

DOROTHY TUCKLE, Petitioner/Appellee, v. **HIS HONOUR M. WILKINS WRIGHT**, Assigned Judge, Civil Law Court, Sixth Judicial Circuit, and **THE UNITED METHODIST CHURCH OF LIBERIA**, Respondents/Appellants.

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

Heard: November 21, 1994. Decided: February 17, 1995.

1. Motions must first be disposed and if denied, before proceeding to the disposition of law issues.
2. It is a reversible error for a judge to rule a case to trial on the ruling affecting a motion to dismiss, without first disposing of the law issues raised in the pleadings;
3. Certiorari will lie where the lower court judge, after denying a motion to dismiss an action, immediately rules a case to trial without passing on the issues of law raised in the pleadings.

These certiorari proceedings grow from the ruling of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in which the trial judge denied a motion to dismiss an action of ejectment and immediately ruled the case to trial without passing on the law issues raised in the pleadings. Petitioner contends among other things, that under the law and practice extant in this jurisdiction, a motion is always required to be disposed of first and if denied, before proceeding to the disposition of law issues; and that it is a reversible error for a judge to rule a case to trial on the ruling affecting a motion to dismiss, without first disposing of the law issues raised in the pleadings. From a ruling of the Chambers Justice granting the writ, respondent appealed to the bench *en banc*.

The Supreme Court *en banc* affirmed the ruling of the Chambers Justice holding that it was incumbent upon the trial judge, having denied the motion to dismiss, to pass on all the other issues of law raised in the pleadings.

Flaagnwaa R. MacFarland appeared for appellants. *Roger K Martin* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the court.

The petitioner in these proceedings is a defendant in an action of ejectment filed in

the Circuit Court, Sixth Judicial Circuit, Montserrado County against the Methodist Church Board of Directors on January 8, 1993. After filing her answer to the ejectment proceeding, petitioner filed a motion to dismiss the action, which was accordingly resisted by the plaintiff/ respondent. A reply was also filed to the answer. The judge in disposing of the motion to dismiss said and we quote:

"WHEREFORE and in view of the foregoing laws, it is the ruling of this Court that the motion to dismiss cannot be granted at this time but that since the same issues of law raised in this motion are also raised in defendant's answer, which answer as well as the motion itself contained question of both law and fact, which need to be established before a jury under the direction of the court, the court cannot now dismiss the action at this level but will rather allow the case to go to the jury for determination of the facts, and at that time, the court will pass upon those questions of law raised by the parties in the pleadings and a comprehensive judgement will then be made. Civil Procedure Law, Rev. Code 1:11.2(2)(4). Accordingly the motion is denied and the court hereby refuses to dismiss the action and orders the case ruled to trial by jury under the direction of the court since it contains both law and facts. AND IT HEREBY SO ORDERED."

The defendant not being satisfied with the ruling of the, judge, fled to the Chambers of His Honour Mr. Justice E. Winfred Smallwood, then presiding in Chambers with a petition for certiorari. The petition was resisted. According to our distinguished colleague with whom we concur, only counts 6 and 7 of the petition and counts 5 and 16 of the returns need our consideration. However, it would appear that the plaintiffs/ respondents conceded the legal soundness of our distinguished colleague's ruling on count 5 of the respondents' returns which deals with the filing of the bond in a certiorari case being discretionary with the Chambers Justice. Hence he did not argue this before us. We quote below counts 6 and 7 of the petition and count 16 of the returns:

"6. Petitioner further says that under the law extant in this jurisdiction, a motion is always required to be disposed of first and if denied, before proceeding to the disposition of law issues; that it is a reversible error for a judge to rule a case to trial on the ruling affecting a motion to dismiss, without first disposing of the law issues raised in the pleadings; that the records made on April 20, 1993, copy of which are hereto attached, clearly shows that it is petitioner's motion to dismiss and the resistance thereto that were argued and that no arguments on the law issues in the pleadings were advanced on that day. So, it is a reversible error for the judge to assume that the arguments and law citations advanced in the motion to dismiss will

be the same for arguments on the law issues covering the pleadings. Certiorari will therefore lie.

7. In addition to all the above, petitioner further submits that by legal definitions, a motion is an application for a relief incidental to main one sought in the action or proceeding in which the motion is brought. Civil Procedure Law, Rev. Code 1:10.1(1)(2).

It therefore follows that a motion must necessarily present factual issues upon which the law must be applied in order to grant the relief applied for. A motion cannot therefore be confirmed to a mere enunciation of principles of law without showing how those principles apply in a given set of facts. The respondent judge having failed to apply the principles of law presented in the motion to the set of facts in this case and having further failed to pass upon them by only repeating the contentions of the motion and resistance and concluding that the motion raised mixed issues of law and facts; having ruled the case to trial straight from the motion to dismiss without disposing of the issues raised in the pleadings, the respondent judge certainly committed a reversible error for which certiorari will lie."

Count 16 of the returns say:

"16. That regarding counts six and seven of the petition, and under the "speedy clause" of the Liberian Constitution, upon the dismissal of a motion to dismiss which raises the same and identical legal issues, a circuit court judge is correct to rule the case to trial, after the dismissal of said motion. Further, the petitioner failed to establish the legal issue raised in the answer and not taken care of in the motion properly. For such a legal blunder, counts six and seven of the petition should be dismissed."

The main contention of the respondents is that when the motion is being denied, there is no need to pass upon the law issues as are contained in the complaint, answer and reply once the identical issues are raised in the motion and answer and relied on the Civil Procedure Law, Rev. Code 1:11.2(2)(4). For the benefit of this opinion, we quote Section 11.2 Sub-sections (2) and (4) hereunder:

"2. Deferring hearing permitted. A motion under this section shall be heard and determined before trial on application of either party, unless the court for good cause orders that the hearing and determination thereof be deferred until the trial.

4. Immediate trial permitted. The court may on hearing of the motion, try and determine immediately any disputed questions of fact upon affidavits and evidence offered by the parties unless the opposing party is entitled to and has not waived a jury trial."

To our understanding, there is no provision in the sections of the statute quoted above that authorizes the trial judge to rule a case to trial upon the facts, after denying the motions without disposing of the legal issues in the pleadings as contended by counsel for respondents. Besides, the constitutional issue of speedy trial does not in any way prevent a trial judge from disposing of legal issues in the pleadings. These contentions are not therefore conceded. It is our considered opinion that certiorari will lie where the lower court judge, after denying a motion to dismiss an action, immediately rules a case to trial without passing on the issues of law raised in the pleadings.

The trial judge having denied the motion, it was incumbent upon him to have passed on all the other issues of law raised in the pleadings, as has repeatedly been held by this Court. For his failure to do so, certiorari will be granted. See *Lamco .1 V. Operating Company v. Rogers*, 24 LLR 314 (1975); *Thompson v. Faraj*, 25 LLR 34 (1976); *Gallina Blanca, S. A. et al. v. Nestle Products, Ltd*, 25 LLR 116 (1976); *Wright v. Reeves*, 26 LLR 38; *Stubblefield et. al v. Nassah*, 25 LLR 153 (1977).

In view of all we have said herein above, the ruling of our distinguished colleague in Chambers is hereby confirmed and affirmed; the ruling of the trial judge on the motion to dismiss the action of ejectment should be and same is hereby reversed; the motion is reinstated and the case remanded to the court below with instructions that the motion be heard and disposed of anew, and if denied, the other law issues be heard and determined. The Clerk of this Court is instructed to send a mandate to the court below with instruction to the judge presiding therein to give effect to this judgment. And it is hereby so ordered.

Petition granted.