WILLIETTE MARSHALL-COLEMAN, by and thru her Husband, CHARLES S. COLEMAN, Petitioner, *v.* **HIS HONOUR JOHN A. DENNIS,** Assigned Circuit Judge, Sixth Judicial Circuit, March Term, A. D. 1976, and **ANTHONY BARCLAY, WILLIAM D. BOYD**, and **JOSEPH BEDELL,** Respondents.

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

Heard: October 26, 1982. Decided: February 3, 1983.

1. A judge, who is designated as respondent in a remedial process, can represent himself at the hearing of the case.

2. Where a motion for intervention as of right is denied, the proper remedy is mandamus, and not certiorari.

3. Where a statute requires an applicant to get permission to intervene, no person can be considered as such until he has procured such leave.

4. Certiorari cannot be granted to a petitioner who is neither an intervenor nor a party in the action out of which the petition grew.

5. A ruling denying a motion to intervene is final; and in so far as the movant is concerned, the remedy available therefrom is appeal.

Petitioner filed a motion to intervene as a matter of right in an action of ejectment instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The motion was denied, from which ruling petitioner noted his exceptions and applied to the Justice in Chambers for a writ of certiorari. The Justice in Chambers denied and dismissed the petition on grounds that the petitioner was not a party to the ejectment action out of which the petition grew, and that the ruling on the motion to intervene was final and not interlocutory for which certiorari can lie.

The Supreme Court held that intervention in this matter was mandatory and the judge had no discretion. However, the Court opined that the intervenor should have availed herself of the benefit of the writ of mandamus and not certiorari, relying on the opinions in *Karnga v. Coleman*, 5 LLR 405 (1937) and *Gbeh v. Flomo*, 25 LLR 58 (1976). The Court held that where a statute requires an applicant to get permission to intervene, no person can be considered as such, until he has procured such leave, and the petitioner in this case, not being a party or an

intervenor in the ejectment action, cannot therefore apply for a writ of certiorari. The Court held that since the petitioner was never made a party or an intervenor in the ejectment action, the ruling denying the motion to intervene was thus final so far as the petitioner is concerned and she thus should have appealed from the ruling, which she did not do. Accordingly, the Supreme Court affirmed the ruling of the Chambers Justice and *denied* the petition.

Joseph W. Andrews appeared for petitioner. *John A. Dennis* appeared for respondents.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

In 1976, Anthony Barclay, William D. Boyd and Joseph Bedell, now respondents in these proceedings, instituted an action of ejectment against Bobo Smith, Molley Swarary, E. C. Peal et al., in the Sixth Judicial Circuit Court for Montserrado County and while this case was pending, Petitioner Williette Marshall-Coleman filed a motion, on April 20, 1976, to intervene as a matter of right with an answer claiming title to the property, subject of the ejectment action.

The motion to intervene was heard and denied to which petitioner excepted and applied later to the Justice in Chambers for a writ of certiorari contending, among other things, that the judge's ruling was erroneous. Respondents filed their returns, in which they asserted and claimed that the petitioner was not a party to the ejectment action and that the ruling denying the motion to intervene was final and not an interlocutory one for which certiorari would lie. The Justice in Chambers dismissed the petition and sustained the returns instead. It is from this ruling of the Justice in Chambers that this appeal has found its way before this Court *en banc*.

At the call of this case before this Bench, Counselor Joseph W. Andrews appeared for the petitioner/appellant and objected to the representation of Counsellor John A. Dennis, one of the counsels appearing for the respondents, on the ground that Counsellor John A. Dennis was the presiding and trial judge at the time in the court below and that there had been no change of counsel in the case, citing and relying on Rule 28 of the Code of Moral and Professional Ethics as his authority. Counsellor John A. Dennis on the other hand, in resisting the said submission argued that he was one of the respondents and that under our law, a party may be represented in person or by counsel and hence contended further that the objection should be overruled.

Under the law extant in this jurisdiction, when issues involving a common question of law or fact are pending before a court of record, the court, upon a motion by any party or on its

own motion, may order a joint trial of all the matters in issue; and may make such other orders concerning the proceeding; therein as may tend to avoid unnecessary costs or delay, Civil Procedure Law, Rev. Code 1: 6.3. Hence, the consolidation of the objection to the representation of Counsellor John A. Dennis and the certiorari. The issues that have presented themselves for our determination are, as follows:

(1) Whether or not under the existing circumstances Rule 28 of the Code of Moral and Professional Ethics is applicable to bar Counsellor John A. Dennis from representing himself and the other respondents?

2) Whether or not a motion to intervene is a matter of right?

3) Whether or not one who is not a party to a pending action can apply for a writ of certiorari?

4) Whether or not the ruling which denied the motion to intervene was final?

Before addressing ourselves to the grounds of the objection to Counsellor Dennis' representation, let us look at the Rule and the Statute governing retirement from public or judicial employment and representation of parties in action. Rule 28 of the Code of Moral and Professional Ethics of the Revised Rules regulating the Moral Conduct of Lawyers, reads thus:

"Rule 28: A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity. A lawyer, having once held public office or having been in public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

The Statute reads thus:

"Who may represent a party: A party, other than an infant or incompetent person, may prosecute or defend a civil action in person or by attorney or both, except that (a) a corporation or voluntary association shall appear by attorney, and (b) a party may be represented in a court of a stipendiary magistrate or justice of the peace by a husband, wife, father, mother, brother, sister, son, daughter, or guardian. If a party appears by attorney, he may not act through another person not an attorney except by consent of the court and after notice of the change has been served on the other parties." Civil Procedure Law, Rev. Code 1: 1.8.

From our understanding of the rule cited and relied upon by Counsellor Andrews as quoted above, the Court holds a contrary view, in that it is not applicable under the existing facts and circumstances, for no ethical or professional misconduct has been committed by Counsellor Dennis. The contention of Counsellor Dennis is, therefore, sustained.

Directing our attention to issue number two, let us take a glance at our Statute on "intervention". In keeping with the Civil Procedure Law, *Ibid.,*1: 5.61 and 5.62, two kinds of intervention are allowed: Intervention as of a matter of right and permissive intervention. Section 5.61 deals with intervention as of right, and it read:

"*Intervention as of right. In general.* Upon timely application, any person shall be allowed to intervene in an action:

(a) When a Statute of the Republic of Liberia confers an unconditional right to intervene; or

(b) When the representation of the applicant's interests by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or

(c) When the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof."

Granted that the motion was timely and duly made and stated statutory grounds and that the judge was precluded from exercising any discretion, certiorari in our opinion, would not be a proper office to achieve the petitioner's objective. According to the statute, just quoted above, any established right under a statute dealing with intervention as of right, in this Court's view, does not fall under a judge's discretion and therefore intervention in this matter was mandatory and the judge had no discretion. Accordingly, the intervenor should have availed herself of the benefit of the writ of mandamus and not certiorari. *Karga v. Coleman*, 5 LLR 405 (1937) and *Gbeh v. Flomo*, 25 LLR 58 (1976).

Turning to issue number three, the Civil Procedure Law pro-vides that a petition for a writ of certiorari shall contain, among other things, the following: "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." Civil Procedure Law, Rev. Code, 1: 16.23(a) The point to be decided first here is whether or not the petitioner, who was denied intervention in the pending action, is a party to the action, one of the essential requirements for a writ of certiorari. A careful perusal of the records certified to us reveals that the petitioner was never

a party to the ejectment suit. Where a statute requires an applicant to get permission to intervene, no person can be considered as such until he has procured such leave. 59 AM. JUR. 2d., *Parties,* §172. The petitioner in this case, not being a party or an intervenor in the ejectment action, cannot therefore apply for a writ of certiorari. "Certiorari is a special proceeding to review an immediate order or interlocutory judgment of court." *Emidon Limited and Hall v. Liberia Cold Stores Inc.*, 20 LLR.487 (1971)*; Liberia Insurance Agency, Inc. v. Monsour N. Ghosen Brothers et. al.,* 24 LLR 411 (1976); and Civil Procedure Law, Rev. Code 1: 16.21.

This Court holds that since the petitioner was never made a party or an intervenor in the ejectment action, the ruling denying the motion to intervene was thus final so far as the petitioner is concerned and she thus should have appealed from the ruling *Vamply of Liberia, Inc. v. Kandakai,* 22 LLR 241 (1973). Besides, the denial of the motion to intervene did not bar the petitioner from instituting an independent action since she, not being a party to the pending ejectment suit, could not be bound by any judgment thereon. *Boye v. Nelson*, 27 LLR 174 (1978), and *Johns v. Witherspoon*, 9 LLR 152 (1946).

We would like to sound a warning to all judges, that in passing on motions to intervene, they should give due consideration to the need to avoid a multiplicity of suits and the need to obtain final determinations of all issues involved in the actions pending with the least possible delays and expenses.

In holding as we have done, we have not retreated from the proposition or established rule that to intervene is indeed a matter of right not subject to judicial discretion. In sustaining this petition otherwise would be legislating law thereby making the petitioner both a party to the pending action as well as an intervenor.

In view of the fact that the petitioner was not a party to the action pending in the lower court, and the ruling denying the motion to intervene not being interlocutory, the ruling of the Justice in Chambers dismissing the writ of certiorari is hereby confirmed and affirmed and the Clerk of this Court is therefore ordered to send a mandate to the court below directing it to resume jurisdiction over this matter and determine same with costs against the petitioner. And it is so ordered.

Ruling affirmed.