

WILLIE DENNIS, Appellant, v. **HAMIDI**, a Mandingo Man, and **G. C. N. TECQUAH**, Justice of the Peace of the Magisterial Court of the City of Monrovia, Montserrado County, Appellees.

APPEAL FROM ORDER IN CHAMBERS UPON APPLICATION FOR WRIT
OF CERTIORARI TO THE MAGISTERIAL COURT OF THE CITY OF
MONROVIA, MONTSERRADO COUNTY. -

Argued May 22, 23, 1957. Decided June 14, 1957.

1. The issuance of a writ of certiorari is discretionary and dependent upon a showing of special ground therefor.
2. Where the lower court has jurisdiction, a writ of certiorari will not ordinarily be granted until the conclusion of proceedings, and then only if it appears that the lower court has abused such jurisdiction to the extent of entering an illegal judgment or order.

Magistrate G. C. N. Tecquah awarded an imperfect judgment by default to the appellant as plaintiff in an action for damages for malicious arrest against appellee, Hamidi, who thereupon secured an assignment for retrial. Appellant applied to the Justice presiding in Chambers for a writ of certiorari. The application was denied in an order which this Court, *en banc*, affirmed.

Albert D. Peabody for appellant. *K. S. Tamba* for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

Willie Dennis sued out an action of damages for causing malicious arrest, before the Magisterial Court of the City of Monrovia, Montserrado County, against Hamidi, a Mandingo man, defendant. The case was called for hearing, and defendant not answering, plaintiff requested a judgment to be entered by default. The court acquiesced therein and awarded judgment in the sum of one hundred dollars with costs.

On the day of the rendition of judgment, and without ascertaining whether defendant would comply with the said judgment, an execution was prayed for, granted and served on Hamidi, the Mandingo man, and his car was seized thereunder.

The defendant being dissatisfied with the entire procedure of the Magistrate, appeared before him in court on the same day in company with his counsel, and moved the court to vacate said execution, for reasons in substance that :

1. Neither he nor his counsel was notified of the assignment of the case for hearing.
2. Because, according to the judgment rendered in the said case, after the plaintiff had been granted imperfect judgment, final judgment was rendered thereon without the hearing of plaintiff's witnesses as the law directs.

To this submission and the resistance thereto, Magistrate G. C. N. Tecquah, a respondent in these proceedings, ruled as follows :

"The court in giving its ruling to the submission filed by the defense counsel, says as follows, to wit: That as to Count i of the said submission, the court fails to see with defendant's counsel when he says that defendant has not had his day in court, more especially when a week's adjournment was granted him upon his own request. Therefore Count i is overruled.

"As to Count 2 the court also says that, since the court is responsible for its own records, it is also responsible to rectify same; but, since that was not done before the documents were attacked by the opposite side, Count 2 of defense submission is sustained. The Court has no alternative but to grant the submission of the defendant and rule the case to a new trial."

Although, the petitioner in certiorari, plaintiff below, tacitly admitted the illegality of the said judgment in his resistance, and claimed it to have been the province of the court to correct its own wrongs, especially when the date of the sitting had not expired, yet on the other hand, he attempted to profit by the legal blunders for which he was directly responsible when he excepted to the ruling of the Magistrate and announced an appeal on what is regarded in law to be an imperfect judgment.

This privilege was denied him, and the case was assigned for retrial. Thus these proceedings in certiorari now before this Court *en banc* took their growth.

On August 8, 1956, plaintiff below, now petitioner, petitioned Mr. Justice Pierre, presiding in Chambers, to grant the issuance of a writ of certiorari against the respondents in this case. After a hearing on the merits of the petition to determine whether or not the writ would lie, the Justice presiding in Chambers denied the

issuance of the writ for want of sufficient legal grounds, and commanded the Magistrate to resume jurisdiction and hold a *de novo* trial of the case of damages out of which the petition grew, especially so since no prejudice was calculated to accrue to either of the parties concerned.

It is from this ruling of Mr. Justice Pierre, presiding in Chambers, that petitioner excepted and has brought his cause before this Court *en banc* for final action.

Having heard arguments by counsel, this Court considers that the ruling of the Justice presiding in Chambers is in complete harmony with settled principles of law which have been authoritatively summarized as follows :

"If a tribunal possesses jurisdiction to hear and determine a case, the writ will seldom issue until the proceedings has terminated, and then only if it appears that the tribunal has entered an illegal judgment or order." 10 AM. JUR. 529 *Certiorari* § 5.

The writ of certiorari is not regarded as one of right, but rather as one which is discretionary in order to promote the ends of justice as effectively as possible. Courts will not issue such a writ upon the mere suggestion of either party that there is error in the record of the proceedings below; but special cause must be shown to the court to which the application is made, and mostly based upon the absence, excess or usurpation of jurisdiction by the tribunal from which the proceedings were removed.

Therefore it is our opinion that the ruling of the Justice presiding in Chambers should not be disturbed ; and this Court, sitting *en banc*, affirms the same. And it is hereby so ordered.

Order affirmed.