NATHANIEL LEWIS, G. BOYEE TOGBA et al., Petitioners/Appellants, v. **HIS HONOUR FREDERICK K. TULAY**, Resident Judge, Sixth Judicial Circuit, Montserrado County, **JOHN G. T. NAGBE** and **THE MINISTRY OF JUSTICE**, Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF CERTIORARI.

Heard: June 26, 1986. Decided: July 31, 1986.

1. If the petitioner in a certiorari proceeding does not pay the accrued costs, as provided by the statute, the Supreme Court will refuse jurisdiction and thereby not order the issuance of the writ.

2. Certiorari does not lie to review final judgment. It is only used to review intermediate order or interlocutory judgment of a lower tribunal.

Appellants were ordered evicted from certain parcels of land upon judgment of the trial court. Although appellant did not appeal from the judgment of the trial court, when the court sought to enforce its judgment the appellants filed a bill of information before the same trial court, apparently in an attempt to have the trial judge reverse his judgment. When the trial judge denied the bill of information, the appellant petitioned the Chambers Justice for a writ of certiorari. Upon denial of the petition by the Chambers Justice, the appellant appealed to the full bench. The Supreme Court upheld the ruling of the Chambers Justice, dismissing the petition.

Flaagwaa R. McFarland appeared for the petitioners/ appellants. *M Kron Yangbe* appeared for the respondents/ appellees.

This is an appeal from the ruling of His Honour, Chambers Justice Boimah K. Morris in a certiorari proceedings now before the bench *en banc*. We shall come to the facts in the case as per records certified to us later on in this opinion. But for the moment, we would like to unfold the many, if not unnecessary, judicial processes resorted to by the parties in these proceedings which could have been avoided by the exercise of ordinary prudence.

Firstly, there was a request or application made to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for the enforcement of an Executive Ordinance or Decree no. 80; secondly, a writ of possession for the enforcement of the Executive Ordinance or Decree no. 80 aforesaid; thirdly, a bill of information before the circuit court which issued out the writ of possession, to stay the enforcement of the writ of possession; fourthly; a petition in certiorari to review the final judgment in the information proceedings, and fifthly, while appeal in the certiorari ruling from the Chambers Justice was pending before the full bench, appellees in certiorari filed a bill of information before the bench *en banc* against respondents/appellants in certiorari. In order to avoid unnecessary cost or delay in the final determination of this matter, the various suits or proceedings therein, as brought before us, were consolidated. See Civil Procedure Law, Rev. Code 1: 6.3.

Perhaps had the Constitutional Advisory Assembly which met in Gbarnga City, Bong County in 1983 to review the Draft Constitution for the return of this Country to civilian democratic rule, not wisely deleted the Ombudsman Commission in the Draft Constitution during its deliberation, this case or for that matter, any other case brought before this Court after January 6, 1986, would go on *ad infinitum*. But thank God for that deletion. These legal battles, if not entanglements, were apparently instituted not for the purpose of seeking final determination of the main issue but to cause unnecessary delay and frustrate the ends of justice.

From the records certified to us, the following facts were revealed: In August of 1983, the Minister of Justice received directives through a letter from the then Head of State and Chairman of the then People's Redemption Council, Dr. Samuel Kanyon Doe, now President

(a) Executive Ordinance Number 10-A or Decree no. 80;

(b) copy of a true and correct copy of a public land Sale deed from the Republic of Liberia to G. Koffa Nagbe for 42.5 acres of land;

(c) copy of a true and correct copy of Public Land Sale Deed in favor of G. Koffa Nagbe and Gaswa Johnson for 54 acres of land, both situated in Montserrado County; and

(d) letter from Capt. J. P. Beh, then Acting Minister of Internal Affairs, dated February 25, 1982.

For the benefit of this opinion, we hereunder quote these documents which we consider relevant to the determination of this case:

LETTER TO THE MINISTER OF JUSTICE "PRC-IV/DG-C/273/183 August 29, 1983 Mr. Minister:

In keeping with a decision rendered by President Barclay, you are hereby authorized and empowered to take the necessary legal steps to place the late G. Koffa Nagbe's heirs, represented by John Gmanten T. Nagbe, in possession of the 54 acres of land which lie adjacent to the 42.5 that has already been turned over to them. Meanwhile, you are directed to ensure that the Nagbe heirs take immediate possession of the said 54 acres of land and have all squatters vacate the same in four weeks upon receipt of this directive.

Attached you will find a copy of Nagbe's deed and other supporting documents. IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES! Cordially yours, /s/ CIC Samuel K. Doe HEAD OF STATE & CHAIRMAN, PRC Major Jenkins Scott Minister of Justice Ministry of Justice Monrovia, Liberia

cc: John Gmanten T. Nagbe." "EXECUTIVE ORDINANCE NO. TEN-A (DECREE NO. 80)

"WHEREAS, in keeping with testimonies heard and recommendations submitted by authorized Government, the late Gabriel L. Dennis, Moore's heirs and the late G. Koffa Nagbe's heirs involving 42.5 acres of land situated and lying between the St. Paul River and

WHEREAS, the late President Edwin J. Barclay, in his capacity as Chief Executive of the Republic of Liberia, did uphold and approve the recommendations of the said Committee; and

WHEREAS, request was made by the late Gabriel L. Dennis on behalf of himself and the Moore Family for a two- year grace period to vacate the premises which was granted but never implemented after the grace period expired; and

WHEREAS, the Ministry of Lands, Mines and Energy, acting on authority of the Head of State, recently conducted a comprehensive survey of the area in question, identified the 42.5 acres of land which is the *bona fide* property of the late G. Koffa Nagbe; and which now descends to his surviving heir, Mr. John G. T. Nagbe.

NOW THEREFORE, I, SAMUEL KANYON DOE, Head of State, Chairman of the People's Redemption Council, and Commander-in-Chief of the Armed Forces of Liberia, by virtue of the authority in me vested, do hereby declare and proclaim that the late G. Koffa Nagbe's heirs, represented by John G. T. Nagbe, are the legitimate and rightful owners of the 42.5 acres of land including the area connecting Stockton Creek, East, and the St. Paul River, West, and all the rights and privileges appertaining thereto; and by so doing, the said land is hereby restored to them by the Government of the Republic of Liberia in perpetuity.

Furthermore, the Nagbe heirs are to take immediate possession of same; and all the rights and privileges of the Dennis'/Moore's heirs hereinbefore accorded them are hereby declared null and void and immediately cease to exist; which requires them to immediately vacate the said 42.5 acres of land.

Under the prevailing circumstances, the Ministry of Justice is hereby authorized and empowered to defend, safeguard and protect the rights and interests of the Nagbe's heirs in any litigation or dispute pertaining to the said land; and the Judge of the Civil Law Court of Montserrado County is hereby authorized to order the sheriff for Montserrado County to evict the Dennis'/Moore's heirs from the said property and all other illegal occupants and squatters, and inform the general public through the news media of the Nagbe's ownership of the said property.

In view of the aforementioned, the Ministry of Justice is hereby further ordered and

/t/ CIC Samuel K. Doe CHAIRMAN, PEOPLE'S REDEMPTION COUNCIL AND HEAD OF STATE".

"AMA/10-G/167/203/182 February 25, 1982 Rev. Isaac Tugbeh Chairman Fallah G. Varney Bridge Community Bushrod Island Monrovia, Liberia Mr. Chairman: This Ministry has received complaint against you by two families, namely: the Dennis family and Mr. John Nagbe who are jointly claiming ownership of the 85 acres of the land around Fallah Varney Bridge which your community has asked the Ministry of Local Government to grant you squatter's rights and/or to allow you to undertake development projects in the area.

We wish to direct that in view of the dispute over the ownership of this land, and in view of the head of State's letter, Ref. No. PRC/II/167/203/t82 dated January 11, 1982 to Maj. Fodee Kromah, Minister of Lands & Mines in connection with the immediate settlement of this dispute between these two families for the establishment of the right ownership of this land, we cannot grant you the right to squat on this land or allow you to undertake any development project thereon. In case the rightful owner of this land is determined by the Liberian Government, negotiation could be made by the community with that owner for the possibility of buying piece or portion of this land by your community.

Thanks for your kind and usual cooperation.

IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES." Very truly yours, /s/ Capt. John P. Beh /t/ Capt. John P. Beh ACTING MINISTER".

These attachments were, in our opinion, to aid the Ministry of Justice in carrying out the directives herein above mentioned.

Predicated upon this letter, the Ministry of Justice appeared before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its December 1983 Term, presided over by His Honour Frederick K. Tulay, then Circuit Judge, and made records. Whereupon the judge cited the members of the Fallah Varney Bridge Community, appellants in the case at bar, to appear before court on a day certain. They appeared and in their presence the Decree or Executive Ordinance was read, and because the members of the Fallah Varney Bridge Community had no paper title, the court ordered the issuance of a writ of possession to place John G. T. Nagbe et al., heirs of G. Koffa Nagbe, in possession of the 54 and 42.5 acres of

Redemption Council and Head of State of the Republic of Liberia, granting respondent Nagbe and his heirs 42.5 acres of land . ."

"(b) But that where informants are presently occupying "does not fall within the said 42.5 acres of land..."

(c) That a Board of Arbitrators be appointed to confirm their contention that they were not occupying respondent Nagbe's premises; and

(d) That where informants were presently occupying was public land and that the Executive Ordinance or Decree in question does not apply to squatters on public land (see count 5 of bill of information).

The records are dehors of any returns to this bill of in-formation, even though the presiding judge did issue a judge's appellee was the rightful owner of a parcel of land described in the writ of possession, claimed that where they were occupying "was public land and did not fall within the land" owned by appellee Nagbe. The informants are also the same petitioners in certiorari who, in count 1 of their petition, claimed to be "title holders to the very parcel of land they are still occupying. What an anomaly! The application was granted and the alternative writ issued, commanding respondent to file his returns.

In his returns, respondent Nagbe contended that: (a) the judgment sought to be reviewed by these certiorari proceedings was final, in that, a writ of possession after final judgment had already been served on the petitioners, now appellants, and therefore certiorari would not lie, and (b) that petitioners, having failed to comply with the provision of the statute controlling certiorari, are barred and estopped from seeking the benefit thereunder provided.

Since these inconsistencies and other procedural blunders have been thoroughly dealt with by the Chambers Justice, we deem it unnecessary to traverse them in details. However, we shall pass upon certain aspects of the petition which we deem necessary for the benefit of this opinion. And because of our agreement with the ruling of the said Chambers Justice, we hereunder quote said ruling:

descended to his heir John G. T. Nagbe. The petitioners further claim that they filed information before the respondent judge contending that they have titles to the area occupied by them and that the said area is not within the 42.5 acres of land belonging to the late Koffa Nagbe. The petitioners therefore requested for an arbitration comprising of surveyors to go and survey Koffa Nagbe's 42.5 acres of land but the judge ignored order commanding the clerk to summon respondent Nagbe and the Minister of Justice to appear in the information proceedings.

The bill of information, filed for the obvious purpose of seeking to have the trial judge reverse his own judgment against which there was no appeal, was disposed of against informants. According to informants, they were denied an appeal to the Supreme Court from the ruling in the information proceedings by the court below "in open court". In other words, appellants were present in court when the bill of information was disposed of This assertion is contained in their petition for a writ of certiorari which we shall shortly deal with.

Appellants, represented by Counsellor Flaagwaa R. Mc-Farland, filed a petition for a writ of certiorari before His Honour Boimah K. Morris, Justice presiding in Chambers. In counts 1, 3 and 4 thereof, appellants alleged among other things that:

(a) they were title holders to the premises from which they were being evicted by "Executive Order 10-A" or Decree no. 80 by the court below (see count 1, second paragraph);

(b) that the trial judge erred by concluding in his final judgment in the ejectment case that appellants, as informants below, were in fact on the premises of appellees/respondents without passing on the "factual and legal issues . . . raised in the bill of information", in which appellants, as informants, contended that the premises occupied by them were not within appellees' (respondents below) parcel of land (see count 3; and count 4 which we deem

We wish to reiterate here in passing that the identical informants who, in their bill of information below, admitted that their request and decided to evict them without due process of law, that is, without filing any legal proceedings as required by the ordinance upon which the respondent judge relied to evict them. After the ruling, respondent judge denied them the privilege of an appeal and therefore the only alternative opened to them was to come by writ of certiorari to review the ruling. The petitioners are not contending against the existence of the 42.5 acres of land to respondent John G. T. Nagbe granted under Executive Order no. 10-A.

The respondents maintained in their amended returns that the petition should be dismissed because the petitioners have woefully violated the statute on certiorari by the failure to pay the accrued costs as in keeping with the Civil procedure Law, Revised Code 1: 16.23(3). To buttress the violation of this mandatory requirement of our statute, the respondents attached &certificate from the clerk of the trial court and they accordingly asked that the petition be dismissed. The respondents further averred that the petitioners were regularly and duly summoned but they failed to appear or failed to answer. Therefore when the case was called for trial on the 4th of February 1984, the petitioners were called three times at the courtroom door by the sheriff, according to practice and procedure, but they failed to answer. Therefore a plea of not liable was entered in their favor and an imperfect judgment entered for the co-respondent, John G. T. Nagbe. A trial jury was thereafter duly empaneled, sworn and qualified to try the case. Trial was had according to procedure and ended with a judgment against the petitioners and a writ of possession issued in favor Of John G. T. Nagbe and served or the petitioners. Respondents further argued that certiorari will not lie to review a final judgment, nor against the order of court for the enforcement of its final judgment as in the instant case.

"As much as we would like to delve into these legal arguments advanced by the parties, we are precluded from doing so because of the failure of the petitioners to pay the accrued costs which is a mandatory requirement of the statute as found in the Revised Code I: 16.2, under

(a) 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;

(b) A statement of the decision of the official, board or agency that is alleged to be illegal or of the intermediate order or interlocutory judgment of which review is sought;

(c) Certification by two members of the bar that in their opinion the contention of the petitioner is sound in law.

2.*Necessary party.* The party in whose favor the act or decision complained of has been rendered shall be named as respondent and shall be served with a copy of the petition. 3. *Payment of accrued costs; bond* 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.

4. *Stay.* The issuance of the writ shall act as a stay of proceedings before the inferior tribunal".

The payment of accrued costs as provided by the statute quoted above is placed upon the petitioner and failure to pay which this Court will refuse jurisdiction and thereby not order the issuance of the writ because the mandatory requirements of the statute must be met before the writ is issued. Secondly, certiorari does not lie to review final judgment. Instead, the office of certiorari is to review intermediate order or interlocutory judgment of a court. Civil Procedure Law, Revised Code 1: 16.21(1).

In view of the foregoing, it is our ruling that the mandatory requirement of the statute not

Given under my hand to open Court this 31st day of December, A.D. 1985. /s/ Boimah K. Morris It/ Boimah K. Morris ASSOCIATE JUSTICE PRESIDING IN CHAMBERS".

In traversing the averments or certain aspects in petitioners/ appellants' petition, two issues are presented before us for consideration:

1. Whether or not certiorari would lie in view of appellants' admission in count 4 of their petition, that after a final judgment was rendered against them they were subsequently denied an appeal by the trial judge?

2. Whether or not the certification by two counselors of the petition for certiorari in the case at bar, as provided by statute (Revised Code 1: 16.23(c)) was justified under the prevailing circumstances?

In passing on the first issue, it is our opinion that to entitle a petitioner to the issuance of the alternative writ in certiorari, the first requirement as laid down by our statute is the pendency of a suit to which the applicant is a party (Civil Procedure Law, Rev. Code 1:16.23(a)) and that said suit has not been finally determined (emphasis supplied). The very use of the word "judgment" in appellants' application for petition for certiorari compels us to take recourse to the law as regards the definition of judgment and the office of the remedial writ of certiorari.

According to common law principle, adopted in this jurisdiction, a judgment is defined thus: "A judgment is the law's last word in a judicial controversy. It is the result of the application of legal principles to the state of facts presented to the court. It may be defined as the court's

It is therefore our holding that under the circumstances, and in view of appellants' admission that indeed a final judgment was rendered against them by the court below, certiorari cannot lie. Our position is supported by statute and several opinions of this Court. In the case, *Republic of Liberia v. Weafuah and Hunter* [1964] LRSC 47; 16 LLR 122 (1964), appeal from ruling in Chambers on application for certiorari the Court held: "The corrective competence of a writ of certiorari ends with the determination of the case out of which it grows as in this case where the writ was applied for after judgment had been rendered". *See* also *Harris v. Harris and Williams,* [1947] LRSC 12; 9 LLR 338 (1947)); *Ajavon v. Bull,* 14 LLR 178. In this jurisdiction, where judgment is rendered against a party in the lower court of record, and the party feels, or has reason to believe, that he was legally incapacitated to take an appeal therefrom, the proper remedy provided for under our law is not certiorari but writ of error. Civil Procedure Law, Rev. Code 1: 16.21(4), under *writ of error.*

In passing upon the second issue, that is, certification of petition in certiorari or any other remedial writ by lawyers, we wish to point out here that most of these remedial processes are resorted to by lawyers not for the purpose of seeking redress or justice for their clients but for the sole purpose of baffling and delaying justice or enforcement of judgment. In such instances, lawyers certifying these unmeritorious applications are also to be blamed for contributing to these artifices and machinations, abusing a statutory requirement that such application be certified by counsellors before it can be entertained by the Chambers Justice. Had these counsellors carefully scrutinized those applications, they would have had some reservations or would have refused to certify unmeritorious petitions such as the one in the instant case, and this would have saved fruitless exercises before this Court of dernier resort. Furthermore, reservation or refusal to certify such a petition would have added more to the dignity of the legal profession and, at the same time, frustrate unscrupulous lawyers who find solace in opening a pandora box to matters already determined judicially. This Court has not been silent on such unprofessional conduct either. Mr. Justice Shannon, speaking for the Court in one of such instances said:

"...It is difficult to find words that would adequately deprecate this sharp practice, embarked

Mr. Justice Davis, two years prior to the opinion just cited, and also speaking for the Court, had this to say:

"...We deem it both necessary and expedient to observe the tendency of some unscrupulous young lawyers to agitate litigation and thereby institute useless and unmeritorious suits. Moreover, these lawyers are in the habit of advising their clients to disobey the orders of the courts - a practice which this Court not only frowns upon but will employ every effort in stamping out." *Bryant v. Morris and Darby,* [1954] LRSC 41; 12 LLR 198 (1954), text a 199-200.

We therefore warn lawyers to exercise due care in certifying petitions for remedial writs; otherwise, where the situation warrants, we will have to penalize a counsel for employing such machinations and artifices to stall the execution of mandates or enforcement of judgments.

The above quoted ruling of the Justice in Chambers, having adequately dealt with the other aspects of the office and function of the writ of certiorari is, in the opinion of this Court, in harmony with law and therefore should not be disturbed. Had the learned counsel for appellants exercised prudence in this case, he would have made some genuine effort to secure time from the court below so as to enable appellants to vacate the premises, instead of resorting to these multifarious and un-meritorious suits simply to thwart the administration of justice and enforcement of the lower court's judgment.

Wherefore, and in view of the foregoing, the ruling of the Chambers Justice is hereby affirmed and confirmed, but with this modification: That said judgment be enforced without prejudice to any lawful arrangement made or arrived at with the heirs of the late G. Koffa Nagbe, represented by appellees for the purchase or lawful occupancy of any portion of the 96.5 acres of land restored to appellee by Executive Ordinance 10-A or Decree no. 80, if the heirs of Nagbe so desire. Costs against appellants. And it is hereby so ordered.