

UDIAO SHOE INDUSTRY, by and thru its General Manager, **MR. D. K. KABA**,
Petitioner, *v.* **HIS HONOUR JAMES K. BELLEH**, Assigned Circuit Judge, People's Civil
Law Court, Ninth Judicial Circuit, March Term, A. D. 1984, Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided August 6, 1984.

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.
2. The judgment of a court, sought to be reviewed by certiorari, must be interlocutory and not final. Certiorari will not lie where the writ is sought to review the final judgment of a court.
3. Certiorari will not be granted to perform the functions of a writ of error; nor will it be granted where relief is obtainable by appeal.
4. Although the statute on certiorari does not state that the payment of accrued costs is a prerequisite to the issuance of the writ of certiorari, yet the language of the statute leaves no doubt that there must be some showing that accrued costs have been paid before the writ will issue.
5. Under the certiorari statute, the certification by Counsellors of the Supreme Court must state that in their opinion the contention of the petitioner is sound in law.

Petitioner was sued in an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for the recovery of real property. Petitioner claimed that he did not have his day in court since, without service of an assignment on him; the trial court judge proceeded to dismiss his answer and motion to dismiss plaintiff's complaint.

In response to the petition, the respondents argued that certiorari would not lie since final judgment had already been rendered in the case and the judgment partially satisfied. The proper remedy in such a case, they said, should have been a petition for a writ of error. Moreover, they argued that the accrued costs had not been paid as required by law, and that for this defect the petition should be dismissed.

The Chambers Justice agreed with the contentions of the respondents and dismissed the petition. The Justice rejected the argument of the petitioner who, while conceding that final judgment had been rendered in the case, maintained that certiorari would lie since the case was still pending before the trial court for the purpose of having the trial judge approve the bill of exceptions and the appeal bond. The Justice defined the province of certiorari as a proceeding to review and correct an intermediate order or interlocutory decision of officials, boards and agencies acting in a judicial capacity, and not to review a final judgment. He noted that the judgment, the review of which was sought by the petitioner, was a final judgment, and that the appropriate remedy therefore should have been a writ of error. Certiorari, he said, could not be used as a substitute for a writ of error.

The Justice observed further that accrued costs not having been paid, the petition for certiorari could not be entertained. Relying on the case *Dixon v. Kandakai*, 25 LLR 362 (1976), the Justice held that although the statute did not provide for payment of accrued costs as a prerequisite to the issuance of the writ of certiorari, yet the language left no doubt that there had to be a showing that accrued costs had been paid before the writ could be issued.

Moreover, he pointed out, the certification of the Counsellors of the Supreme Court Bar did not meet the requirement of the statute for issuance of the writ, in that it stated otherwise than that the Counsellors who signed the certificate believed that the contention of the petitioner was sound in law. On the basis of the foregoing defects, the petition was *denied*.

Appearances not indicated

MORRIS, J., presiding in Chambers.

The petitioner in these proceedings has filed a six count petition praying for the issuance of the writ of certiorari against the respondent. Count one of the petition states that the petitioner is a party defendant in an action of ejectment to recover the possession of real property, instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. Count two avers that the case out of which the petition for a writ of certiorari grows is still pending before the lower court. Count three stipulates that the petitioner never had his day in court during the disposition of the law issues because there was no notice of assignment served on him. He argues in count four of the petition that his answer and motion to dismiss plaintiff's complaint were passed upon with-out notice to him. In count five he alleges that:

"Certiorari will lie to review and correct an erroneous interlocutory ruling of an inferior court that manifestly prejudices the right of a party in a case pending before the said court."

He maintains in count six that:

"Payment of accrued costs and a bond cannot be made and paid because the case is still pending."

The respondents filed a ten-count returns in which they contend in counts two and eight, that certiorari will not lie because the case is no longer pending before the lower court, in that final judgment has been rendered and partially satisfied. The remedy, they say, should have been error proceedings.

They maintain in count nine that the accrued costs not having been paid, the petition should be dismissed. Respondents allege in count ten that the certificate of counsel is defective as it is only signed by one counsellor or attorney whose signature is not legible so as to know whether or not he is an attorney-at-law or counsellor of this Bar, and, secondly, that the certificate of counsel states "in our opinion real errors are assigned," which statement, under our statute, is suitable to a writ of error and not certiorari. Therefore, they say, the certificate is defective and renders the petition dismissible.

The petitioner's counsel, while arguing before us, admitted that the lower court has rendered final judgment but maintained that the rendition of a final judgment does not deprive the court of jurisdiction over the cause, as said case will still be pending before said court for the purpose of signing bill of exceptions and appeal bond. Therefore, he says, certiorari will lie.

Certiorari is defined by our statute as a special proceeding to review and correct a decision 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). From the above definition of certiorari, we can readily conclude that the judgment of a court sought to be reviewed must be an interlocutory one and not final. Certiorari will not lie when the writ is sought to review the final judgment of a court, as is in the present case. *Vamply of Liberia Inc. v. Kandakai*, 22 LLR 241 (1973). Counts two and eight of the returns are therefore sustained as against the entire petition.

Certiorari will not be granted to perform the functions of a writ of error; nor will it be granted where relief is obtainable by appeal. *Compagnie Francaise de L'Afrique Occidentale v. Cole*, 13 LLR 180 (1958); *Raymond Concrete Pile Company v. Perry* 522 (1960).

Regarding the payment of the accrued costs, this obligation is placed on the petitioner by our statute which provides that:

"The petitioner shall pay all the accrued costs, and he may be required to give a bond, conditioned on paying the respondent such damages as he may sustain if the writ is dismissed." Civil Procedure Law, Rev. Code 1 :16.23 (3), p. 147.

In *Dixon v. Kandakai*, 25 LLR 352, 366 (1975), this Court, speaking through Mr. Justice Horace, held:

"Although the statute on certiorari does not state that the payment of accrued costs is a prerequisite to the issuance of the writ, yet the language of the statute leaves no doubt that there must be some showing that accrued costs have been paid before the writ will issue." Count nine of the returns is therefore sustained as against count six of the petition. Moreover, count five of the petition is well taken and therefore conceded.

As for the counsel certificate, the original copy in the court's file shows the signatures of two counsellors. Hence this contention is not conceded and is overruled. However the certificate does state that:

"We, the undersigned practitioners, Counsellors of the People's Supreme Court Bar, have read the attached petition for assignment of certiorari in the above entitled cause of action and in our opinion real errors are assigned."

Section 16.23 (1) (c) provides for certification by two members of the bar that in their opinion the contention of the petitioner is sound in law. This point of the returns regarding the wording of the certificate partaking of the nature of the requirement in the case of a writ of error is conceded.

The petitioner also filed a three-count bill of information on July 13, 1984. However, when this case was called for hearing, he *sua sponte* withdrew his bill of information on the minutes of court, having been granted permission by the court to do so. Hence, we ordered said bill of information stricken from the record of this case, as though it had never existed.

In view of the foregoing circumstances, the facts and the laws cited, it is our candid opinion, and we so hold, that certiorari will not lie. The petition is therefore denied and the alternative writ quashed, with costs against petitioner. The Clerk of this Court is instructed to send a mandate to the court below, ordering the judge presiding therein to resume jurisdiction and proceed to enforce its judgment. And it is so ordered.

Certiorari denied