

Jack D. Gbassana, Amos Gbassana and Benjamin Gbassana, all of the City of Monrovia, Liberia APPELLANTS/PETITIONERS Versus His Honor **Emery S. Paye** Assigned Judge Presiding Civil Law Court, 6th Judicial Circuit, Montserrado Count Sitting in its March term, A. D. 2007 APPELLEES/RESPONDENTS

LRSC 31

APPEAL. PETITION FOR A WRIT OF CERTIORARI

Heard: April 2, 2010 Decided: August 18, 2010

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The respondents in this certiorari proceeding were petitioners in a cancellation proceeding in the Civil Law Court of Montserrado County, seeking to have cancelled deeds executed on December 10, 1775, September 2, 1975 and February 19, 1975 by one Soko Hines.

The grounds for seeking cancellation of the deeds were that the said Soko Hines and one Samuel Vawah had been reported to have illegally sold parcels of land from the estate of George Carey and that upon the orders of the late President Samuel K. Doe, the Ministry of Justice conducted an investigation and confirmed the allegation. The late President Doe then ordered the Ministry of Justice to have all deeds executed by the said Soko Hines, Samuel Vamah, et al involving said properties duly cancelled. This information to all persons who had bought land from the said Soko Hines, Samuel Vawah, et al in the area (George Carey estate) was published in newspapers in 1982. According to the petitioners in the cancellation proceeding the respondents concealed their 1975 deeds executed by Soko Hines.

In 2006 the petitioners having become aware of the existence of the three deeds, filed a petition in the Civil Law Court to have said deeds cancelled. The respondents filed their returns claiming title to the land. They also moved the court to deny the cancellation petition on the ground that the statute of limitation had barred their claim since the decision to have the deeds cancelled was made more than 20 years ago. The petitioners filed reply to the returns and the parties rested pleadings.

On March 21, 2007 the case was called for the disposition of law issues. The absence of the respondents/petitioners was noted. Counsel for the cancellation petition made a submission pursuant to statutory provision that petitioners be allowed to argue their side of the case, and also that there was only one issue of law which was whether or

not the statute of limitation was applicable in view of the circumstances incident to the conveyance of the pieces of property herein in dispute. The trial judge granted the request and the petitioners argued their side of the case. The judge subsequently ruled that the statute of limitation would not apply. The trial judge also overruled count 2, 3, 5 and 7 of respondents returns to the cancellation petition and ruled the rest of the counts of the returns, the petition and the reply to trial. This ruling was entered during the December Term 2006 of the Sixth Judicial Circuit.

On April 11, 2007, respondent's counsel filed a motion to rescind the ruling as to counts 2, 3, 5 and 7 of respondent's returns which the judge had overruled during the disposition of the law issue(s) in the cancellation proceeding. When the motion was assigned for hearing the movant did not appear. Counsel for respondent pleaded abandonment and also that the motion to rescind was filed out of term time and requested the court to dismiss the motion pursuant to law. The trial judge appointed counsel to take the ruling on behalf of movant. The court dismissed the motion on both grounds.

On May 23, 2007, the said movant filed a motion for continuance on grounds that Jack Gbassana who he claimed was the main owner of the property had left for Guinea and was in fact gone to the United States for medical reasons and would not be returning to Liberia until September; that the other two Gbassana named as respondents in the main case are nominal parties only. The respondents in resisting said motion said that only in a criminal case is the defendant bound to be present at all times during trial. In a civil case such as the instant case, the petitioners are the first to present their case and they should be allowed and that after their presentation and the defendant had not returned from his foreign trip then counsel could move for continuance. The judge in denying the motion for continuance said that a motion for continuance during trial would be in place. In the case at bar the petitioners had not taken the stand to present their case after which then the respondents. There was no need to continue the petition case at that point.

On June 8, 2007 when the case was called for trial, respondent's counsel made a submission requesting court that because of the complexity of the issues raised, the court should empanel a jury to hear the cancellation petition. The respondents countered by saying that a cancellation petition is a proceeding in equity and not in law (ejectment) heard by a judge without a jury. The law further requires that a party wishing a jury trial must within 10 days after been served summons apply for jury trial and not when the case is called for trial. The judge denied the application on the ground that it was belatedly made.

To which ruling counsel noted his exception and gave notice that he would take advantage of the statute made and provided in such cases. The court then proceeded with the trial by ordering the qualification of the petitioners' first witness who took the stand, testified, was directed by his counsel and cross examined by respondent's counsel. Due to the lateness of the time the trial was suspended to resume on June 14, 2007 at 1:00pm.

On June 13, 2007 counsel for respondents filed a petition for certiorari. The Chambers Justice, Her Honor Gladys K. Johnson ordered issuance of a conference citation with an order to the judge to stay all proceedings until further ordered. Justice Johnson left chambers and the petition was heard and decided subsequently by Her Honor Jamesetta Wolokolie denying issuance of the peremptory writ and dismissing the petition with instruction that the trial court resume jurisdiction and proceed with the trial. The petitioners in certiorari announced an appeal and are before us praying for a reversal of said ruling.

Counsel for appellants in his petition stated that the trial judge committed several irregularities which he thought could be corrected through the offices of the powerful writ of certiorari. We perused the records and listed the several motions counsel for respondent s filed in this case, the resistances thereto and the rulings the trial judge entered. The first motion was for the trial judge to rescind a ruling in April 2007 that was made during the December term of 2007. When the motion was assigned for hearing movant was absent. The judge was moved to dismiss on two grounds (1) filed out of term time (2) movant failed to appear and argue his motion. We found no error in said ruling. In addition to the judge's grounds for dismissal, we hold that there is no provision in our practice for a judge to rescind his ruling on the law issues. The proper procedure is to note exception to such ruling for appellate review. The next motion was for the case to be heard by jury. We find no error that the judge denied it because the law was correctly applied. According to 1 LCLR section 22. (2),(4) of our Civil Procedure Law, trial by Juror, a party who desires a jury trial in a proceeding must within 10 days of receiving summons make application for trial by jury. The time allowed had expired when counsel made his application, even if trial by juror was allowed by law in this case. But as the appellees rightly said a bill in equity for the cancellation of a deed is heard by the court sitting without a jury. See *Wilson V. Wilson*, 27LLR182 (1978).

Then there was the motion for continuance on the ground that one of respondent's three clients had travelled first to Guinea, and then to the United States for health reasons and would be returning in September, 2007. Was there a medical report? Not

in the case file, only the counsel's words. But besides that omission, a motion for continuance before trial must be filed within a reasonable time before trial. Counsel in this case knew all along that the client he was claiming to be most material to the case at bar was without the bailiwick even at the time he applied for trial by jury. In the opinion of this court for each time counsel for respondents came up with a new motion, he was deliberately trying to delay the trial in total disregard of the rule against such tactics.

We have made a careful review of the records and the ruling by our colleague Justice Wolokolie presiding in chambers from whose ruling this appeal was taken to the full bench and are satisfied to uphold not only the Chambers Justice's ruling but the several rulings of the trial judge as he disposed of the several motions that were made by counsel for respondent. We must emphasize that the writ of certiorari will not serve as a substitute for any other remedial writ. It corrects errors in the adjudication process while a case is still pending. But the irregularity or error complained of must not derive from the judge's disposition of the law issues because such errors are only to be excepted to and form the basis for a bill of exceptions for appellate review.

We observe in these proceedings that counsel for respondents had filed a motion to rescind the ruling made on the law issues, and raised in said motion the issue about executive order having a lifespan of only one year and that the judge had wrongly overruled some vital counts in the returns to the petition. But when this motion was assigned for hearing he failed to appear and his motion was dismissed on the ground of abandonment and other grounds. Now, could he cure that defect by certiorari? We hold no. But in deed, counsel devoted his entire brief on that issue alone, the exclusion of certain counts from his returns. So what about the fact that the judge denied his motion for jury trial which denial triggered the sudden trip to the Chambers of the Justice presiding? Must we take it then that counsel abandoned same since he did not raise it in the brief, but decided to return to the motion to rescind the ruling in which proceeding he failed to appear and the motion was dismissed? How could a petition for certiorari remedy the situation? How did the judge contravene the law? We fail to see. The respondents' remedy to cure the alleged irregularities arising from the trial judge's disposition of the law issues are fit subjects for appeal.

The Supreme Court has handed down many opinions on the functions of the writ, when it is available to a party and when it is not. See *African Hebrew Israelite Foundation of Liberia v. Thorpe and Lewis*, 31 LLR 351,355(1983) *Musa v. Varney and McCauley* 37LLR906,908 (1994) *Bassa Brotherhood Industrial and Benefit Society V. Dennis*, 20LLR443,446 (1971) *Liberia Water and Sewer Corporation V. Thorpe and*

Peal, 36LLR795 (1990).

In view of the foregoing, we affirm the ruling of the Chambers Justice, Her Honor Jamesetta Wolokolie out of which this appeal grew and deny issuance of the peremptory writ. The petition is therefore hereby denied. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and commence trial of this cause from whence it had stayed further proceeding by orders of the Chambers Justice. AND IT IS HEREBY SO ORDERED. COSTS AGAINST THE PETITIONER

Ruling confirmed, Petition Denied.

Counsellor T. Dempster Brown of the Center for the Protection of Human Rights represented the appellant, the appellees was represented by Counsellor Roger K. Martin, Sr. of the Martin Law Office.