CASES ADJUDGED

IN THE

SUPREME COURT OF TH E REPUBLIC OF LIBERIA

AT

# MARCH TERM, 1963.

MAH NAHYAHDA, Appellant, r. EDWARD CARTER, EMMA COOPER, and Judge JOSEPH P.

FINDLEY of the Circuit Court of the Sixth Judicial

Circuit, Montserrado County, Appellees.

APPEAL FROM ORDER IN CHAMBERS ON APPLICATION FOR CERTIORARI TO THE CIRCUIT CO URT OF TH E SIXTH J UDICIAL CIRCUIT,

MO l"fTSER RADO COUNTY.

Argued April 23, 1963. Decided May 9, 1963.

1. Certiorari will not lie to review a determination of a trial court on evidence of ownership submitted by a non-party in a replevin action.
2. During recess of the Supreme Court, the Justice presiding in Chambers may hear and dispose of applications for remedial or extraordinary writs, subject to review by the Court en tactic.

In a replevin action in the court below, appellant was plaintiff; appellee Carter was defendant; and appellee Findley was judge. Appellee Cooper, a non-party to the action, submitted evidence of ownership of the replevied property. Appellant applied to the Justice presiding in Chambers for a writ of certiorari. The application was denied in an order from which appellee appealed to the Court en 6nnc. The *order* was *affrmed.*

*A.* Gather itcdnrdion for appellant. *Richard Diy gs*

for appellee.

MR. JUSTICE \RDSWORTH delivered the opinion of

the Court.

This petition for certiorari is appealed from a ruling of the Justice presiding in Chambers, and grows out of a case of replevin filed in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Emma Cooper, one of the appellees before this Court, was not a party to the action of replevin in the court below, but filed an affidavit of ownership of two vehicles which had been seized under the writ of replevin. Besides alleging own- ership, the affidavit listed serial numbers and license plates to identify the vehicles as those which the deponent had purchased from importers in Monrovia. For the benefit of this opinion we quote the said affidavit here- under:

“Before me, a duly qualified justice of the peace for and in Montserrado County, at my office in the City of Monrovia, personally appeared Emma A. Cooper, who, being sworn, deposes and says:

“That the Ope1 Caravan station wagon, in use as a taxicab, with the following description :

Color: Hawaii blue

Engine No. is 73 Serial No. i 4• ' \*94 License plate No. 46

and the Ford F-z$o pick-up described as follows: Model: 19 61

Color: Green

Engine **No. F-z$-JE** 1 3 'i Serial No. **F-2$-J** ' 3'i

G.V. 3

Horsepower of vehicle: '39 Tonnage of vehicle: @ License plate No. : 27\*'i

which were, on Saturday May s. '9 \*2, seized from Edward Carter, defendant in an action of replevin

now pending before this court, are deponent’s personal property (see attached documents) ; that the said Opel Caravan station wagon and Ford pick-up were given to the said Edward Carter, the above-named defendant to operate for the benefit of deponent, and not as the private personal property of the said Edward Carter ; and that all and singular allegations of f acts herein m ade and contained are true both in substance and in f act to the best of her knowledge. “Sworn and subscribed to before me in the City of

Monrovia, this 7th day of M ay, i 962.

[Sgd.) “RAYMOND HoccARD,

*Justice o f th e Peace, Mo ntserrado Clo unt y.*

[ Sgd. j “EMMA A. COOPER,

*Own er o f said ze hicles,* deponent.”

Still further to prove her ownership of the vehicles, Mrs. Cooper made profert with her affid avit the debit note upon which she took delivery of one of the vehicles from the importing firm, the Liberia Trading Corpora- tion. The description and serial numbers of this vehicle, as listed on the debit note—an Opel Caravan station wagon, color H awai i bl ue-are thesame as those listed on the affidavit. So there can be no doubt that this particular vehicle was imported by the Liberia Trading Corporation and sold to Mrs. Emma Cooper. Although the other vehicle—a Ford F-z o pick-up—was not identified by similar documentary evidence, Mrs. Cooper testified as to her ownership of both vehicles, and presented docu- ments in court to prove both purchases during the hearing held on the affid avit. Here is a part of her testimony: “O. You have filed an affidavit of ownership for cer- tain property here before this court. You will

give the court all f acts and circumstances in con- nection with this matter and in support of your affidavit 7

"A. I bought the bus from L.T.C. The Opel car and

*“a.*

“A.

the pick-up I bought from Firestone with my own money, and here are the papers connected with this purchase.

We pass back to you these documents marked A- I, A-z and A-4. Please look at them and say, if you know, whose signatures appear on docu- ments A- I and A-z, and whose initial on A-4? On one is the signature of the **L.T.C.** garage manager. Document marked A-4 carries the signature of the Firestone garage manager ; and the other is a chattel mortgage signed by myself and the **L.T.C.** garage manager.”

In addition to this testimony of Mrs. Cooper, the garage managers of the two importing firms testified that their companies had sold her the two vehicles in question. Thus, beyond any possibility of doubt, it was established that the two vehicles replevied from Mr. Carter were not his, but were the property of the affiant. Upon this evi- dence, the trial court delivered the vehicles to Mrs. Cooper ; and the appellant then petitioned for certiorari. Filed with the plaintiff’s complaint in replevin is an affidavit wherein description of the vehicles sought to be replevied is set forth. In order to clarif y the question of the identity of the two vehicles claimed by Mrs. Cooper,

we quote the body of said affidavit hereunder:

“Mah Nahyahda, being duly sworn, deposes and says:

“i. That she is the plaintiff in the above-entitled cause, and that she is the owner of the following described properties, to wit:

“One half-ton Ford pick-up, green color, license plate No. T. 2y6 value $yoo.

“One Opel van, two doors, gray color marked: Life is the best’, license plate No. T 46. Value $z,2y$.

2. That she is lawfully entitled to the possession of said properties, as named above, by virtue of her





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ownership ; that she, being mother-in-law of the defendant at the time, advanced defendant the sum of $i, oo to purchase and operate the first car so as to help defendant and her daughter. Defendant operated the car, and later sold it, and from the proceeds bought the above- described properties. When defendant and plaintiff’s daughter were divorced, plaintiff ap- plied for the return of her properties, but de- fendant refused to return them to her.

That the said properties are wrongfully de- tained by the defendant, and that the alleged cause of the detention is that, after defendant and plaintiff’s daughter were divorced, defend- ant claimed said properties and refused to surrender them to plaintiff, the lawful owner. That said properties have not been taken for any taz, assessment or fine pursuant to any statute, or seized under a writ of attachment or a writ or execution.

That the actual value of the said properties is

the sum of $•.97s ”

Thus, we have a complete picture of how the vehicles came to be claimed by M rs. Cooper, upon her afhdavit of ownership, after the writ of replevin had taken them from the custody of Mr. Carter, who was Mrs. Cooper’s driver.

Mr. Justice Harris, presiding in Chambers, heard argu- ments on the petition for certiorari filed by the present appellant, and also on the returns filed by the present respondents; and on August i6, '9 ^• , gave ruling in said matter, relevant portion of which ruling, we quote here- under:

“I am of the opinion that, since Judge Findley was the judge who ordered the issuance of the writ of replevin during the term wherein he was assigned to preside over the circuit court, and it was served and

returned, and the affidavit of ownership was filed dur- ing the very term when Judge Findley was in jurisdic- tion, and all parties had due and timely notice (otherwise petitioner, plaintiff in the court below, would not have had a chance to resist the affidavit) , Judge Findley did not act illegally, because he did not try the main action filed and venued in the June, 1962, term of the court. He was in jurisdiction of

that court to which application was made for speedy

justice, and hence acted ; for justice delayed is justice denied. Moreover, hearing and disposition of the affidavit of ownership does not affect the final deter- mination of the replevin case. If the property seized under the writ of replevin was proved to be not that of the plaintiff in the court below, which was the case from the records certified to this court, or the said property could not be found to be replevied, then and in that case, the said action, in keeping with law, must be turned into an action of damages. I am of the opinion, also, that the interest of petitioner has not been prejudiced by the entertaining of the affidavit of ownership.

“It is admitted that the procedure adopted by the affiant, Emma Cooper, for intervention in the suit, that is to say by filing an affidavit of ownership instead of a motion to intervene, is not in strict conformity with intervention procedure. Yet all parties concerned had notice and did appear, and affiant proved her ownership conclusively ; but the plaintiff, below, now petitioner, when called upon to produce evidence in her favor, made announcement through counsel, in substance, that she did not know the whereabouts of his client; that she was sent to him by Senator Potter ; that, after the adjournment of the case, he got in touch with Senator Potter, who Iaithfully promised to send his client to him on that day; but unfortunately he had not seen her.

“We shall now proceed to review the returns of the respondents so as to ascertain whether the grounds therein laid are sufficient to deny the writ of certiorari or not. As to Count i of the returns, the contention raised therein to the effect that, since the petition is addressed to the full bench, it cannot be tried by a Justice sitting in Chambers, because of want of juris- diction, is a I ar-fetched issue of the remotest kind ; for the law has undoubtedly given the Justice presiding in chambers the jurisdiction to try and dispose of cases in chambers, but directs that during the sitting of the Court *en banc,* the Court may issue or order the issu- ance of remedial or extraordinary writs, which, during the recess of the Court, the Justice presiding in cham- bers may try and dispose of, subject to appeal to the full bench. Count I of the returns is therefore not sustained.

“Counts 2, 3 and 4 of the returns are sustained be-

cause the Court finds them sound in law; and hence

the writ of certiorari prayed for is denied, and the petition dismissed with costs against the petitioner ; and it is so ordered. The clerk of this Court is ordered to send a mandate to the court below inform- ing it of this ruling.”

Because we are in agreement with the position taken by the Justice presiding in Chambers in the above-quoted ruling, we have affirmed the same. And it is hereby so ordered.

*A ffrm ed.*