

**ISAAC SAMUELS, GARJAH**, et al., Petitioners, v. **STEPHEN LOGAN** and **WILMOT LOGAN**, Heirs and Administrators of the **INTESTATE ESTATE OF the Late JOSIAH P. LOGAN**, and **HIS HONOUR JEREMIAH J. Z. REEVES**, Resident Circuit Judge, Grand Bassa County, R. L. presiding in Chambers during the November Term, A. D. 1976, Probate Division, Respondents.

AN APPEAL FROM THE RULING OF THE CHAMBER JUSTICE DENYING A  
PETITION FOR A WRIT OF CERTIORARI

Heard: April 14, 1983. Decided: July 7, 1983.

1. The court is under no legal and judicial obligation to adjudicate a right that does not legally exist.
2. A petition for letters of administration followed by the granting of the letters where there was no objection or appeal, puts the matter to rest. Consequently, there is no matter pending from which certiorari can lie.
3. A writ of certiorari will not lie to review questions of facts to be determined by evidence outside of the records. The writ will also not be issued to quash a proceeding when substantial justice has been done even though some evidence has been rejected or admitted.
4. Only a party to the proceedings sought to be reviewed, or are directly affected by it, can prosecute a writ of certiorari. So where one not a party seeks to use the writ, he must show that the decision sought to be resolved is directed against him or his property, in the sense that the enforcement of the decision would invoke special, immediate, and in effect a direct injury to his interests.

The Administrators of the intestate estate of the late Josiah P. Logan filed a bill of information before the probate division of the Second Judicial Circuit Court for Grand Bassa County alleging interference with the estate by the petitioners, respondents in the trial court. The trial court ruled the interference illegal and the respondents fled to the Justice in Chambers on a writ of certiorari. The Chambers Justice denied the petition and on appeal the decision was affirmed by the Supreme Court en banc. The Court noted that it could not allow the certiorari as the petition therefor sought to have the Court correct violation of the statutory requirement as contained in the Civil Procedure Law, Rev. Code 1: 6.23, which the writ could not do; it sought to have the Court review a ruling which was final in itself; the ruling sought to be reviewed did not prejudice the interest of any of the parties; the petitioner had no legitimate interest which could be addressed by the Court; and there were other adequate remedies at law available to the petitioners.

Joseph Patrick Henry Findley appeared for the petitioners. M. Fahnbulleh Jones appeared for the respondents.

MR. JUSTICE KOROMA delivered the opinion of the Court.

Josiah P. Logan of Grand Bassa County died intestate while his children were yet minors. His estate remained unadministered until Stephen M. Logan and Wilmot J. T. Logan reached their maturity and applied to the Second Judicial Circuit of Grand Bassa County for letters of administration. The application was heard, granted and the letters of administration issued then.

In the process of administering the estate, these administrators filed a bill of information before His Honor J. Jeremiah Z. Reeves, resident circuit judge of the Second Judicial Circuit Court, complaining of interference with the intestate estate of their late father by the respondents who allegedly entered upon lot number 40-D situated and lying on Tubman Street, Lower Buchanan, Grand Bassa County, and were occupying the buildings thereon, collecting rents and doing such other acts on said property that were detrimental to and deprived the legitimate heirs and legatees of their rights thereto.

The respondents filed a five-count answer the substance of which are herein quoted below for the benefit of this opinion in which they contended that:

1. Co-respondents Apieh and Teetee Gbawreh negotiated with the late Josiah P. Logan for the purchase of one town lot for \$100.00 for which \$70.00 was paid. Later, Mr. Logan increased the price to \$200.00 and they paid an additional \$100.00 to him and for which he issued a receipt but which receipt allegedly was misplaced. However, that witness could testify to this fact. That the balance of \$30.00 to make up the total of \$200.00 for the lot was paid after the death of Josiah Logan to his heirs. The receipt for \$70.00 was exhibited.
2. Respondents claimed that they had notorious and open occupancy of the said premises prior to the death of the late Josiah P. Logan but did not indicate for how long.
3. Co-respondents Moses Kangar contended that he had a mortgage contract with the late Josiah P. Logan for the amount of \$187.50 and lot number 40-D was given him as a security for which an unsigned deed was executed by the late Josiah P. Logan.
4. The respondents argued further that a copy of the information was never served upon them, but rather they had appeared and filed their Answer upon a verbal message from one Attorney J. Courtsay Thompson.
5. That if any interference with the intestate estate has been perpetrated, it is by informants themselves .

The informants in their reply contended that the alleged unsigned deed and the mortgage contract are legal nullities; in that the deed is not signed by Josiah P. Logan, the alleged

grantor, and the mortgage contract executed July 1, 1958 had not been probated and registered according to law. Hence, the said documents, deed and mortgage contract were void of any legal effect and consideration. As to the respondents' alleged notorious occupancy of the premises prior to the death of Mr. Josiah P. Logan, the informants maintained that said occupancy was not due to any genuine claim or lien on the estate or by consent of informants/administrators but due to the respondents' unlawful, illegal and outright disregard for law and order coupled with their notorious interference with the said estate. That their father died in 1960 when they were yet minors and that it was during this period that the respondents unlawfully and illegally entered upon and occupied the premises unknown to them. They finally contended in their reply that the respondents' answer should be dismissed for late filing.

After entertaining arguments pro et con on the issues in the information, answer and reply, the Court entered ruling herein quoted below for the benefit of this opinion:

"That since all the properties involved and constitute a part of the intestate estate of the administrators/informants' father, they are still part and parcel of the said intestate estate and the administrators have the right to perform their duties in keeping with their letters of administration and the law controlling intestate estates. See pleading; also for reliance see the case Woodson v. Heuston and Solomon, 12 LLR 133 (1954), 9 LLR 168. AND IT IS HEREBY SO ORDERED."

Being dissatisfied with the above ruling, Isaac Samuels, Garjah Kangar and others fled to the Chambers of this Court and prayed for the issuance of the writ of certiorari on a five-count petition in which they averred the substance of their answer in the bill of information filed in the trial court of the Second Judicial Circuit. They contended further that in passing upon the pleadings in the said bill of information, the trial judge, His Honour J. Jeremiah Z. Reeves, failed and neglected to pass upon the issues of law raised therein as well as failed and refused to hear the facts so as to establish whether or not, they the petitioners in these certiorari proceedings ever interfered in the intestate estate of the late Josiah P. Logan, the issues that constituted the bone of contention in the information proceeding; and that the ruling made by His Honour Judge Reeves was materially prejudicial to the interest of the respondents in the bill of information and therefore this petition for a writ of certiorari.

In countering this petition, the respondents filed a seven-count amended returns in which they denied the rights of petitioners and the legal and factual sufficiency of their petition to recover against the respondents, raising therein the following legal and factual issues:

1. That the Supreme Court does not review cases in piecemeal. Therefore, certiorari will not lie to review a ruling of the lower court on disposition of issues of law, especially where exceptions have been noted against said ruling. Petitioners should have therefore saved the point for a regular appeal.

2. That this Court should refuse jurisdiction over the persons of the respondents for a violation of the statutory requirement by the petitioners in bringing the respondents under the jurisdiction of this Court wherein they have failed, disregarded and omitted to aver in their petition that they are parties to an action or proceeding pending before a court or judge or an administrative board or agency. That because of this woeful neglect and patent violation of this mandatory statutory requirement, this Court should quash the alternative writ and dismiss the petition.

3. That where the petitioners in certiorari have other adequate and complete remedy at law, certiorari will not lie.

4. That the alleged mortgage contract referred to in the petition does not vest petitioners with the right of possession or title in the petitioners so as to justify occupancy of the premises by the petitioners. That the alleged mortgage is only a security for payment of the alleged loan and is not a sale in fee simple or otherwise of the premises in question to the petitioners.

5. That the alleged counsellor certificate attached to the petition is defective; in that, it neither contains the caption of the case nor is there any indication whatsoever showing the case with which the certificate is connected as is mandatorily required by the statutes and opinions of the Supreme Court.

6. That not only is the ruling of the respondent judge not prejudicial to the interest of any of the parties, but that there is no showing in the petition as to how the interest of the petitioners was prejudiced as to warrant these certiorari proceedings.

7. That the answer in the information proceeding was out of court because of late filing.

Mr. Justice Morris having heard arguments in Chambers on these issues herein above listed quashed the alternative writ and denied the petition with costs against the petitioners. Exceptions having been noted, the petitioners have appealed from this ruling to this Forum for review and final determination. For our purpose in resolving the issues of contention, we shall consider and pass upon the following points:

1. Whether or not the ruling of the co-respondent judge is final, interlocutory or intermediate to any cause of action pending in the court below?

2. If intermediate, whether or not it is prejudicial to the petitioners?

3. Whether or not petitioners did interfere in the intestate estate of Josiah P. Logan?

4. Whether or not certiorari will lie?

In a two count brief filed by the petitioners and argued before this Bench, they strenuously contended that the ruling of the corespondent judge was given in the progress of the

administration of the subject intestate estate upon the information, which is intermediate to the administration of said intestate estate; hence, it is interlocutory and certiorari would lie to review it. Further, that the ruling determined only some preliminary step by advising the administrators that they "have the right to perform their duties in keeping with their letters of administration" and does not adjudicate the ultimate rights of the parties or finalize the case in court; that it simply indicates the rights of the administrator, Stephen and Wilmot Logan to administer intestate estate of their late father.

In order for this Court to decide whether or not the ruling of the respondent judge is intermediate and does not adjudicate the ultimate rights of the parties or finalize the case in court, it is important to determine what the rights of the parties are in this case.

By virtue of the intestacy of the properties of Josiah P. Logan, Stephen Logan and Wilmot Logan were appointed administrators under letters of administration granted them by the Second Judicial Circuit Court. Their claim of being heirs of Josiah P. Logan is not questioned by the petitioners in these proceedings. Hence, by operation of law, Stephen and Wilmot Logan have heritable or possessory rights in the intestate estate of their father. Under the information proceeding, the court adjudicated this right by ruling that the administrators should proceed to administer the intestate estate in keeping with their letters of administration and the law controlling intestate estates. By stating in said ruling that "since all the properties involved constitute a part of the intestate estate of the administrators /informants' father, they are still part and parcel of the said intestate estate" we may rightly conclude that the court took cognizance of its own records with particular reference to the inventory taken of the properties in question under the letters of administration. On the other hand, we have failed to see, even with the aid of a microscope, where lies the right of Moses Kangar who occupies the property in question under a legally questionable mortgage? Equally so or even more difficult to see, is the right of Apieh and Teetee Gbawreh who also occupy the property in question on the strength of an unsigned, unprobated and unregistered paper which they christened as a deed. Right, as defined by Funk and Wagnalls, is a just and proper claim or title to anything whatever that is enforceable by law. FUNK AND WAGNALLS STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 1048 (Intl. ed.), Vol. 2 (1965). Right is a legally enforceable claim inseparably associated with remedy. RADIN LAW DICTIONARY 300(1955). What just and proper claim or title enforceable by law did Moses Kangar or Apieh and Teetee Gbawreh have on lot number 40-D and the houses thereon which they were occupying and collecting rents therefrom? The alleged negotiation with the late Josiah P. Logan to purchase lot number 40-D and the alleged subsequent payment of \$30.00 to his heirs to complete the purchase of the land did not legally create any right of Apieh and Teetee Gbawreh on the said property. Notwithstanding, if Mr. Apieh and Madam Teetee Gbawreh were desirous to press for any right in the property, same could have been done directly with the Administrators or upon

their failure to comply, the said parties to seek redress through court. The duties of administrators being to collect assets of estate, pay its debts and distribute residue to those entitled. BLACK'S LAW DICTIONARY 67 (4th ed). The proper purpose the ruling could have served on the bill of information was to have directed the administrators to proceed to administer the estate in keeping with the duties imposed upon them by the letters of administration and the law controlling intestate estates. The court committed no error and it prejudiced the interest of no party by: (1) failing to tell Moses Kangar to go to the administrators, if at all he had a legitimate claim, to demand redemption of said mortgage or that he will institute a foreclosure proceeding; (2) failing to tell Apieh and Teetee Gbawreh to go to the administrators, if their claim was legitimate, to demand an administrator's deed or that they would proceed by specific performance. What purpose would it have served for the respondent judge to have instituted investigation and taken evidence while passing on the information as to the alleged mortgage contract and sale of lot number 40-D when at the conclusion of such investigation he could not, by operation of law, enter a decree of foreclosure, redemption or specific performance. An investigation therefore, as contemplated by the petitioners in these proceedings, would not have only been an exercise in futility but also a misdirection and abuse of judicial function. The court does not exist to institute and simultaneously pass upon actions for parties.

Further to the argument of the petitioners in these proceedings that the ruling of the respondent judge does not adjudicate the ultimate rights of the parties or finalize the case in court, it is our desire to know if they are speaking of right as contemplated by law or that of the rule of the jungle? For, to enter upon and occupy real property under an alleged mortgage contract and/or by the strength of an unsigned, unprobated and unregistered deed is no right under any law except that of the jungle. A right which is based on the laws of the jungle places no judicial obligation on a court of justice to adjudicate the same. Right, as defined by Black's Law Dictionary, is that which resides in a determinate person, by virtue of a given law, and which avails against a person or answers to a duty lying on a person other than the person in whom it, the right, (emphasis ours) resides. BLACK'S LAW DICTIONARY, 4' EDITION, Page 1486. What right resides in the petitioners and what law avails against or places a duty upon the administrators under the circumstances outlined in the returns to the bill of information, to have warranted the ultimate adjudication of same? The court is under no legal and judicial obligation to adjudicate a right that does not legally exist. The interference with the intestate estate of the late Josiah P. Logan which was the substance of the bill of information and which the respondents did not deny in their returns, constituted no right in the eye of the law to have required adjudication. The court adjudicates legal rights that are asserted and set before it and disdains wrongs. The administration of an estate being done by operation of law under the direction of the court, it was legally obligatory on the court to have directed the administrators to proceed with the performance of their duties in keeping with their letters of administration and the law

controlling the intestate estates. By this direction of the court, we hold candidly that the ultimate rights of the administrators/informants had been adjudicated under the bill of information proceedings leaving nothing else to be done.

With reference to the argument of the petitioners that the ruling of the respondent judge is made in the progress of the administration of the subject intestate estate, upon the information which is intermediate to the administration of the said intestate estate, and therefore interlocutory as a consequence of which certiorari will lie to review the same, we hold that said argument has no legal foundation on which to stand. There is no action styled "administration of intestate estate" still pending before the court in the progress, of which a ruling was made by the respondent judge on the bill of information. Rather, a petition for letters of administration had long been disposed of by the court and that disposition put to rest the action when there was no objection to or appeal from the ruling granting the letters of administration. Consequently, the letter was issued. The administration of the estate therefore that was in progress at the time of the filing of the bill of information in the lower court and the filing of the petition for certiorari in this Court, are not an action in progress or pending before any court. Rather, it is the execution of the court's ruling or order entered upon the petition for letters of administration. This execution of the court's order or ruling is not what is contemplated by the statute when it mandatorily required that the contents of a petition for a writ of certiorari should include a statement that the petitioner is a party to an action or proceedings pending before a court or judge or an administrative board or agency. Civil Procedure Law, Rev. Code, 1:16.23. In addition to the fact that such an action is nowhere and no longer pending, the petitioners in these certiorari proceedings were never party to it when it was filed and disposed of. Hence, the argument advanced by the petitioners in this respect is clearly destitute of any legal effect. Further to this argument, the petitioners in these certiorari proceedings being no party to the proceedings wherein the letters of administration were granted and showing no legal interest in nor genuine title to the property that is being administered under the authority of the said letters of administration, are not properly clothed to advance the argument that the ruling is intermediate or interlocutory because of the relative nature of said argument. In that, if the petitioners are arguing that the ruling in the bill of information is intermediate or interlocutory relative to the adjudication of the ultimate rights of the parties in the information proceedings, then this Court says those legal rights that were presented in the pleadings before the court were adjudicated and the wrongs rejected, thereby putting a finality to the determination of those issues on that level of adjudication. If the argument is made relative to the administration of the intestate estate by the informants, then this Court holds, that said argument cannot be sustained because the petitioners were no party to the proceedings out of which the court's order was being executed. From either angle of the argument, certiorari cannot lie.

According to legal authorities, it is generally conceded that only a party to the proceedings sought to be reviewed, or one directly affected by it, can prosecute the writ. So, where one not a party seeks to use the writ, he must show that the decision sought to be resolved is directed against him or his property in the sense that the enforcement of the decision would involve special, immediate, and in effect a direct injury to his interests. SRCL, Certiorari, §7. The property in question upon which the decision was made not being owned by the petitioners in these certiorari proceedings, the enforcement of said decision could not involve special, immediate or direct injury to the interest of the petitioners.

Principally, there are two classes of cases in which a writ of certiorari will lie; secondly, whenever it is shown that the inferior court or tribunal has proceeded illegally and no appeal or writ of error will lie. So it seems fairly to be settled that to invoke the aid of a court by certiorari, the petitioners must establish either that the proceedings are infected with some fatal irregularity rendering them absolutely void, or that the jurisdiction of the cause did not belong to the tribunal which assumed it, but to a different tribunal, or else that the cause is one not within the limits of judicial power. By any authorities it is held that this writ will be issued only upon evidence presented by the records, and to correct errors of law. So it has been held that writ will not lie to review questions of fact to be determined by evidence outside the records. Nor will the writ be issued to quash a proceeding when substantial justice has been done even through some evidence has been rejected or admitted. This writ lies only when there is no other adequate remedy. Ibid., §5.

It is therefore our holding that the writ of certiorari cannot be issued to the petitioners for:

1. Violation of the statutory requirement as contained in Civil Procedure Law, Rev. Code, 1:6.23(a) (d)
2. The ruling sought to be reviewed being final in itself, adjudicated the ultimate rights of the parties, and cannot be reviewed by certiorari.
3. The ruling sought to be reviewed did not prejudice the interest of any party, but rather it adjudicated the right of the parties.
4. No legitimate interest exist where there is no legitimate right.
5. That petitioner has other adequate and complete remedy at law.

Wherefore and in view of the foregoing facts, circumstances, legal citations and reasoning, the ruling of the Chambers Justice quashing the alternative writ and denying the petition is hereby confirmed and affirmed with cost against the petitioners. And it is hereby so ordered.

*Petition denied*