MANUELLA PEDILLA VARGAS, Petitioner, v. **HER HONOUR C. AIMESA REEVES**, Resident Judge, Sixth Judicial Circuit Court, and EZZAT N. EID, Respondents.

Heard: November 16, 1998. Decided: January 21, 1998.

1. A petition for a writ of certiorari shall contain a statement of the decision that is alleged to be illegal or of the intermediate order or interlocutory judgment of which review is sought.

2. A petition for certiorari is permissible only where the trial court rules on a motion or other matter in a trial, exceptions are taken thereto, and the party proceeds forthwith to apply for the remedial writ. If the petitioner waits until an assignment is issued and served, and files a motion or participates otherwise in the case, the original action excepted no longer comes within the reach of a remedial process, and certiorari can no longer be pursued. The process of appeal must therefore then be pursued. The writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal must therefore then be pursued.

3. The writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal.

4. Certiorari is a special proceeding to review and correct a lower court's interlocutory ruling or intermediate order.

5. It is contemptuous for counsel to mislead the court into doing an act which it would not normally do.

6. Laws found to be inconsistent with the Constitution are void and the Supreme Court has the authority to declare such laws unconstitutional.

7. Under the Constitution, all parties have the right to trial by jury. The Constitution is silent, however, on the time, forum, and manner in which the right to trial by jury can be invoked and enjoyed.

8. Constitutional law categorizes rights under two distinct headings: Those which are self-executing and those which are not self-executing.

9. Self-executing constitutional provisions are those which are immediately effective without the necessity of ancillary legislation; provisions by which rights given may be enjoyed or duty imposed enforced.

10. Non-self-executing constitutional provisions are those which merely indicate principles without lying down rules giving them force of law.

11. Section 22.1(2) of the Civil Procedure Law requires that a demand for jury trial must be made not later than ten days after service of a pleading, while section 22.1(4) provides that the failure of a party to serve a demand in keeping with section 22.1(2) and to file it in keeping with section 22.8. A failure to comply with these sections constitutes a waiver by the party of the right to trial by jury.

12. In order for the Court to sustain a successful challenge to the constitutionality of a legislation, the Court must come out clear and unequivocal terms and specifically declare said statute unconstitutional.

13. The basis for demanding a jury trial in a declaratory judgment proceeding is that there must be an issue of fact which is in dispute between the parties.

Petitioner filed a petition in the lower court praying for a declaratory judgment against the co-respondent. Following the resting of pleadings, the judge ruled on the law issues, and determine that there were no fundamental disputes as to the facts in the case. She therefore ruled the case to trial of the facts without a jury, and immediately thereafter assigned the case for hearing. Whereupon, the petitioner filed a motion demanding a trial by jury, asserting that there were issues in dispute. The motion was resisted and denied by the judge, with the petitioner excepting thereto and announcing that he will avail himself of the statute. Thereafter, petitioner filed a motion for the judge to recuse herself from hearing the case. While the motion was pending, petitioner petitioned the Justice in Chambers for a writ of certiorari, praying the Supreme Court to review the trial judge's denial of the request of petitioner for a trial by jury, contending that the statutory provision which prescribed the time within which a request for trial by jury should be made was unconstitutional.

As the matter involved a constitutional issues, the Justice in Chambers forwarded same to the Bench *en banc* for disposition. The Supreme Court *en banc* denied the petition holding, firstly, that the constitutional provision granting the right to trial by jury was not a self-executing provision and therefore required further action by the Legislature. The provision under challenge, it said, was to given meaning to the

constitutional guarantee and ensure an orderly enjoyment of the guarantee. The petitioner, it said, had failed to make the request with the ten day period prescribed by the statute and had therefore waived the right to jury trial.

Secondly, the Court opined that although the petitioner had taken exceptions to the ruling denying the request to a trial by jury, he had failed to immediately proceed by remedial process for a review of the ruling, but had instead waited until an assignment for trial had been issued and served on the parties, d had further filed a motion of recusal. By these acts, the Court said, the petitioner had rendered the remedial process impermissible since the matter before the trial court was no longer the ruling denying the request for a jury trial but a motion to recuse. Therefore, it said, the only remedy to pursue then was an appeal. Certiorari, the Court observed, could not be used as a substitute for appeal, especially where appeal was an adequate remedy. Certiorari was therefore *denied* and the trial ordered to proceed with the hearing of the petition for declaratory judgment.

Beyan D. Howard and *Tiawan S. Gongole* of Legal Consultants Inc. appeared for petitioner. *H Varney G. Sherman* and *F. Musah Dean* of Sherman & Sherman Inc. appeared for respondents.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

These certiorari proceedings are before this Bench *en banc* from the Chambers of our very distinguished colleague, Mr. Justice John Nathaniel Morris, before whom the petition was filed but which he forwarded to the Supreme Court for determination of the issues since they were of a constitutional nature.

The facts are that on February 28, 1998, petitioner filed a petition for declaratory judgment against Co-respondent Ezzat N. Eid in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Co-respondent filed his returns to the petition on March 5, 1998 and petitioner filed her reply on March 17, 1998. There pleadings rested. On April 1, 1998, the court below heard arguments on the law issues and on April 6, 1998, passed on the law issues and ruled the case to trial.

In its ruling on the law issues, the trial court stated that "there is no dispute as to certain fundamental facts" and that it was necessary to narrate said facts as the basis for the disposition of law issues. Immediately after the court ruled on the law issues on April 6, 1998, the court there and then, and with both counsels present, assigned the case for trial on April 14, 1998, at 1:00 p.m. On April 13, 1998, petitioner filed a

motion for jury trial which was resisted on April 14th when trial should have been had.

In her motion, petitioner contended that the declaratory judgment: proceeding involved factual issues to be determined; secondly, that petitioner was entitled to jury trial as a matter of right; and finally that petitioner demanded a jury trial of all issues of fact in the case.

In his resistance to the motion, respondent contended, among other things, that petitioner had failed to state which facts were in dispute that would require jury trial; secondly, that there were no issues of fact in dispute; thirdly, that the right to a trial by jury, as guaranteed by the Constitution, was not self executing and is effectuated by statute and that petitioner had failed to comply with the requirement of the statute, and hence, she could not enjoy that constitutional right.

The court, on April 22' 1998, ruled denying the motion on the grounds that generally declaratory judgment proceedings are heard by the judge sitting alone, except where there are issues of fact in dispute, and that in the instant case there were no issues of fact in dispute.

The judge also ruled that a party wishing to exercise his right to jury trial must apply for it within ten days after pleadings have rested; that he must specify the issues sought to be tried by jury; and that a failure to comply with the statute constituted a waiver of that right. Petitioner excepted to this ruling and notified the court that she would take advantage of the statute.

On April 27, 1998 the court issued a notice of assignment for trial of the facts on April 29th1998. Upon receipt of the said assignment, petitioner, on that same day, April 27, 1998, petitioner filed a motion to recuse, demanding that the judge recuse herself from trying the case. Before the judge could assign, hear and rule on said motion to recuse, the petitioner also on the self-same day of April 27t h filed a petition for a writ of certiorari, which certiorari petition is now the subject of this opinion. The Chambers Justice conducted a conference with the parties and subsequently issued the writ, but forwarded the matter to the Full Bench since it was argued that the petition had raised two novel constitutional issues, as follows:

(a) Whether a party is mandatorily entitled to a trial by jury in declaratory judgment proceedings; and

(b) If a party is entitled to a jury trial in a declaratory judgment proceeding, whether there is a time limit within which said party should exercise such right.

When this case was argued before us, several issues were advanced by both counsels which the Court will address later in this opinion. However, the first question to answer is whether or not certiorari will lie. This is basic.

"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); *Liberian Insurance Agency Inc. v. Monsour N. Ghosen & Bros,* 24 LLR 411 (1976), text at 412.

"A petition for a writ of certiorari shall contain a statement of the decision that is alleged to be illegal or of the intermediate order or interlocutory judgment of which review is sought." *Ibid.,* ∫ 16.23(1)(b), at 147.

Recourse to the trial court's records indicate that the court ruled denying petitioner's motion for a jury trial on April 22, 1998, to which ruling petitioner excepted and gave notice that she would take advantage of the statute. The exception was noted and the matter suspended. Then on April 27, 1998, the judge assigned the case for trial on April 29th. On that same day, April 29th, petitioner filed the motion for the judge to recuse herself, and at the same time filed this petition for a writ of certiorari in the Chambers of the Supreme Court. What was the purpose of the certiorari and what ruling of the trial court was sought to be reviewed?

From the sequence of events, we hold that when the trial court ruled con the motion for jury trial, it was proper for petitioner to except and it was at that point that a petition for certiorari may have been permissible in keeping with petitioner's notice to take advantage of the statute. But once the notice of assignment was issued and served and then the motion to recuse was filed, it meant that the court's ruling on the motion for jury trial became part of the record for appeal and was no longer within the reach of a remedial process. Once petitioner filed her motion for the judge to recuse herself, it meant that petitioner was ready to go to the next stage of the case, which was to dispose of said motion and proceed from a ruling thereon, thereby making the court's ruling on the motion for jury trial part of the settled record of the case. In short, the filing of the subsequent motion to recuse was the cut-off point as to the ruling on the previous motion for jury trial. Only appeal would render said

ruling reviewable and a writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal. *Morris v. Flomo,* 26 LLR 314 (1977).

Therefore, it is our holding that certiorari was inappropriately filed with the Supreme Court because the matter before the trial court was no longer the motion for jury trial but rather the motion to recuse, and the court had neither assigned nor heard the motion to make a ruling thereon, which would then have been a fit subject for review.

Certiorari is a special proceeding to review and correct a lower court's interlocutory ruling or intermediate order. *Wright v. Reeves,* 26 LLR 38 (1977). In the instant case, there was no ruling on the motion to recuse and hence nothing to review and correct. At least, in the *Morris v. Flomo* case, the certiorari was filed immediately after the ruling, so there was something to review and correct. Similarly, this was the situation in the *Wright v. Reeves* case. Accordingly, the petition for certiorari is denied, the alternative writ quashed and the peremptory writ refused for being unfounded, illegal, and without merit.

This Court is of the view that the filing of the petition for certiorari was done in bad faith and for the mem purpose of delaying and baffling the main suit, which, itself, was filed by petitioner. Why should petitioner employ such measures with the aid of the Court to frustrate and baffle justice in a case brought by petitioner? It is safe to assume that if petitioner had a justifiable cause, logic dictated that she would or should be anxious to get it heard and determined. The aid of this Court was invoked by means of misrepresentation because it is clear that bad our distinguished colleague, the Chambers Justice, who ordered the alternative writ issued, been aware of the fact that a motion to recuse had been filed subsequent to the previous ruling on the motion for jury trial, he would never have ordered the said writ issued. This is contemptuous where counsel would mislead the Court into doing an act it normally would not do.

In the case *Liberian Insurance Agency Inc. v. Monsour N Ghosen & Bros,* cited *supra,* the jury returned a verdict on June 19, 1975 and petitioner noted his exceptions thereto on the record and gave notice he would file a motion for new trial. The very next day, June 20, 1975, he filed his petition for certiorari without including in his petition that a verdict had been returned, to which he had excepted and had given notice that he would file a motion for new a trial. So without this information, the Chambers Justice, Mr. Justice Horace, issued the alternative writ on the same date.

When the case was heard in Chambers by Mr. Justice Wardsworth, the petition was denied and the alternative writ quashed, the peremptory writ was denied, and petitioner then appealed to the Full Bench.

Because the instant case is wholly analogous to the *Ghosen* case, in so far as the conduct of the Petitioner withholding information from the Chambers Justice is concerned, and because we are in complete agreement with the action of the court, we shall quote verbatim what this Court had to say, speaking thru Mr. Justice Horace:

"It seems that this act was a calculated one on the part of the petitioner, for if the Justice who ordered the alternative writ issued had been aware of this fact, perhaps no alternative writ would have been ordered issued.

Because of the unmeritorious petition filed by counsel, bent upon deceiving this Court when he argued that his petition was filed before a verdict was brought against him, when it was not, he is hereby amerced in a fine of $50.00 to be paid within forty-eight hours after rendition of this decision. Until the fine is paid he shall not be permitted to practice law in any of the courts of the Republic." *Ibid.,* text at 413.

Accordingly, this Court hereby holds petitioners counsel in contempt for bringing such unmeritorious petition, knowing fully well that they had excepted to the ruling on the motion for jury trial, that the case was subsequently assigned for trial, and that shortly before trial they had filed a motion to recuse, which motion was not yet assigned, heard, or ruled upon to form the basis for review. Moreover, counsel for petitioner did not bring these facts to the attention of the Chambers Justice but caused him to order the issuance and service of the alternative writ. Counsel, in persons of Counsellors Tiawan S. Gongloe and Beyan D. Howard, are hereby fined the sum of LD$1,000.00 (One Thousand Liberian dollars) each to be paid into the government revenue within seventy-two hours after rendition of this judgment. Upon their failure to so pay this fine, they shall be suspended from the practice of law, directly and indirectly, in any court in this Republic for a period of three months.

Further, the lawyers who signed the petitioner's counsellor certificate, in persons of Counsellors Charles Abdullai and Nyenati Tuan, are also fined the amount of LD$500.00 (Five Hundred Liberian dollars) each to be paid within seventy-two hours, and upon their failure to pay the fine, they too shall be suspended from the practice of law for one month . Their role in the deception by petitioner is that they claim to "have fully read and *analyzed* (Emphasis supplied) the petitioner's petition for

certiorari and that in their opinion the contention of the petitioner is sound in law. So they too conspired to deceive the Chambers Justice.

Even though we have already ruled that certiorari does not lie, it is important to pass upon the very crucial issues raised by the parties and strenuously argued before us. For the benefit of this opinion the single most important issue is whether or not the statute prescribing the manner in which the constitutional right to trial by jury may be invoked and enjoyed is itself unconstitutional and hence unenforceable?

Petitioner was vehement in his contention that section 22.1(2)(3) and (4) of the Civil Procedure Law, Rev. Code 1, violates one's right to trial by jury as guaranteed by the Constitution. Petitioner argued that insofar as it relates to the tame within which a trial by jury may be demanded by a party, the said statute is unconstitutional since the Constitution itself does not contain any time limitation. Petitioner relied on Article 2 of the 1986 Constitution of Liberia, which provides: "This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect." Petitioner argued that the Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent law unconstitutional.

For us, that is a non issue. We recognize and give credence to the Constitution of Liberia and to the principle that any law found to be inconsistent with the Constitution is void, and that the Supreme Court has the power to declare said law unconstitutional. The problem here is that the law must first be found to be inconsistent with the Constitution, and then it can or will be declared unconstitutional. This is the present exercise wherein we must now determine and declare whether section 22.1 of the Civil Procedure Law is unconstitutional.

The Constitution of Liberia provides that all "parties shall have the right to trial by jury." LIB. CONST., Art. 20(a)(1986). That is all the Constitution says. It is silent as to the time, forum, and manner in which this right to trial by jury can be invoked and enjoyed.

Respondent, on the other hand, argued that this right to trial by jury, like other provisions of the Constitution, is merely a declaration which is not self executing but requires enabling legislation to give it effect. We agree with this argument.

Constitutional law categorizes rights under two distinct headings: those which are self-executing and those which are not self- executing. 16 AM. JUR. 2d, *Constitutional Law,* §§ 139 and 140. Self-executing constitutional provision refers to provisions which are immediately effective without the necessity of ancillary legislation. A constitutional provision is self-executing if it supplies sufficient rule by which right given may be enjoyed or duty imposed enforced; constitutional provision is not-executing when it merely indicates principles without laying down rules giving them force of law. BLACK'S LAW DICTIONARY 1360 (6thed. 1990).

We have already stated that the constitutional provision on the right to trial by jury is not self-executing and requires ancillary enabling legislation to give it effect. We therefore turn then to the statute enacted pursuant thereto to determine whether the said statute is in contravention of the constitutional provision or within its contemplation.

Petitioner does not have a problem with Chapter 22, trial by jury. In fact, petitioner invoked her right to jury trial citing and relying on section 22.1, subsections 1, 2, 3, 5, and 6 of the Civil Procedure Law, Rev. Code 1. Petitioner's position is inconsistent and contradictory, for on the one hand petitioner cited and relied on section 22.1(2) without attacking it, while on the other hand, she challenged that identical provision as being illegal and inconsistent with the Constitution. When arguing the motion for a jury trial, petitioner did not express any reservations regarding section 22.1(2) or any portion thereof. She only discovered that the provision was unconstitutional when her motion for jury trial was denied. We wonder if petitioner would have raised the same challenge if her motion had been granted. We think not. Petitioner's counsel, when arguing before this Court, contended that his only problem with the statute was its prescription of a time frame within which a trial by jury can be demanded and enjoyed and that one's failure to comply with its requirement should be of no consequence. Petitioner unsuccessfully attempted to confuse the Court.

Irrespective of petitioner's view on the legality of this statute, the Court holds that the statute is not unconstitutional but that it is in aid of the Constitution. This statute gives form, shape and effect to the broad constitutional provision which is merely a general guideline. The statute makes it capable of being exercised and enjoyed. Without such a statute, the constitutional provision will remain abstract and a mere declaration or principle. The Constitution cannot provide for every single scenario or possibility or transaction and that is why statutory enactments are provided for, so as to give life or meaning to constitutional principles, and such enabling legislation must be strictly observed.

Petitioner's challenge to the constitutionality of the statute is defeated and as a demonstration of the fact that this provision of the statute conforms to or is in aid of the Constitution, even the opening sentence of the chapter which includes section 22.1 (1), and which reads, as follows: "The right to trial by jury as declared by the Constitution or as given by statute *shall be preserved inviolate"* Civil Procedure Law, Rev. Code 1: 22.1.

This shows that our lawmakers were mindful of the constitutional right at the time the statute was being enacted and therefore their intent could not have been to undermine that constitutional provision. Petitioner says the contention of illegality of the statute relates to only the time limit and that the rest of it is valid. That argument is merely academic and hairsplitting and of no persuasion. Section 22.1 (2) requires that a demand for jury trial must be made not later than ten days after service of a pleading, while section 22.1 (4) provides that the failure of a party to serve a demand in keeping with section 22.1(2) and to file it in keeping with section 8.2, constitutes a waiver by him of trial by jury. Civil Procedure Law, Rev. Code 1: 22.1(2). This law is clear and mandatory. This is the situation in the instant case, that petitioner waived her right to jury trial by her failure to demand jury trial within ten days after pleadings rested.

Going further, the Court observes, as respondent have contended, that the right to trial by jury is not the only constitutional right which is not self-executing and requires ancillary legislative enactment and for which the Legislature has provided such enabling legislation. Therefore, if this enabling statute on the right to jury trial were to be declared unconstitutional simply because the Constitution itself does not specifically contain similar wordings, then we would have to also strike down all other enabling statutes which give effect to non-self-executing constitutional rights.

Some of the other constitutional rights which are not self-executing for which enabling legislation have been passed include the right to appeal from an adverse judgment, the right of free movement to include travel in and out of Liberia, the right to bail, the right to vote, the right to freedom of assembly and of association, or for that matter, to own, use and enjoy property. For example, on property rights, is it unconstitutional where the statute requires that as evidence of title to real property one must have a deed and that the deed must be probated and registered within four months? As to personal property, is it unconstitutional for one to be required to register his vehicle and obtain a license plate and a driver's license before plying the streets and to drive on a particular side of the street and at a certain speed? As to free

movement of citizens, is it unconstitutional for one to be required to obtain a passport or laissez-passer and thereafter an exit visa and be registered before leaving Liberia or for an alien to be required to comply with regulations of the Bureau of Immigration? As to the right to vote, is it unconstitutional for one to be required to register with the Elections Commission and to obtain a voter's registration card and to vote in a particular precinct or district? As to the right to bail, is it unconstitutional for an accused to be required to tender a property valuation bond meeting certain requirements of the Ministry of Finance or of the statute as to sureties? As to the right to appeal, is it unconstitutional to require a party to first announce his appeal orally and then file a bill of exceptions in ten days and appeal bond in sixty days and notice of completion of appeal? Why doesn't the appellant just announce his appeal and appear in the Supreme Court Chambers to await the call of his case? Moreover, since the Constitution has not defined every single criminal offense, are the Penal Law and the Criminal Procedure Law unconstitutional? Since there is constitutional guarantee of freedom of speech, is the law on libel and slander unconstitutional?

We can go on and on with this list, and the answer to all of the above would still be in the negative, that these statutes are not in themselves unconstitutional simply because they prescribe means and rules by which rights guaranteed by the Constitution ought to be invoked, exercised and enjoyed. We hereby reiterate that the failure of any person to obey, comply with, and abide by provisions of ancillary or enabling statutes which seek to give meaning to rights guaranteed by the Constitution amounts to a waiver or forfeiture of said right, and that a challenge to such statute will not be entertained simply because a person feels or is affected by the application of such statute.

Petitioner relied heavily on and gave much prominence to the case *Saleeby Brothers Inc. v. Barclay's Export Finance Company, Ltd,* 20 LLR 520 (1971), text at 523-524, in which the Supreme Court held that "an application for trial by jury can be made at any time before testimony of witnesses begins at the trial." Petitioner contended that the statutory provision requiring a party to demand a jury trial within ten days after the service of a pleading is unconstitutional. We observe that in the *Saleeby* case, as to the issue of waiver of jury trial, the Supreme Court said:

"We find ourselves unable to agree with this contention because we do not feel that any statutory requirement as to time of making the application can deprive a party of the constitutional right to a jury trial if in the party's views, a jury trial is necessary to the protection of his rights." *Id.,* at 523.

It must be noted that the Supreme Court expressed it views and opinion without specifically declaring the statute unconstitutional. The Court said "We do not *feel"* that a statutory requirement can deprive a party of the constitutional right to jury trial..." (Emphasis supplied). It is our view that when the Court sustains a successful challenge to the constitutionality of a legislation, the Court must come out in clear and unequivocal terms and specifically declare said statute unconstitutional. In the *Saleeby* case, the Court stopped short of making such a declaration, thus leaving the statute still valid and in force. Hence, the *Saleeby* case certainly cannot be used as a guidepost in cases of this nature, since it expresses the mere *'feelings"* of the Court without a clear and outright declaration that the statute is unconstitutional.

To the contrary, this Court now holds and declares that section 22.1(2), being an ancillary and enabling legislation to the constitutional guarantee of the right to trial by jury, is constitutional, lawful and valid, and is to be strictly observed and complied with. Not only that, but we hereby declare our disagreement with the holding of the Supreme Court in *Saleeby* case as regards the time within which a demand for jury trial may be made. Accordingly, that portion of that *Saleeby* opinion as regards time to demand jury trial is hereby recalled and declared of no legal effect and that the present statute, section 22.1(2)(4) is declared legal and ordered observed and enforced. The inclusion of a time limit for the enjoyment of the right to a jury trial does not operate as a limit on or denial of the right but only ensures that it is enjoyed with some order.

One other issue which came up was whether or not a jury trial was permissible in actions of declaratory judgment. The law is clear on this. The trial court in its ruling on petitioner's motion for jury trial held that ordinarily declaratory judgment proceedings are for the judge alone and that a jury is called in only when there is an issue of fact in dispute. Civil Procedure Law, Rev. Code 1: 43.9. Note that the section relied on by the Court in its ruling and by petitioner in support of its motion, provides that the right to a jury trial may be demanded under the circumstances and in the manner provided in chapter 22, i.e., the same section 22.1 which petitioner now challenges.

Proceeding on the strength on section 43.9, *supra,* relied on by petitioner (See page four, 20 th day's jury session, March Term, Tuesday, April 14, 1998, of the minutes of the Civil Law Court as the basis for demanding a jury trial in declaratory judgment proceedings, there must be an issue of fact which is in dispute between the parties. We need to determine in the instant case whether there were any factual issues in dispute between the parties and what were those issues.

As stated earlier in this opinion, the trial court in its ruling on the law issues ruled that "there is no dispute as to certain fundamental facts" and that it was therefore necessary to narrate those facts as the basis for the disposition of the law issues. To this ruling, petitioner's counsel excepted in part and gave notice that he will take advantage of the statute.

Even though petitioner excepted to this ruling, yet petitioner took no further action as to said ruling but proceeded with further action in this case. That ruling of the court on the law issues is not subject of review in these certiorari proceedings and will govern the further conduct of the trial.

Applying the ruling that there was no disputable issue of fact and the governing statute, section 43.9, to the instant case, it is clear that petitioner was not entitled to a jury trial in these declaratory judgment proceedings. Hence, this case will now go to trial without a jury for these two reasons, i.e. that there is no disputable issue of fact, and because a jury trial was not demanded within the time limit prescribed by section 22.1 (2).

WHEREFORE, and in view of the foregoing, it is the considered opinion of this Court that the ruling of the trial court on the petitioner's motion for jury trial, being part of the settled records of the case, is hereby affirmed in whole as it is supported by the law controlling. The petition for the writ of certiorari is denied because there was no legal basis for bringing same. The alternative writ is quashed and the peremptory writ refused. Counsels for petitioner are hereby fined the sum of L$1,000.00 each, to be paid within 72 hours or else be suspended from the practice of law for three month. Counsels who signed their certificate are also fined L$500.00 each or be suspended from the practice of law for one month.

The trial court is ordered to resume jurisdiction over the case and proceed with the trial of the declaratory judgment case without a jury. Costs are assessed against petitioner. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding therein to resume jurisdiction over the case and commence the trial of the declaratory judgment action without a jury. And it is hereby so ordered.

Ruling affirmed.

MADAM CHIEF JUSTICE SCOTT *dissents.*

I am constrained to disagree with my distinguished Associate Justices in the majority opinion in this matter. The facts of this controversy have been stated in the majority opinion and it would be redundant to restate same. The issues raised in the writ of certiorari are constitutional issues. They concern the right to a jury trial is guaranteed in the Constitution. However, in my opinion, the deciding issue is whether or not a party litigant should be denied his or her constitutional right to a jury trial due to the negligence of his or her counsel; or, for that matter, whether or not a time limit, in terms of the number of days, should be legislated to allow for the right to exercise the constitutional right to a jury trial.

Since the incumbency or formal seating of this Supreme Court Bench in October 1997, the theme of almost all of the opinions handed down has been the pursuit of substantive justice and not the strict adherence to procedural law at the expense of simple justice. Our premise in these opinion has been that a party litigant should not lose his or her rights due to the negligence of a lawyer in failing to comply with the statutory or other procedural steps governing a case. Thus was the logic in our majority opinion in the following cases:

(1) *Sannoh v. ADC Airlines et al.,* 38 LLR 603 (1998), decided October Term, A. D. 1997.

(2) *Donzo v. Ahmed,* 37 LLR 107 (1992), decided October Term, A. D. 1992.

(3) *West Africa Rubber Trading Company v. Metzger and Temhmeh,* 39 LLR 151 (1998), decided March Term, A. D. 1998.

(4) *National Iron Ore Company et al. v. Yancy, Cooper and Tweh.*

In all of these opinions, we have imposed fines and suspensions on the negligent lawyers and have permitted the party litigant to enjoy their legal rights *non pro tunc;* and here is precedent in the opinions of this Court to support this trend. See *Saleely Bros., Inc. v. Barclay Export Finance Company, Ltd.,* 20 LLR 520 (1971); *Sannoh v. ADC Airlines,* 38 LLR 615 (1997); *In the Matter of Counsellor Constance.*

My interpretation of the statute under review also takes a contrary view to that held by the majority opinion. It is my considered opinion that the Legislature did not intend to deny a right to jury trial by the enactment of chapter 22, section 22.1(2),

Civil Procedure Law, Rev. Code 1. To appreciate the intent of the Legislature we have to examine the entire section. The very first paragraph of chapter 22.1 reads:

"(1) *Right preserved.* The right to trial jury as declared by . . . the Constitution, or as given by statute shall be preserved inviolate.

This is a command from the Legislature affirming and upholding the constitutional right to a trial by jury. It leaves no room for discretion by a trial judge or court. Indeed, the section provides for relief in the event at party litigant does not demand a trial by jury. Paragraph five of section 22.1 reads:

"Relief for failure to make demand. Notwithstanding, the failure of a party to demand a jury in an action in which such a demand might has been made upright, the court in its discretion, upon motion, may order a trial by jury of any or all issues."

Moreover, the statute continues to provide opportunities to ensure that a party litigant is accorded the right of jury trial. Paragraph 6 of the said section 22.1 reads:

"6. Issues triable by a jury revealed at trial. When it a pegs in the course of a trial by the court that the relief required, even though not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury trial of such issues. Failure to make such a demand within the limited by the court shall be deemed a waiver of the right to trial by jury. Upon such demand, the court shall order a jury trial of any issues of fact which afire required to be tried by jury."

In view of the foregoing quoted paragraphs, it is my considered view that the failure to serve a copy of the demand for Jury trial on the adverse party ....not later than ten (10) days after the service of a pleading or an amendment of a pleading ....is not intended as a bar to the constitutional right to a trial by jury. It was not the intent of the framers of the statute to deny the right to trial by jury.

My esteemed Associate Justices have held that certiorari will not lie because petitioner, on April 27, 1998, had simultaneously filed a petition for a writ of certiorari before the Chambers Justice and a motion to recuse against the trial court judge, Her Honour C. Aimesa Reeves. The view of the majority is that the filing of the motion to recuse, which remains unheard and undetermined, rendered the judge's ruling denying the motion for jury trial an issue reviewable upon appeal and not by a writ of certiorari. The majority holds that "certiorari as inappropriately filed in the

Supreme Court because the matter before the trial court was no longer the motion for jury trial but rather the motion to recuse.

I disagree with the foregoing reasoning and conclusion of my distinguished Associate Justices. The trial judge had ruled denying the motion for a jury trial. Petitioner had taken exceptions thereto and made record that advantage would be taken of the statute. Clearly, the judge had made a determination on the motion for jury trial. This was a complete act. The motion for jury trial was not pending any longer. It is this ruling that was correctly and appropriately reviewable by a petition for a writ of certiorari. All lawyers are aware that the remedial process of certiorari reviews rulings and not motions that are undetermined. Further, when an interlocutory ruling is made by an inferior court, that issue is determined, and that the ruling becomes fit subject for review by a higher forum with appellate jurisdiction.

Additionally, it is my considered opinion that the simultaneous filing of a motion to recuse is not a waiver to seek a remedial review. The said motion to recuse may be filed at any stage of the trial.

Further, it is the practice in our jurisdiction that during a trial, when a party excepts to all interlocutory ruling or order of the judge and announces that he will take advantage of the statute controlling, the trial does not halt, but continues. Are my colleagues saying that the continued participation of the aggrieved party in the ongoing trial after taking exception and announcing that advantage will be taken of the statute serves as a waiver to seek a writ of certiorari? I think not. My question is how does the aggrieved party prevent the judge from proceeding with the case? Is the majority saying that the exceptions taken and the declaration to take advantage of the statute serves as a stay on further proceeding in the action? The majority is not clear in its opinion.

One wonders how is the trial affected if the judge's ruling is reversed? The effect of a reversal of the judge would return both parties to the lower court, aid the court would dispose of the motion to recuse, if need be, and then both parties would proceed to present their various sides of the matter before the jury. No harm would be done to defendant if plaintiff is granted his request of constitutional right to a jury trial. No one is harmed and no one loses if the petitioners is granted the constitutional right to jury trial. Hence, certiorari should lie.

This view is affirmed, confirmed and upheld by opinions we are delivering at these closing ceremonies, that is, the October, A. D. 1998 Term of this Honourable Court.

See: (1) *Lamin, et al, v. Swope and Save the Children;* (2) *The Liberia Trading and Development Bank (TRADEVCO) v. Mathies and Cavalla Rubber Corporation.*

Therefore, it is my considered view that the intent of the Legislature in enacting chapter 22, section 22.1, was to preserve inviolate the constitutional right to jury trial. The filing of the motion for a jury trial beyond the 10 day period is not sufficient ground to deny petitioners his or her constitutional right. The denial of the right to jury trial is contrary to the intent and spirit of section 22.1.

The assertion of the constitutional right to jury trial does not prejudice the rights of respondents, but the denial thereof is manifestly prejudicial to the right of petitioners. Therefore, it is my considered opinion that certiorari will lie. Hence my dissent.