

TOM N. BESTMAN, Chairman of the Board of
Trustees of the BASSA BROTHERHOOD I & B
SOCIETY of Monrovia, Appellant, *v.* HON. JOSEPH
P. FINDLEY, Circuit Judge, Sixth Judicial Circuit,
and LUCY GIBSON, Appellees.

APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS DENYING
A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 15, 1968. Decided June 14, 1968.

1. A petition for a writ of certiorari alleging irregularities in the conduct of a case by a judge, should be based upon a record containing the facts to substantiate the allegation, and not merely upon observations and recollection of the petitioner.
2. Judges have discretionary power in injunction proceedings to dissolve a temporary injunction on application, or to condition such dissolution, pending a final hearing, on the posting of a bond by the applicant, indemnifying plaintiff for any damages he may sustain as a result of such dissolution.

Appellant applied for a writ of certiorari from the Justice in chambers, after alleging that in the course of an application by the defendant for a dissolution of a temporary injunction obtained by the plaintiff, the judge unreasonably and arbitrarily dissolved the injunction pending its final determination, upon an indemnification bond being given. An appeal from the ruling of the Justice denying the writ was taken and the *ruling* was *affirmed*.

Thomas G. Collins for appellant. *J. Dossen Richards* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the court.

This case emanates from the chambers of the Justice presiding who heard and determined the matter in favor

of appellees-respondents. The petitioner, disputing the ruling of the Justice, noted exceptions and prayed an appeal to the full bench for review of the said matter, which was granted.

The petition contains five counts, of which we shall set forth two and three:

"2. That pending the hearing of said case, as aforesaid, for some reasons unknown to the petitioner, the respondent judge, while engaged in a certain ejectment case then on trial, and seemingly being angered by some insolent conduct of counsel in said case, suddenly yelled out in open court: 'You, woman with the glasses on,' meaning the defendant, 'go and build your house on the community land, your bond will be arranged later.'

"Upon this *sua sponte* order of the court, the said defendant immediately resumed her building construction work on plaintiffs' property, with defiance and challenge to them up to the filing of this application.

"3. That since the resumption of the building construction work, petitioner's counsel has repeatedly informed the respondent-judge of the abrupt violation of the injunction order, but to no avail, in that, no record was made of the *sua sponte* order nor were the petitioner and other parties concerned ever cited to appear or have their day in court before making said ruling."

Countering, co-respondent filed a return, numbering nine counts, of which we shall set forth the following four:

"2. That as to count two of the petition, same is false and deliberately calculated to mislead this Court. In keeping with the provision of the statutes, a regular application for the modification of injunction was made by the co-respondent and opposed by the petitioner in these proceedings. Although the application

was made on the 24th day of July, 1967, the resistance thereto was not filed until the 7th of August, 1967, and it was not until the 8th day of August, that the judge, in the sound and judicious exercise of his discretion, granted the application of the petitioner, defendant in the injunction suit, and ordered her to file an indemnity bond, which she did, and said bond was approved on the 8th day of August, 1967, so that the allegations contained in count two of the petition that the respondent judge gave a '*sua sponte* order' is a fabrication. Co-respondent respectfully requests this Court to take judicial notice of the records certified and transmitted by the clerk of the trial court in the injunction suit, with special reference to the minutes of the court for the 34th day session, Tuesday, August 8, 1967.

"4. And also because co-respondent says, that count three of the petition is a manifestation of petitioner's lack of the correct understanding and proper application of the law controlling suits of injunction, because the judge may, either by motion of the defendant or upon his own initiative, dissolve an injunction, more especially when he has before him the petition, a verified answer, and motion to dissolve, and the judge is not legally obliged to hear evidence when in his discretion the petition has no merits.

"6. And also because co-respondent submits that certiorari does not lie to review the exercise of the discretion of a judge, especially when he has acted upon the authority of law, as the respondent judge did in this case, unless there is a clear showing in the petition of an arbitrary abuse of that discretion, which does not appear in the petition, or any suggestion thereof made therein.

"7. And co-respondent further submits that certiorari cannot lie in this case because there have been

no errors committed by the respondent judge, nor has there been any allegation of any act of his which is materially prejudicial to the rights of the petitioner."

It is regrettable to observe that there is no showing by petitioner that the trial judge did give the order to the defendant in the manner described in count two of the petition, as there is no record from the trial court in the form of a clerk's certificate or minutes of the court to support petitioner's allegation to the effect: "The respondent judge while engaged in a certain ejectment case then on trial, and seemingly being angered by some insolent conduct of counsel in said case, suddenly yelled out in open court: 'You, woman with the glasses on,' meaning defendant, 'go and build your house on the community land, your bond will be arranged later.'"

"Certiorari is a special proceeding to review and correct the proceedings of any administrative board or agency or of any court of record other than the Supreme Court. . . ." Civil Procedure Law, 1956 Code 6:1200.

It is obvious that a petition for a writ of certiorari alleging irregularities in the conduct of any case by a trial judge should be based upon a record containing the facts to substantiate the allegations of the petitioner. This does not obtain in this case; consequently, the petition in this regard is unmeritorious. Therefore, count two of the petition is hereby not sustained.

With respect to count three of the petition, we gather that petitioner intends to convey that the co-respondent, Lucy Gibson, was not legally authorized to resume work on her building construction. In checking the record in this case we find a document entitled, exhibit "A," purporting to be in opposition to an application for modification of the injunction, signed by the Barclay law firm of counsel for plaintiff-appellant. We have found a certified document, signed by John B. P. Morris, clerk of the Circuit Court, Montserrado County, which reveals that

on August 8, 1967, the trial court made the following ruling:

"The Court: This application has been filed since the 24th day of July, 1967, and defendant has been coming from time to time for relief, without avail. The application is granted and the resistance thereto overruled, pending final determination and upon tendering a bond."

It is crystal clear that this document, emanating from the trial court, controverts the allegations in count three.

In regard to the court's exercising discretion in modifying an injunction, without first taking evidence, the following is applicable:

"Upon reasonable notice to the plaintiff, the defendant may file a motion to dissolve or modify the writ; and the court shall hear the motion as expeditiously as the ends of justice permit. The court may dissolve the writ outright at such hearing or may condition dissolution of the writ pending final hearing of the issues on the giving of a bond by the defendant for any damage caused the plaintiff by the defendant's actions after dissolution of the writ if on final hearing a permanent injunction is granted; . . ." Civil Procedure Law, 1956 Code 6:1084 (in part).

We gather from the foregoing that our law makers in injunction proceedings impliedly granted judges discretionary powers to dissolve outright the writ, or condition dissolution thereof on the defendant's giving bond to indemnify the plaintiff for any damage he may sustain, pending final hearing of the issues.

It would seem unreasonable to take evidence before application for modification of the injunction may be heard and disposed of, especially so in view of the statute quoted which includes the requirement of a bond to be given by the defendant. It is evident that the trial judge did not err in granting co-respondent Lucy Gibson's application for modification of the injunction.

Therefore, in view of the foregoing, it is our considered opinion that the petition is unmeritorious, and the ruling of the Justice in these proceedings is hereby affirmed, with costs against appellant. And it is hereby so ordered.

Affirmed.