

JAMES T. MASON, Petitioner, v. **HIS HONOUR FRANCIS N. PUPO, SR.**, Debt Court Judge, Montserrado County, **SMALL CHARLIE** and **MAMADEE**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING A WRIT
OF CERTIORARI.

Heard: November 24, 1982. Decided: February 3, 1983.

1. Certiorari cannot be granted where adequate relief can be obtained through regular appeal.
2. Certiorari proceedings can be heard only during the pendency of

These proceedings emanate from the final judgment of the Court in an action of debt by attachment instituted by Co-respondents Charlie and Mamadee in the Debt Court for Montserrado County. After the pleadings rested in the case, law issues disposed of, the case was assigned for trial, but at the call of the case, counsel for petitioner was not in court; whereupon Co-respondents Charlie and Mamadee's counsel made application to the court to invoke Circuit Court Rule Seven (7). The application was granted and the co-respondents had their witnesses qualified. When the first witness was on the stand and while on the direct examination, the counsel for petitioner entered the courtroom and when asked to cross examines the witness, he requested for time to read the records and because his request was denied, he left the courtroom. He was not present when the other witness or witnesses testified and were discharged, after which, the co-respondents rested evidence, and final judgment was rendered in their favor. It was from this final judgment that petitioner applied to the Chambers Justice for a writ of certiorari. The alternative writ was issued and, after argument pro et con, the Chambers Justice granted the petition and ordered the issuance of the peremptory writ of certiorari, from which ruling, the respondents appealed to the bench en banc.

The Supreme Court held that Certiorari proceedings can be heard only during the pendency of an action before a court or tribunal, and the efficacy of the writ is terminated by adjudication of the case out of which it grew. In the instant case, the Court found that the trial court has rendered a final judgment. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice.

McDonald J. Krakue appeared for petitioner. S. Benoni Dunbar, Sr. appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

These proceedings grew out of an action of debt by attachment instituted by the co-respondents in the Debt Court of Montserrado County against the petitioner for the recovery of \$11,000.00. The case was assigned for trial on the 7th of July, 1982 at 9 o'clock a.m. The records show that at the call of the case counsel for petitioner was not in court. Co-respondents' counsel made application to court to invoke Circuit Court Rule seven (7). The application was granted and the said co-respondents had their witnesses qualified. When the first witness in person of Small Charlie was on the stand undergoing direct examination, the counsel for petitioner entered the courtroom. He was requested to cross examine the witness; thereupon he requested for time to read the records and because his request was denied, he left the courtroom. He was not present when the other witness or witnesses testified and were discharged. Thereafter, the co-respondents rested evidence argued and submitted their case. The judge then rendered final judgment on the same day. The petitioner therefore fled to the Chambers of Justice M. Kron Yangbe for a writ of certiorari. Justice Yangbe ordered the issuance of the alternative writ of certiorari and pleadings rested with respondents' replying affidavit. After arguments pro et con, Justice Frank W. Smith, then presiding in Chambers, granted the petition and ordered the issuance of the peremptory writ of certiorari, from which ruling, the respondents appealed to the Bench en banc. Hence this case is before us for final determination. The only issue germane to the disposition of the case is whether or not the petition for certiorari can be entertained after the rendition of final judgment?

The petitioner outlined certain alleged irregularities of the respondent judge which were denied by counsel for respondents in their returns. Count 1 of the returns and count 1 of the answering affidavit embody the pertinent issue above mentioned and therefore we think it proper to quote them verbatim:

RETURNS

"1. Because respondents say that certiorari will not lie in that it must contain a statement that the petitioner is a party to an action pending before the court or judge. In other words, it is an extraordinary remedy applied for in order to prevent an injury to a party that may be irreparable and without which the ordinary method of appeal may not give adequate remedy. In the instant case, respondents contend that final judgment has already been rendered as can be seen from profert herewith made and marked Exhibit "A", two days prior to the filing of these proceedings."

ANSWERING AFFIDAVIT

“1. Because petitioner says that as to count one of the returns same should be dismissed because it shows a subtle ignorance of the law with respect to the averment contained therein; in that, petitioner strongly contends that it is after the enforcement of a judgment that a writ of certiorari is not maintainable and not after its rendition; hence, the respondents' Exhibit "A" is a further manifestation of the hasty manner in which the respondent disposed of the trial of this case in absolute disregard for petitioner's rights under the law and contrary to the cool neutrality of an impartial judge. Such arbitrary acts on the part of the respondents in denying petitioner's counsel the right to spread on record an application for time to study the records and afford him the opportunity to take the witness to task on cross examination, were prejudicial to his interest as can be seen from the respondents' prejudicial ruling as reflected on the minutes of court, July 7th, A. D. 1982, sheet three.”

In the *Maritime Transport Operators, GMBH v. Koroma and Nigeria Ports Authority*, 25 LLR 371, 373 (1976), this Court at the hearing of an error proceedings was reminded of an appeal from the Chambers of Mr. Justice Horace in certiorari proceedings in the same case and this was the position taken by the Court:

"At the hearing of these proceedings, the defendants in error contended that there was already an appeal pending from the ruling denying certiorari by Mr. Justice Horace. This is true, but the Court decided not to hear the appeal because judgment had already been rendered by the lower court in the matter out of which the certiorari grew. Hence, the hearing of the certiorari appeal would be to no avail at this stage. Certiorari proceedings can be heard only during the pendency of an action before a court or judge. Civil Procedure Law, Rev. Code 1:16.23 (I) (a). The efficacy of a writ of certiorari is terminated by adjudication of the case out of which it grows, *Republic v. Weafuah and Hunter*, 16 LLR 122 (1964). This being so, it was clearly within this Court's prerogative to decide not to hear the appeal in the certiorari proceedings."

Certiorari is a special proceeding to review and correct decision of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court. *Ibid.*, 1:16.21

(1). A petition for a writ of certiorari shall contain the following:

"(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. *Ibid.*, 1: 16.23 (1) (a), (b) and (c).

It is clear from the above statutory provisions that to entertain a petition for the writ of certiorari the case or proceeding must be pending before a court or a judge whose ruling is sought to be reviewed by the superior court. Can a case or proceeding said to be pending before a court or a judge after that court or judge has rendered final judgment? Our answer is in the negative, because a final judgment puts an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for; while an interlocutory judgment is the one given in the progress of a cause upon some plea, proceeding or default which is only intermediate, and does not finally determine or complete the suit. BLACK'S LAW DICTIONARY 979 (4th ed). This Court in the case *Republic v. Weafuah and Hunter*, 16 LLR 122 (1964), held that "the corrective competence of a writ of certiorari ends with the determination of the case out of which it grows."

In the case just recited, the court rendered final judgment during the pendency of the appeal in the certiorari proceedings. The petitioners therefore applied for the writ of error. In this case, final judgment was rendered prior to petitioner filing his petition for certiorari. We have no other alternative therefore but to sustain count one of respondents' returns and overrule count one of petitioner's answering affidavit and with it the entire petition must crumble.

Certiorari cannot be granted where adequate relief can be obtained through regular appeal. *Morris v. Flomo*, 26 LLR 314 (1977); *Raymond Concrete Pile Company v. Perry and Hamilton*, 13 LLR 522 (1960). The petitioners should have either continued with the trial or appealed from the final judgment or invoke the office of the writ of error if he felt that he was denied his day in court.

In view of the laws cited and the facts aforementioned, the ruling of the Justice in Chambers is hereby reversed. The petitioner's petition ought to be and the same is hereby dismissed, the alternative writ quashed and the peremptory writ denied. And it is hereby so ordered.
Ruling reversed

Petition denied.