

**REBECCA OUTLAND** and **DANIEL J. WEAVER**, Appellants/Petitioners, v. **HIS HONOUR J. HENRIQUE PEARSON**, Assigned Judge for the People's Monthly and Probate Court, Montserrado County, and **IVEY OUTLAND**, Appellees/Respondents.

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

Heard: March 28, 1983. Decided: July 7, 1983.

1. 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 writ of certiorari will not issue if there is another adequate remedy available to a party.
2. The revocation of the final ruling, judgment, or act of the probate judge, upon notice to all parties concerned, canceling and annulling the rights, privileges, office and functions theretofore granted and operational under such ruling was final in itself and an appeal is the only course of action for a party to pursue.
3. Although the jury of the trial court is authorized by law to review and pass on issues of facts in probate cases, the trial judge is without jurisdictional authority to enter final judgment in such proceeding but should rather transmit same to the probate judge for final determination in keeping with law.
4. Issues not raised in the pleadings cannot be properly adjudicated.
5. In unusual hardship and in the furtherance of justice, the writ of certiorari can be granted to supplement the method of review provided by the statute.
6. A verdict is the answer of the jury given to the court concerning the matter of fact committed to their trial and examination; it makes no precedent and settles nothing but the immediate controversy to which it relates.

Petitioners filed objections to the probate and registration of the last will and testament of the late George Victor Outland in the Probate Court for Montserrado County. The case was referred to the Sixth Judicial Circuit Court for trial by jury of the factual issues. The original will was unavailable and the trial judge, sua sponte, declared the copy of the will admissible into evidence but did not surrender same to the jury for its inspection and deliberation thereon. The jury therefore returned a "verdict" indicating that they did not know what to do. The trial judge considered this action of the jury to be a verdict and entered a final judgment thereon rather than sending the matter back to the probate court to render the final judgment. While the contested will case was still pending in the probate court, petitioners applied for and were granted letters of administration to administer the said

estate. Subsequently, counsel for respondents brought this irregularity to the Court's attention and the probate judge revoked the letters of administration. It was from this ruling of the probate judge revoking the letters of administration that the petitioners applied for this writ of certiorari. The Supreme Court upheld the decision of the Chambers Justice denying certiorari on the ground that other remedies were available to the petitioner.

Robert G. W. Azango appeared for the petitioners. J. Emmanuel R. Berry appeared for the respondents.

MR. JUSTICE KOROMA delivered the opinion of the Court.

The chronology of this case disclosed to us the following sequence of facts and events. That in 1981, one George Victor Outland of Paynesville, Montserrado County died and is alleged to have left a last will and testament which his wife Ivey Outland, offered for probation and registration. Predicated upon the objection of Rebecca Outland and J. Daniel Weaver, the will was transmitted to the People's Sixth Judicial Circuit for jury trial as the law directs. The case was called up for hearing during the March 1982 Term of the court, presided over by His Honour Frederick K. Tulay. A jury was selected, sworn and empaneled to try the factual issues raised in the objection and resistance. Following presentation of the facts on both sides, the jury was charged which after, due deliberation, returned without a verdict neither for nor against any of the parties. However, they placed on record that they did not know what to say because no instrument had been presented to them.

Novel to jury trial procedure, the trial judge considered this statement as the verdict of the empaneled jury, ordered it recorded on the records and subsequently rendered thereupon a final judgment. As we consider this judgment one of the pivots upon which this case has conveniently rested in finding its path to this Forum, we have deemed it necessary to quote it in this opinion.

"The verdict of the trial jury being in harmony with the evidence adduced at the trial, the law controlling, and the instruction of this court, the same is hereby confirmed and affirmed, and it is the judgment of this court that until the original will is available, the parties in this case are hereby placed in status quo, that is to say, the position in which they were before the will was brought to court for probation and registration, as the fault discovered cannot be hinged on one party alone respondent without inspecting the document to see that it is the original brought to the probate court to be proved; an objector without inspecting it had this court to empanel a jury and then sought to offer it into evidence, the court says that to be fair on both sides, cost is disallowed. The Clerk of this court is hereby instructed to inform the Monthly and Probate Court for Montserrado County of this judgment. And it is hereby so ordered."

No exceptions were registered against this judgment by any of the two parties. Hence, the clerk of the Civil Law Court proceeded and informed the monthly and probate court of said judgment as per instructions. By virtue of this procedure and judgment in the Sixth Judicial Circuit Court, the case went into a stalemate and parties placed in status quo. This judgment, to which no exceptions were taken by any party, set in motion the primary irregularity in this case. This irregularity was compounded by the application of Counsellor Azango, representing the objectors, for letters of administration for the objectors to administer the property for which a contested last will and testament was in court, and not yet proven or objections thereto dismissed. His Honor J. Henrique Pearson, then assigned and presiding over the monthly and probate court, granted the application and issued letters of administration to Rebecca Outland and Daniel Weaver, objectors in the action of the contested will. Following the granting of the letters of administration, counsel for respondents in these proceedings called the court's attention to the existence of a last will and testament of the late Victor Outland in which his wife, Ivey Outland, corespondent herein is named as Executrix and informed the court further of the pendency of the objections to said will before the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County. Predicated upon this representation made to the probate judge by counsel for co-respondent Ivey Outland, His Honor J. Henrique Pearson, who had granted the application for letters of administration to Rebecca Outland and Daniel Weaver, petitioners in these Certiorari Proceedings, revoked his ruling and made null and void the letters of administration after due notice to all parties. Misinformation and misrepresentation of facts by the petitioners and their counsel were the reasons the court attached to the revocation of the letters of administration. Worthy of notation is the fact that antecedent to the revocation of the letters of administration, a notice of assignment was duly served and acknowledged by all the parties of interest but neither the petitioners nor their counsel attended upon the said assignment as a result, their absence was considered and treated by the court as an abandonment of their cause.

It is from this ruling of the monthly and probate court judge, revoking and making null and void the letters of administration that the petitioners fled to the Chambers of this Court and prayed for the issuance of the writ of certiorari. Our distinguished colleague, Mr. Justice Smith heard the case in Chambers, denied the issuance of the peremptory writ and quashed the alternative writ with cost against the petitioners; and it is from this ruling of the Chambers Justice that the petitioners appealed to this Bench for hearing and final determination.

Recourse to the petition, the returns, and the arguments of the parties before this Court, necessitated that we consider only two issues as germane to the determination of this case. These are: (1) Whether certiorari is the proper remedy for the petitioners to seek in this case and as such whether the ruling of the Chambers Justice denying the petition should be

reversed? (2) Whether or not it can be legally concluded that a last will and testament and objections thereto are still pending undecided; hence, the probate judge justifiably revoked the letters of administration.

Certiorari, as defined by statute, 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. Civil Procedure Law, Rev. Code 1:16.21 (1). At common law, the principal office of the writ of certiorari is to determine whether the conduct of the inferior tribunal was within its jurisdiction and otherwise, that is, to control the action of the inferior tribunal and to keep it within its jurisdiction. The main function of the writ is to correct substantial errors of law committed by a judicial or quasi-judicial tribunal which are not otherwise reviewable by a court. Its purpose is to review the findings and acts of inferior tribunals and officers exercising judicial or quasi-judicial functions in order to determine whether their jurisdiction has been exceeded, or to ascertain whether the evidence furnishes any legal and substantial basis for the decision of the inferior tribunal, 14 AM JUR, 2nd, Certiorari, § 2.

With this statutory and common law definition, the office and functions of the writ of certiorari culled from the quoted legal authorities and made a part of this opinion for our guidance, we shall now proceed to pass upon the two issues listed above and which we consider germane to a judicial determination of this case.

Although the petitioners in these proceedings were clearly aware that an action of contested will was still pending before the monthly and probate court undecided and they being the objectors and contestants thereto, they condescended to file an application in the said court for letters of administration, setting therein as one of their reasons that the estate of the late George Victor Outland had been declared by this Court "intestate estate". This application having been heard and granted, the court's ruling in this respect put finality to the applicatory action and an appeal would have been the only alternative for the Supreme Court to review such ruling if a respondent party had been affected. Conversely, if the application was heard and denied, the only course left to the applicant to secure an appellate review was an appeal. Revocation by definition being an annulment or cancellation of an act or promise. FUNK AND WAGNALLS STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 1095 (Int'l. ed., Vol. 2). The revocation of the final ruling, judgment or act of the probate court judge upon notice to all parties concerned, canceling and annulling the rights, privileges, offices and functions heretofore granted and operational under such ruling was final in itself and carries the same legal weight and effect of a denial of the application. Except for the allegation of the petitioners to the effect that they were neither in court nor represented by counsel when the respondent judge revoked the letters of administration and as a result they were denied their day in court in which case and if such allegation was well substantiated, error would have been the remedy available to the petitioners yet we are of the

candid opinion that an appeal was the only course of legal consequence for the petitioners to have pursued. Whereas an appeal can be the embodiment of all of the remedial proceedings, yet not one or collective remedial proceeding can legally and judicially perform the office of an appeal. The writ of certiorari will not be issued if there is another adequate remedy available to a party. It is only in a case of unusual hardship and in the furtherance of justice that the use of the writ of certiorari is permitted to supplement the method of review provided by statute. 14 AM JUR. 2<sup>d</sup>, Certiorari, § 11. The ruling of the court on the revocation of the letters of administration sealed and put finality to the application and left nothing to be adjudicated and hence certiorari will not issue to review it.

Following the trial of the facts in the contested will, in the Civil Law Court, the judgment entered upon what was termed "verdict" by the trial court, set into motion a series of irregularities which culminated into the filing of this petition for a writ of certiorari. To avoid a repetition of such acts of irregularities hereafter especially in Montserrado County where the probate and law divisions are separated into two courts and charged by law to try the issues of law and facts separately and respectively in contested will cases, we have felt the necessity to treat with the proceeding and the irregularities which attended the proving of the last will and testament of the late George Victor Outland in the Civil Law Court. No party of course registered exceptions to or appealed from the final act of the trial judge in the circuit Court. However, since both parties have strongly relied on said proceeding to prove their respective sides in the certiorari proceedings before this Court, it will serve the ends of justice to treat and correct the wrong. This therefore brings us up to our second point in the determination of this certiorari proceeding as to whether or not it can be legally concluded that a last will and testament and objections thereto are still pending undecided and hence the probate judge justifiably revoked the letters of administration.

In addressing ourselves to this issue, the first question that registers on our minds is whether or not any objections would have been filed if the will in question had not been offered for probation and registration. Our answer being negative, we must then positively conclude that a will was offered for probation and registration by the widow of the late George Victor Outland, correspondent in this certiorari proceedings. It was against the probation and registration of this instrument that objections were filed by Rebecca Outland and J. Daniel Weaver, now petitioners before this Court. By operation of law, the legal issues raised in the objections were heard and disposed of by the probate court and only the issues of fact as presumably summarized by the probate judge, were forwarded to the Civil Law Court, Sixth Judicial Circuit for the jury to hear and pass upon under the direction of the judge of said court. Certainly, the will was the main factual instrument forwarded to the circuit court to be proven and whether or not the said will as forwarded to the Civil Law Court of the Sixth Judicial Circuit, was the original or the duplicate copy, this was a question of law which should have been settled by the ruling on the law issues in the probate court had it been

raised squarely by the petitioners in their objection. Hence this was neither a factual issue for the trial jury to decide nor was it a matter of discretion of law for the judge presiding over the jury trial of the contested will to refuse admission of said document into evidence on the grounds that it was not the original. Further, it was not within the judicial province of the trial judge to instruct the jury to the effect that the will was not the original. The objectors who had objected to the probation of the will sent to the circuit court to be proved, never raised the issue that it was not the original. It was the trial judge who raised the issue, by virtue of which the trial jury was deprived of their right to have the document presented to them in order to decide on its credibility and effect. In his final judgment quoted supra, the trial judge stated that the objectors as well as the petitioners did not inspect the said will before offering it into evidence. Mr. Justice Reeves, speaking for the Court in *Flowers and Head v. Republic*, said that issues not raised in the pleadings cannot be properly adjudicated. 1 LLR334, (1889) .

From what the court termed as the verdict of the trial jury in which they did not know what to say because no instrument had been presented to them and the court's final judgment confirming this so called verdict, we here opine without reservation that: (1) It was the judge while directing the trial of the facts in the Civil Law Court, Sixth Judicial Circuit, who raised the issue of the original nature of the will, a legal issue which had not been raised in the pleading of the objectors and passed upon in the probate court. (2) By this act of the trial judge, the trial jury was deprived of its statutory office to give credibility and effect to the said document. The end result of this conduct on the part of the trial judge was the return of the jury from its room of deliberation without a verdict. For, a verdict by definition "is the answer of a jury given to the court concerning the matter of fact committed to their trial and examination; it makes no precedent, and settles nothing but the immediate controversy to which it relates. It is the decision made by a jury and reported to the court, and as such it is an elemental entity which cannot be divided by a judge. Ruling Case Law, 27 RCL 834.

The immediate controversy in the case under review was a contested will and it was the only matter of fact which should have been committed to the trial and examination of the jury in order to afford them an opportunity to return with an answer to the court concerning said fact. This not having been done, the statement that the jury made in court upon returning from their room of deliberation did not constitute an answer to any matter of fact nor did it relate to the immediate controversy. Hence, by definition and reason of the law, no verdict was brought following the jury trial of the contested will case to have warranted the entry there upon of a final judgment. Therefore, the last will and testament of the late George Victor Outland as offered for probation and registration is pending in the court undecided. The respondent judge was legally correct to cancel the letters of administration which he was misled to order issued. Certiorari will not therefore lie against the said judgment of the court.

The final judgment of the judge who presided over the jury trial as proferted with the petition for a writ of certiorari does not make reference to the factual issues which were summarized by the probate court and sent to the Civil Law Court for the jury to hear and pass upon. We also observed that the judge rendered final judgment contrary to statute; in that where he was not exercising probate jurisdiction, he could not have legally entered final judgment in a probate matter, but rather forward the verdict of the jury to the probate court where the judgment on it should have been rendered. We herein quote the relevant statute on the point:

"Right to jury trial. A party is entitled to trial by jury, if duly demanded, in any proceeding where any controverted issue of fact arises as to which any party has a constitutional right of trial by jury and in any proceeding for the probate of a will in which such an issue of fact arises.

Order framing issue. When a jury has been duly demanded, within twenty days after joiner of issue and on two days notice to the other parties who have appeared and pleaded, a proposed order framing the issues to be tried by the jury shall be submitted to the probate judge by the party demanding a jury trial; a counter proposed order may be submitted by any of the other parties. In addition, the court may direct any party to submit a proposed order framing the issues. After the submission, the court shall make an appropriate order setting forth the issues to be tried, a copy of which shall be served by the clerk of the court on all parties who have appeared and pleaded."

Place of jury trial. After issues have been framed for the jury, a proceeding and, where necessary, the papers and other records therein, shall be transferred to the trial term part of the circuit court within the county in which the probate court sits and the controverted issues of fact shall there be tried by a jury (in Montserrado County where there is established a separate probate court, to the Civil Law Court "for the Sixth Judicial Circuit)." See Decedents Estates Law, Rev. Code 8:105.1(1)(3)(4)

And at section 105.2 Subsection (2) of the same book, it is required and we herein quote further:

"Verdicts. In every case the trial court shall direct the jury to return a special verdict in accordance with the procedure set forth in connection with special verdicts unless in his opinion, the law and the facts adduced in evidence justify the return of a general verdict. The verdict, if not set aside by the court before which the issues are tried, shall be conclusive except upon appeal and after being entered in the minutes shall be certified to the probate court by the clerk of the court in which the trial took place, whereupon the probate court shall enter a final decree accordingly."

The procedure prescribed and established by statute must always be strictly followed.

The trial judge was without jurisdictional authority to enter final judgment in such proceeding based upon the jury's verdict. Therefore, the said judgment as quoted supra in this opinion is hereby declared null and void, unenforceable and of no legal effect. The proceeding growing out of the last will and testament of the Late George Victor Outland and the objections thereto is still pending undetermined. The legal issues raised in the pleadings should be disposed of by the probate court and the factual issues as summarized, forwarded to the Civil Law Court to be tried by a jury and the judge presiding over such trial as referee should comply with statute quoted supra.

In view of the foregoing, facts and laws herein cited, the petition for a writ of certiorari is hereby denied and the ruling of our distinguished colleague Mr. Justice Smith quashing the alternative writ with cost against the petitioners is hereby confirmed. And it is hereby so ordered.

*Petition denied.*