

THE INSURANCE COMPANY OF AFRICA, represented by its Manager,
INTRUSCO CORPORATION, by and thru its President, **WILLIAM MERRIAM, JR.**,
Petitioner, v. **HIS HONOUR E. S. KOROMA**, Assigned Circuit Judge, June Term, A. D.
1982 of the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County, and
JAMES C. DENNIS, SR., Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING
ISSUANCE OF THE WRIT OF CERTIORARI.

Heard: October 26, 1983. Decided: December 21, 1983.

1. Certiorari will not lie to review a decision or order of a judge which order or decision has brought finality to the case in the lower court.
2. A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon the merits, or after trial by the rendition of judgment either in favour of the plaintiff or the defendant.
3. Certiorari will not be granted where adequate relief can be obtained through a regular appeal.
4. Certiorari cannot be used to order the trial court to permit a party to process an appeal as that is not the province of the writ.

Petitioner applied for a writ of certiorari seeking to review the decision of the lower court judge who had denied the petitioner's motion to intervene and had ordered that its answer and motion to refuse jurisdiction be stricken from the docket of the court in an action of damages growing out of a contract in which Co-respondent James C. Dennis took up insurance with the petitioner. The Chambers Justice denied issuance of the writ and on appeal, the judgment of the Chambers Justice was affirmed. In affirming the ruling of the Chambers Justice, the Supreme Court held that certiorari would not lie since the rulings of the trial court whose review was sought by the petition for certiorari, were final rather than interlocutory; and that rather than resorting to certiorari, the petitioner should have proceeded by regular appeal.

S. Edward Carlor, John T. Teewia and Evelynna Cooper appeared for petitioner. M. Fahnbulleh Jones appeared for the respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This certiorari proceeding was intended to have us review the rulings of the lower court in denying the petitioner's motion to intervene and ordering petitioner's answer and motion to refuse jurisdiction for lack of capacity to sue, stricken from the docket of the damages suit filed by James C. Dennis, Sr. of Monrovia against Compagnie General de Travaux d'Hydraulique.

The alternative writ was ordered issued by our distinguished colleague, Mr. Justice Smith, who, after entertaining arguments from both sides, quashed the alternative writ and denied the peremptory writ. The petitioner has appealed to this Court from the ruling of the Chamber Justice.

The main issue for the determination of this case is whether or not the ruling given by His Honour E. S. Koroma in denying the petitioner's motion to intervene in the damage suit instituted against its insured and the subsequent ruling ordering its (petitioner's) answer and motion to refuse jurisdiction stricken from the docket were final or interlocutory. 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. The petition for certiorari shall contain the following:

1. A statement that the petitioner is a party to an action or proceeding pending before a court or judge or an administrative board or agency;
2. A statement of the decision of the official, board, or agency that is alleged to be illegal or of the intermediate order or interlocutory judgments of which review is sought;
3. Certification by two members of the bar that in their opinion the contention of the petitioner is sound in law.

Civil Procedure Law, Rev. Code 1: 16.21 (1) and 16.23 (1) (a), (b) and (c). This is the ruling denying petitioner's motion to intervene:

"Although intervention is a matter of right, yet, under the principle of law herein quoted, the intervenor has no foundation upon which to stand since the principal defendant who is insured by the intervenor has failed to answer the complaint, and by that silence and/or failure has accented to the averments laid in said complaint. The intervenor has no one to unite with to resist the claim of the plaintiff and, hence no standing in this case. The motion to intervene therefore is hereby denied and overruled against the resistance. And it is hereby so ordered.

Given under my hand in open court this 30th day of August, A. D. 1982.

E. S. Koroma ASSIGNED CIRCUIT JUDGE PRESIDING

It would appear that despite the above ruling dismissing petitioner's motion to intervene, still maintained that its answer and motion to refuse jurisdiction were still in court undetermined. Consequently, the case was reassigned for September 1, 1982. At the call of the case after both sides had announced representation, Co-respondent James Dennis moved the court on the minutes to have the petitioner' s/intervenor' s name dropped from the damages suit because its motion to intervene which would have made it a party, was denied. Hence, it had

no standing in the case as a party. The court then made the below ruling and petitioner made her announcement which in turn was also ruled upon, as follows:

COURT'S RULING "...Hence, this court could not entertain the motion without repudiating its own act when it denied the motion to intervene. The movant being no party to this case by virtue of this court's denial of the motion to intervene, it is by operation of law precluded from raising jurisdictional ground. The submission, therefore, made by plaintiff in this case, being well grounded, is hereby given our favour-able judicial consideration and the motion filed by the intervenor on the ground of jurisdiction automatically crumbles under the weight of this court's ruling on the motion to intervene, and with that motion, the answer rides in the hazardous seas to no safety, and therefore, the motion and answer are all ordered stricken off the records of this case. And it is hereby so ordered.

Given under my hand and signature in open court, this 1st day of September, A. D. 1982 E. S. Koroma Assigned Circuit Judge Presiding "To which ruling intervenor excepts and announces an appeal to the Honourable the People's Supreme Court, October Term, A. D. 1982. And submits.

THE COURT: The announcement is noted and the ruling herein made being interlocutory, is not subject to appeal. And it is hereby so ordered. Appeal denied. And so ordered. MATTER SUSPENDED." Count 5 of petitioner's petition for a writ of certiorari is quoted thus:

"5. The judge's denial of the intervenor's appeal is erroneous because by dismissing the intervenor's answer, and its motion to refuse jurisdiction put finality to the intervenor's side of the case and so the appeal should have been granted."

We wonder why the petitioner deviated from its position taken, indicated in court five supra, and instead has taken recourse to certiorari.

Certiorari will not lie when the writ is sought to review the final judgment of a court. A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon the merits, or after trial by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties. *Vamply of Liberia, Inc. v. Kandakai*, 22 LLR 241, 252 (1973).

In our opinion the two rulings were appealable most especially the first ruling denying the motion to intervene, because it was by the granting of the motion to intervene that would have made petitioner/intervenor a party to the damage suit and once that was denied, it had no standing as a party in the case. Hence, the denial of the motion therefore put finality to

petitioner' s/intervenor's side of the case. Since intervention is a matter of right, it would have appealed from the ruling despite the judge's labeling said ruling as interlocutory. Upon the judge's failure to grant intervenor's appeal, she would have applied for mandamus to compel the judge to grant the appeal.

The petitioner did not appeal from the ruling denying its motion to intervene. Instead, it applied for certiorari to review the judge's rulings. This Court has been consistent in its holdings that certiorari will not be granted where adequate relief can be obtained through a regular appeal. *Raymond Concrete Pile Co., v. Perry*, 13 LLR 522 (1960); *Bailey v. Kandakai*, 21 LLR 556, 558 (1972); *Morris v. Flomo*, 26 LLR 314 (1977).

It is our considered opinion that certiorari will not lie since the relief now sought could have been obtained by ordinary appellate process. Furthermore, we cannot grant the request of petitioner which is to order the trial court to permit the petitioner to process its appeal because this is not the office of the writ of certiorari.

In view of all we have narrated and the laws cited, it is the opinion of this Court that the ruling of the Justice in Chambers being in conformity with the laws supra, same is hereby confirmed and affirmed. And it is hereby so ordered.

Judgment affirmed.