DAVID SMITH et al., Petitioners, v. **HIS HONOUR J. HENRIC PEARSON,** Presiding Judge, Sixth Judicial Circuit, Montserrado County, and **ELLEN A. MELTON,** Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR ISSUANCE OF A WRIT OF CERTIORARI.
Heard: June 23, 1988. Decoded: July 29, 1988.

1. The purpose of the writ of certiorari is to review an intermediate order or interlocutory judgment of a court.

2. Certiorari proceedings can be heard only during the pendency of an action before a trial court or judge from whom the certiorari proceedings emanate.

3. Certiorari will lie in every instance where the rights of a party seem to be manifestly prejudiced by the rulings of an inferior court during the pendency of a case.

4. Certiorari is not the appropriate remedy for the review of a matter which has terminated in a final judgment.

5. The statutory requirements governing certiorari are to be strictly enforced.

6. Certiorari will not lie where there is other adequate and complete remedy such as appeal available to the aggrieved party.

Following the resting of pleadings in an action of ejectment instituted by Co-respondent Ellen A. Melton against the petitioners, and the resting of evidence by the said co-respondent, petitioners filed a motion for summary judgment. When the trial court denied the motion, the petitioners failed to appear for continuation of the trial, although duly notified of the hearing. A further failure to appear prompted the co-respondent to invoke Rule 7 of the Rules of the Circuit Court and applied to the court to proceed with the trial on the ground that the petitioners had abandoned their defense. The application was granted, and the trial proceeded with and final entered against the petitioners.

In rendering final judgment, the trial judge designated counsel to take the ruling. The judgment was duly excepted to and an appeal announced on behalf of the petitioners. However, rather than pursuing the appeal, petitioners filed a petition for a writ of

certiorari, asserting that they were denied their day in court. The Chambers Justice denied the petition, from which denial an appeal was taken to the Bench en banc of the Supreme Court.

Upon review, the Supreme Court affirmed the ruling of the Justice in Chambers, holding that certiorari was not the proper remedy to pursue from a final judgment. The Court also held that where an aggrieved party claims that he has not had his day in court, the proper remedy is a petition for a writ of error, not certiorari. Additionally, the Court noted that since an appeal had been announced from the final judgment on behalf of the petitioners, they should have pursued the avenue of an appeal rather than resorting to certiorari. The Court therefore held that the denial of the petition was proper and accordingly affirmed the same.

E. Wade Appleton of the Appleton Law Chambers appeared for petitioners. J. Emmanuel R. Berry appeared for the respondents.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

Mrs. Ellen A. Melton, plaintiff in the lower court, instituted an action of ejectment against David Smith et al., of Paynesville, Montserrado County, on September 15, 1982, in the Civil Law Court, Sixth Judicial, Montserrado County, sitting in its Term, A. D. 1982. Defendant therein, now petitioners, filed an answer, which was followed by the plaintiffs reply, and the resting of the pleadings. His Honour J. Henric Pearson disposed of the law issues and ruled the case to trial by a jury. When the trial commenced, Co-respondent Ellen A. Melton presented her side of the case and on April 29, 1987, rested evidence in toto.

When the petitioners took the stand on May 1, 1987, they immediately filed a motion for summary judgment in their favor. The motion was resisted on May 4, 1987 by the appellee and denied on May 7, 1987 by the trial court.

Thereafter, petitioners failed to appear for trial, although cited in order to present their side of the case. On May 15, 1987, following the service of another citation, Co-respondent Melton invoked Rule 7 of the Rules of Court governing the circuit courts and requested that court to regard petitioners unexcused absence from the court as an abandonment of their defense and cause. The application was granted by the court.

In entering final judgment on May 18, 1987 against the petitioners, the court, in obedience to the Civil Procedure Law, Rev. Code 1:51.6, deputized Counsellor Robert G. W. Azango to take the ruling for the absent counsel for the petitioners. The deputized counsel excepted to the ruling and announced an appeal therefrom. See Civil Procedure Law, Rev. Code 1: 51.4. Instead of perfecting their appeal in keeping with sections 51.7, 51.8 and 51.9 of the Civil Procedure Law, Rev. Code 1, the petitioners chose to approach the Justice in Chambers by way of the remedial process of certiorari, which is available to a party who desires this Court to review and correct an intermediate order or interlocutory judgment of a lower court. Civil Procedure Law, Rev. Code 1:16.21(1).

Our distinguished colleague in Chambers, Mr. Justice Junius, heard the matter during this March Term, A. D. 1988 of this Court and affirmed the final judgment of the trial court. Our colleague denied the petition since, from the records certified to this Court and the arguments made by the parties before him, the ruling of the trial from which the petition for certiorari grew was not predicated not predicated upon an interlocutory ruling or an intermediate order.

The contention of the respondents is that if the petitioners did not have their day in court as they claim, petitioners' remedy lies in the office of error, or that alternatively, they should have perfected the appeal announced on their behalf by the counsel deputized by the trial judge.

This contention is sustained by us. Our distinguished err on this issue. The opinion of this Court is so replete with cases on this point that we need only cite a few. In the case Bright v. Reeves, 26 LLR 38 (1977), where the primary issue was whether certiorari will lie, this Court decided that the purpose of the writ of certiorari is "to review an interlocutory ruling or judgment of a court." The ruling of the trial judge involved here was final and not interlocutory. In the case Maritime Transport Operators, GMBH, v. Koroma, 25 LLR 371 (1976), this Court held, at page 373, citing the Civil Procedure Law, Rev. Code 1: 16.23 (1)(a), that certiorari proceedings can be heard only during the pendency of an before a court or judge. Put another way, the case out of which the certiorari emanates must still be pending in the trial court. Republic v. Weafuah, 16 LLR 122 (1964).

The essence of the petitioners' petition is that they were not served with any notice of assignment when final judgment was rendered in the case. This, according to them, made it impossible to appear and defend their interest or except to aforementioned judgment and to announce an appeal therefrom. The petitioners

also informed the court that the executions of the judgment of the trial court had not been completed. Finally, the petitioners prayed this Court to issue the alternative writ of certiorari against the respondents because, they say, petitioners did not have their day in court.

In their returns, the respondents averred that the petition should be denied on the ground that the petitioners were cited to appear and defend their rights, but that they chose not to do so; that Counsellor Robert G. W. Azango was deputized by the trial court to take the ruling or final judgment on behalf of the petitioners, which he did; and that if at all, the petitioners did not have their day in court as they contended, a petition for a writ of error, not certiorari, was the appropriate remedy.

The single issue then is whether certiorari is the proper remedy available to one who claims that he was denied his day in court and that the executions of the judgment has not been completed.

In the case Williams v. Horton, 13 LLR 444 (1960), at page 446, Mr. Justice Pierre, speaking for this Court, said:

Certiorari will lie in every instance where the rights of a party seems to be manifestly prejudiced by the rulings of an inferior court during the pendency of case."(Emphases added).

It is obvious that since the case at bar had terminated in a final judgment, certiorari was not an appropriate remedy. See also Bailey v. Kandakai, 21 LLR 556 (1972) and Vandevoorde v. Morris, 12 323 (1956)

The petitioners in these proceedings have stated that a final judgment was rendered against them in the trial court in their absence and in the absence of their lawyer. From the records certified to this Court, we found that in obedience to the command of the Civil Procedure Law, the trial judge did deputize a lawyer to take an appeal when the final judgment was rendered. See Civil Procedure Law, Rev. Code 1: 51.6. If this is true, could we grant relief in certiorari? Usually error or appeal will lie in such cases. Union National Lank, Inc. v. Hodge & Abraham, 23 LLR 635 (1971).

As such, we regret this unnecessary blunder on the part of counsel for petitioners. It should be remembered that statutory requirements such as the ones involved herein are invariably followed or enforced strictly. See Goodridge v. Kennedy, 17 LLR 584 (1966).

In light of the above, it is obvious that certiorari cannot lie where there is ample and complete remedy available to the aggrieved party, as in the instant case. The institution of these certiorari proceedings was without legal foundation and was therefore unmeritorious.

Therefore, it is our opinion in view of the surrounding circumstances and the law cited above, the ruling of the Justice presiding in Chambers should be of affirmed. And it is hereby so ordered.

Petition denied.