left the said generator in the custody of one Edward H. Elliot for safekeeping. Subsequently, he appointed his nephew James Sumo to take delivery of the generator from Mr. Elliot. While the machine was in the care of Mr. Elliot, Korto Washington, Flomo Washington's daughter, offered to sell the generator to Mr. Zein Kassir for Eight Thousand United States (US\$8,000.00). This sale, however, did not materialize. Notwithstanding, he took delivery of the generator, and refused to turn it over to Mr. James Sumo even after a copy of Mr. Flomo Washington's authorization to James Sumo was exhibited to him. Hence Mr. Flomo Washington notified the Ministry of Justice about the transaction. When the Ministry of Justice decided to use its police power to get the generator from Mr. Zein Kassir premises, he petitioned the court for a writ of injunction against the Ministry of Justice to enjoin her from removing the generator. The petition was denied, but the court in its ruling held that the generator must only be removed from Mr. Zein Kassir's premises upon a search warrant or through an order of court. Notwithstanding this ruling, the Ministry of Justice removed the generator from the premises of Mr. Zein Kassir.

Accordingly, Mr. Kassir filed an information to this effect in the Civil Law Court of the Sixth Judicial Circuit. After entertaining arguments *pro et con*, the court granted the information and ordered that the generator be returned to co-respondent Zein Kassir. It is from this ruling that the petitioners filed this petition for a writ of certiorari. The Chambers Justice denied the petition on the grounds that certiorari will not lie where there is no main suit pending before the lower court, to which ruling appellants excepted and announced an appeal to the full bench. On appeal, the judgment was *affirmed*.

*Clarence Dixon* of the Ministry of Justice appeared for appellants/petitioners. *Isaac G. Wiles* in association with *Ignatius Weah* appeared for appellees/respondents.

MR. JUSTICE MORRIS delivered the opinion of the court.

This case emanated from the purchase of a 35 KVA Perkins generator owned by one Flomo B. Washington. According to the history of the case, one Korto Washington having discovered that her father's 35 KVA Perkins generator was left in the custody of one Edward H. Elliot for safe-keeping contacted the said Edward H. Elliot and made arrangement with him for the leasing of the generator at the rate of five hundred Liberian (L\$500.00) dollars per month.

Acquiescing in this arrangement, Mr. Elliot commenced paying the five hundred Liberian dollars monthly. When Mr. Flomo B. Washington was informed about that arrangement, he allegedly wrote Mr. Elliot expressing his disagreement with said arrangement.

Mr. Flomo Washington then appointed his nephew James Sumo to take delivery of the generator. Afterward, an arrangement was made by Korto Washington for Mr. Zein Kassir to purchase the generator for Eight Thousand United States (US\$8,000.00) but this did not materialize because Mr. Zein Kasair did not have the Eight Thousand United States Dollars available. However, he took delivery of the generator. A copy of Mr. Flomo Washington's authorization to his nephew, James Sumo was exhibited to Zein Kassir and requested that the generator be turned over to him. Mr. Flomo Washington also notified the Ministry of Justice about the transaction.

Upon the failure of Mr, Zein Kassir to turn the KVA Perkins generator to Mr. James Sumo, the Ministry of Justice intervened and decided to take custody of the generator so as to preserve it as Fruit of Crime (FOC). Mr. Zein Kassir again refused to turn

the generator over to the Ministry of Justice. When the Ministry of Justice decided to use its police power to get the generator from his premises, Mr. Zein Kassir petitioned the court for a writ of injunction against the Ministry of Justice to enjoin them from removing the KVA Perkins generator. The petition for injunction was denied on the ground that an injunction is an auxiliary action which must grow out of a main suit.

However, in his ruling denying the petition for injunction, the court made it clear that the generator must only be removed from Mr. Zein Kassir's premises upon a search warrant or through an order of court. Yet, the generator was removed from the premises of Mr. Zein Kassir by the Ministry of Justice with the intent, as the record shows, to send it to Guinea. Accordingly, an information was filed to this effect to Judge Francis Topor, then judge presiding over the Sixth Judicial Circuit, succeeding his colleague His Honour M. Wilkins Wright. After entertaining arguments *pro et con*, the judge ordered that the generator be returned to co-respondent Zein Kassir. It is from this ruling that the petitioners have filed this petition for a writ of certiorari.

We would like to make it clear that, what is before us, of all transactions in this case is, can certiorari lie in such case under our statute? The statute provides: "1. Certiorari. 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(1).

The question is, is the information out of which the certiorari grows, still pending before the lower court and secondly, is the ruling of Judge Topor a review of the judgment of his colleague, Judge M. Wilkins Wright?

The statute plainly said, as quoted earlier that the purpose of certiorari is to review an intermediate order, or interlocutory judgment of a court and this court in its interpretation has consistently held that:

"The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other while a matter is pending when such error materially prejudice or injures the rights of a party." *William v. Clarke*, 2 LLR 130,132 (1913).

"The corrective competence of a writ of certiorari ends with the determination of the case out of which it grows. *Republic v. Weafuah*, 16 LLR 122 (1964).

The records do not show that the motion for injunction or the information growing out of the motion is still pending before the lower court. Hence, there being no main

suit pending before the lower court certiorari will not lie.

Referring to the ruling of Judge Torpor, being a review of his colleague with concurrent jurisdiction, the court says that the ruling of Judge Torpor only enforces that of his colleague Judge M. Wilkins Wright.

As for the position of the Ministry of Justice to take over the generator and preserve same as a fruit of crime ( FOC ), the records show that Counsellor Isaac G. Wiles, counsel for respondents addressed a letter to Mr. Justice Victor D. Hne, then presiding in chambers informing him that

"WILES AND HAGE LAW OFFICES

MONROVIA, LIBERIA

March 8, 1994 His Honour Victor D. Hne Associate Justice of the Supreme Court of Liberia, Justice in Chambers Supreme Court of Liberia Monrovia, Liberia May It Please Your Honour: IN RE: The Ministry of Justice, Flomo B. Washington, James Sumo and Korto Washington of the City of Monrovia, Liberia, ....PETITIONERS Versus (PETITION FOR A WRIT OF CERTIORARI) His Honour Francis N. Topor and Zein Kassir of the City of Monrovia, Liberia, ...RESPONDENTS)

Notwithstanding the pendency of the above entitled cause before Your Honour, the respondents observe and inform as follows:

1. That the petitioners and their lawyers, in total disregard of your Honour and the Supreme Court of Liberia and in violation of the order of the court below, from which order, petitioners have filed a petition for a writ of certiorari, and in exercise of bad faith, have sold the subject of the pending suit (Generator) and same is awaiting exportation at the Free Port of Monrovia. An act for which petitioners should be held in contempt.
2. Upon the discovery of this information, and the institution by respondents of efforts to prevent its exportation, petitioners have threatened the life and liberty of respondent Zein Kassir, hence this information.

Wherefore, respondents pray that Your Honour will write the ECOMOG Commander at the Free Port of Monrovia to prevent the departure of the said Generator and to have same placed in the custody of the Marshal of the Honourable Supreme Court of Liberia; and or in the alternative, in the custody of the respondent Zein Kassir pending the hearing in the matter and to hold petitioners in contempt.

This information and request are made in good faith.

Respectfully Submitted,

Zein Kassir, RESPONDENT by and thru /s/Isaac G. Wiles /t/Isaac G. Wiles  
COUNSELLOR-AT-LAW"

The court cited the Minister of Justice and Counsellor Emmanuel B. James of the James & James Law Firm to appear at the hearing of the information.

We also quote the following:

"RESTRICTED Office of the Provost Marshal ECOMOG Headquarters Free Zone  
Bushrod Island Monrovia Liberia  
8th March, 1994 ECOMOG/1 7/A(MP) PORT COMMANDANT FREEPORT  
RELEASE OF GENERATOR

1. The Chief of Staff ECOMOG HQ, has authorised the off-loading of the Generator on board ARI WATER, a ship bound for Guinea.
2. The said Generator is a matter of investigation being conducted by his office.
3. The Generator is to be back loaded to this office for further action.
4. Thank you for your co-operation. (GKT SAM Lt Col Forces Provost Marshal

RESTRICTED" Predicated upon the above, the generator was not sent out of the country.

In view of all we have said here in above and the facts of the case, it is our holding that certiorari will not lie. The ruling of the Chambers Justice in denying the petition for a writ of certiorari is hereby affirmed and confirmed. The petition or a writ of certiorari is therefore denied. The clerk of this Court is hereby instructed to send a mandate to the court below informing it of the judgment. And it is hereby so ordered.

*Petition denied; ruling affirmed.*