

FREY & ZUSLI, a Swiss Mercantile Firm Transacting Business in the Republic of Liberia, by its Agents, **RITVEL & SALEEBY BROTHERS**, and **RICHARD HAIKAL**, Appellants, v. **JOSEPHINE L. GIBSON, JAMES E. GIBSON, JOHN R. SCOTLAND, J. VICTOR SCOTLAND**, and **FRANCIS H. GIBSON**, Heirs of the Late **EDMOND D. GIBSON**, and His Honor, **JAMES A. A. PIERRE**, as Judge Presiding by Assignment over the Circuit Court of the Fourth Judicial Circuit, Maryland County, Appellees.

APPEAL FROM ORDER IN CHAMBERS UPON APPLICATION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 8, 1957. Decided June 14, 1957.

A writ of certiorari will not be issued upon an unverified petition.

Appellants applied to the Justice presiding in Chambers for a writ of certiorari to the court below in injunction proceedings arising from an action to cancel a lease agreement. The Justice presiding in Chambers refused to issue the writ. Appellants appealed to this Court, *en banc*, from the order of the Justice presiding in Chambers. The order denying certiorari was affirmed by this Court, *en banc*.

J. Dossen Richards for appellants. *D. Bartholomew Cooper* for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.

On March 25, 1955, His Honor, James A. A. Pierre, then presiding by assignment over the Circuit Court of the Fourth Judicial Circuit, Maryland County, issued a decree cancelling a lease agreement entered into between the parties herein. Thereafter, on the same day, the appellees applied for a writ of injunction ordering both the residential and business quarters closed and that said premises be turned over to the petitioners in the injunction suit, now respondents.

The issuance of the injunction by the presiding Judge was regarded by the appellants in these proceedings as materially prejudicial to their interest. They therefore filed their petition for a writ of certiorari which was granted by the Justice presiding in Chambers, and was served upon the appellees who acknowledged the service of the writ upon them, appeared and made returns. The matter finally came on for hearing before the Justice presiding in Chambers. The appellees, in their returns, raised the

issue that the petition was not duly verified. This contention the Justice presiding in Chambers sustained, and denied the petition. We quote hereunder the relevant portion of the Justice's ruling:

"Taking recourse to the petition, we have discovered that this plea is correctly and truthfully submitted, a fact which the counsel for the petitioners conceded, but argued should not operate against his clients because of the principle enunciated by this Court that pleadings involving issues of fact apparent upon the face of the records need not necessarily be supported by an affidavit. To us, this seems to be a misapplication of the rule, since indeed whatever facts are pleaded by the petitioners cannot be claimed to be apparent upon the face of any record before this Court. Because of this issue so raised, which, in our opinion is both fundamental and material, we find no alternative but to sustain same and dismiss the proceedings with costs against the petitioners; and it is hereby so ordered."

From the foregoing ruling, the appellants in these proceedings have appealed to this Court, *en banc*, after entering exceptions thereto. The only issue before us, therefore, is whether the Justice's ruling on the issue raised and mentioned, *supra*, is in keeping with law.

We shall now quote the controlling rule as referred to by the respondents in these proceedings :

"Where an action or proceeding is pending in any court or before a judge thereof, the Supreme Court, or any justice thereof in vacation, may grant a writ of certiorari to any party who by verified petition may complain that the decision or act of any trial judge is illegal, or is materially prejudicial to his rights." R. Sup. Ct., IV, 4 (2 L.L.R. 664).

From the language of the above rule, it is clear that a petition in certiorari proceedings must be verified. An inspection of the pleadings in these proceedings shows that the petition is not verified. We therefore have no alternative but to affirm the ruling of the Justice presiding in Chambers ; and it is hereby so ordered with costs against the petitioners.

Order affirmed.