

UNITED LIBERIA AGENCIES, Inc., through its president, J. SENJE WEAH, Jr.,
Petitioner, v. **HER HONOUR CASSELIA L. STEWART**, Judge, People's Debt Court,
Montserrado County, and **H. P. K. REFRIGERATION**, by and through its Sales
Manager, LEONARD PHILLIPS, JR., Respondents.

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

Heard: April 18, 1983. Decided: July 7, 1983.

1. The dismissal of a defendant's answer, ruling the defendant to bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross-examine as to the proof, and does not shift the burden of proof.
2. An answering affidavit is only applicable to a motion filed before the Supreme Court.
3. The averment in a pleading, factual or legal, to which no responsive pleading is required shall be taken as denied or avoided.

On appeal from the ruling of the Chambers Justice denying a petition for a writ of certiorari growing out of an action of debt in the lower court where the trial judge abated defendant's answer, the ruling of Chamber Justice confirmed with costs against petitioner. In affirming the ruling of the Chambers Justice denying the petition, the Court held that the dismissal of a defendant's answer and the ruling of the said defendant to a bare denial does not deprive the defendant of the right to cross-examine the plaintiff's witnesses or shift the burden of proof from the plaintiff to the defendant. Under the circumstances, the Court said, certiorari would not lie.

S. Edward Carlor appeared for the petitioner. Peter Amos George appeared for the respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The petitioner has asserted briefly in its petition, as follows:

1. That it is a party defendant in an action of debt now pending in the court of origin;
2. That whilst deciding the issues of law the respondent judge committed a reversible and prejudicial error, because the plaintiff in the lower court failed to establish that petitioner/defendant received goods as alleged in the complaint; yet, the answer was abated;
3. That the erroneous ruling on the issues of law has imposed an impossible task on petitioner to prove the case thereby shifting the burden of proof on petitioner/defendant.

The Respondents have opposed the granting of the peremptory writ on the following grounds:

1. That the case has not been gone into on the merits, therefore, certiorari will not lie;
- (2) That petitioner has adequate remedy by way of regular appeal and the Supreme Court will not review ruling of the trial court on issues of law or in piecemeal.

With reference to count 1 of the petition supra, it is not denied that petitioner is a party defendant in the trial court in this case; hence, same is deemed admitted. Civil Procedure Law, Rev. Code 1:9.8 (3). Count 2 alleged facts and petitioner has the right at the trial to produce evidence to refute same, save affirmative defense because petitioner's answer was completely abated, however, the dismissal of a defendant's answer, ruling the defendant to a bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross-examine as to the proof and does not shift the burden of proof, Saalami Brothers v. Kiazolu Wahaab, 15 LLR 32 (1962); nor will certiorari lie where the suitor has adequate and complete remedy at law. Raymond Concrete Pile Co., v. Perry and Hamilton, 13 LLR 522 (1960).

The records in this case reveal that petitioner has filed an answering affidavit. The legal significance of the answering affidavit is not at issue, because respondent didn't make any attack concerning it, notwithstanding, for the sake of the practice, we have elected to comment upon it as dictum.

According to the Rules page 36, part 1 of the Supreme Court of Liberia, answering affidavit is only applicable to a motion and there is no motion filed in this case. Further, there are only 2 pleadings required by statute in a remedial writ, namely, petition and returns. Civil Procedure Law, Rev. Code 1:16.2. Where responsive pleading is not required, the averment in a pleading, factual or legal, to which no responsive pleading is required shall be taken as denied or avoided, and at hearing the party may introduce evidence to disprove same. Civil procedure Law, rev. Code 1: 9.8(3).

Accordingly, the ruling of the Chambers Justice denying the issuance of the peremptory writ of certiorari is confirmed.

The Clerk of this Court is ordered to mandate the court below to resume jurisdiction over this case and proceed to hear evidence on the facts ruled to trial; with costs ruled against the petitioner. And it is hereby so ordered.

Petition denied; ruling affirmed.