

**HELENA YANCY**, by and thru her Husband, **J. M. YANCY, SR.**, Petitioner, v. **HIS HONOUR H. SOA BAILEY**, Judge presiding by assignment over the Fourth Judicial Circuit Court, Harper, Cape Palmas, Maryland County, and **JENNIE CHIE**, Respondents.

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

Heard: January 12, 1983. Decided: February 4, 1983.

1. Certiorari will not lie to review the final judgment of an inferior court; the writ can only be resorted to during the pendency of the case before a trial court or a trial judge.
2. A ruling which seeks to enforce a previous ruling or final judgment without adding more is not appealable.
3. A party cannot appeal from a ruling implementing a final judgment or from a ruling on the issues of law.

Growing out of a final judgment in an action of damages rendered brought by Co-respondent Jennie Chie against Abraham Dio in the Fourth Judicial Circuit, Maryland County, a writ of execution was issued. However, prior to execution of the writ, defendant executed a payment stipulation and bond for the judgment amount, wherein the petitioner stood as surety. When the defendant defaulted in payment of the amount, the co-respondents reported the matter to the Superintendent of Maryland County.

On appeal to the Supreme Court en banc, the ruling of the Justice in Chambers was reversed. The Supreme Court held that the ruling from which certiorari was being prayed for was not an interlocutory ruling, but a final ruling; and hence, certiorari would not lie. The Court also opined that certiorari would not lie to review a ruling which seeks to enforce a previous ruling or final judgment without adding more, which was the situation in the instant case. The petition was therefore denied.

McDonald Krakue appeared for petitioner. Francis N. Torpor appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The records in this case reveal that sometime in May, 1979 a damage suit was instituted by Jennie Chie, co-respondent herein, against Abraham Dio, in the Fourth Judicial Circuit, Maryland County, which terminated in a verdict of \$1,350.00 on May 21, 1979 in favor of the plaintiff. The defendant executed a payment bond for the judgment sum, and, as a result, the enforcement of the writ of execution which had already been issued was suspended. The petitioner in these proceedings became surety for Abraham Dio. According to the stipulations of the bond, Defendant Abraham Dio was to make a monthly installment payment of \$15.50 which was to be increased later to \$25.00 as of January 31, 1980, to the sheriff of Maryland County. In the event of default, the writ of execution which had already been issued against the defendant would be enforced. The payment bond executed on the 20th of July, 1979, reads thus:

"KNOW ALL MEN BY THESE PRESENTS that I, Abraham Dio, for myself and wife Elizabeth Dio, at the time this action of damages was instituted against me by one Jennie Chie, both of us being of Harper City, and Helena Yancy of Harper City, Cape Palmas, Liberia, do

of court the sum of fifteen dollars and fifty cents (\$15.50) without any defalcation whatsoever; failing so to do the execution issued against me shall become enforceable immediately.

Therefore, as of the 31st day of January, A. D. 1980, the sum of twenty-five (\$25.00) per month shall be paid until the said amount of \$1,350.00 shall be fully paid. This amount shall be increased as my salary increases from time to time or as the said salary reduces, but not less than one third of my said salary shall be paid through the sheriff of court and delivered to the plaintiff Jennie Chie; failing so to do until the sum of \$1,350.00 shall have been fully and completely liquidated, then this bond shall become null and void; otherwise, to remain in full force, virtue and effect."

From the record certified to this Court, it would appear that Defendant Abraham Dio failed to comply with the terms of the stipulations entered into in the payment bond. Consequently, Jennie Chie, the plaintiff, appealed to the Superintendent of Maryland County after the April 12, 1980, military take over (coup d'etat), who ordered the petitioner, the only surety to the payment bonds to pay \$177.50 as the amount due according to the terms of the payment bond executed and to produce the principal Abraham Dio. The petitioner not being satisfied with the orders of the superintendent sought redress. Co-respondent Chie also sought redress and enforcement of the judgment, praying the co-respondent judge to have the petitioner produce the body of the defendant in the damages case or pay the amount due under the judgment in the said case. The co-respondent judge ruled in favor of Co-respondent Chie and ordered enforcement of the judgment and service of the execution. We herewith quote a part of the co-respondent judge's ruling, as follows:

. . . the sheriff of this court is ordered that Mrs. Helena Yancy, remain in the City of Harper until she can produce Defendant Abraham Dio before court within the period of two weeks; thereby, relieving herself of further obligation; and that upon her failure to comply with this ruling of the enforcement proceedings, the court will have no other alternative, but to have her pay the balance judgment sum of \$1,172.50 after which she may seek any other legal

case is not analogous to this case since (a) in that case Magistrate Bull denied a motion filed to dismiss a summary ejectment proceeding because the plaintiff had failed to give the required notice to the defendant of what plaintiff intended to prove against the defendant and (b) the magistrate denied the motion while disposing of the law issues. Also, in that case, the summary ejectment suit was still pending before the magistrate undetermined.

In the case at bar, final judgment had been rendered and the defendant had executed a payment bond to satisfy the judgment. He had failed and neglected to comply with the stipulations of said bond. In a long line of consistent opinions, this Court has held that certiorari will not lie to review the final judgment of an inferior court; the case must be pending before a court or a judge. Our statute also stipulates that certiorari can only be resorted to during the pendency of the case. *Vamply of Liberia, Inc. v. Kandakai*, [1973] LRSC 55; 22 LLR 241 (1973); *Markwei v. Amine et al.*[1934] LRSC 22; , 4 LLR 155 (1934); Civil Procedure Law, Rev. Code 1: 16.23. Further, a ruling which seeks to enforce a previous ruling or final judgment without adding more is not appealable. *Acolatse v. Chase Manhattan Bank*, [1974] LRSC 18; 23 LLR 14 (1974); *MacCarthy v. Gray et al.*, 23 LLR 143 (1974); and *Vamply v. Kandakai*, *supra*.

It is our opinion that the main issue for the determination of this case is whether certiorari can lie against a ruling implementing a final judgment. We have said earlier on in this opinion that a ruling enforcing a previous ruling or final judgment to not appealable. Likewise, certiorari will not lie against a ruling implementing a final judgment. *Markwei v. Amine et al.*[1934] LRSC 22; , 4 LLR 155 (1934), *Vamply of Liberia, Inc. v. Kandakai*, 22 LLR 252 (1973). Because we are in complete agreement with the holding of this Court on the point, which is in conformity with the statute in vogue, we have decided to quote the two paragraphs settling this issue, word for word.

Mr. Justice Henriès speaking for the Court in the case *Vamply of Liberia, Inc. v. Kandakai*, *supra*, said on pages 251 and 252:

announced an appeal therefrom. The difference between an interlocutory and a final judgment is clear. According to authority, 'as a general rule, the fact of the judgment is the test to finality. . . . The fact that other proceedings of the court may be necessary to carry into effect the rights of the parties, or that other matters may be reserved for consideration, the decision of which one way or another cannot have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily prevent the decree from being considered final, unless there is some further judicial action contemplated by the court.' 2 AM. JUR., Appeal & Error, § 24. This Court has also held that 'a final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits, or after trial by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties.= 23 CYC, of Law & Proc., Judgments, at 672 (1906); Halaby v. Farhart, 7 LLR 124, 125 (1940).

If, for the sake of argument, it could be assumed that Judge Dennis' ruling was interlocutory, how could this Court review it by certiorari when there is no application for such a review? Likewise, if Judge Kandakai's ruling from which Vamply announced an appeal is assumed to be interlocutory, how could we review it upon a regular appeal before final judgment? It is our opinion that just as one cannot appeal from a ruling implementing a final judgment, Hunter v. Hunter, decided April 26, 1973, so can one not seek certiorari from a ruling implementing a final judgment, Markwei v. Amine, 4LLR 155 (1934) or from a ruling on issues of law, which is the ruling of Judge Dennis that Judge Kandakai was enforcing. Raymond Concrete Pile Co. v. Perry, 13LLR 522 (1960) . . . ."

In our opinion, the only issue pertinent to the determination of this case is whether or not certiorari will lie against a ruling to enforce the final judgment which we have decided. We shall therefore not bother with passing on the other issues which we feel do not tend to either establish the granting or denial of the writ of certiorari, since we cannot pass on the other issues until the case is properly before us.

*Petition denied.*