

REBECCA JOHNSON, Petitioner, v.
MARY MORRIS, et al., Respondents.

PETITION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT,
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 23, 1974. Decided June 14, 1974.

1. When not necessary to a decision in a case before it, the Supreme Court will refrain from pursuing issues therein which could come before the Court for appellate review in a related case pending in a lower court.
2. The petition for a writ of prohibition must be verified by the petitioner; verification thereof by counsel is insufficient.

In April, 1971, the petitioner in these proceedings brought a suit in equity against Mary Morris, a respondent herein, and others, for cancellation of two deeds to real property she alleged were fraudulent and to remove a cloud on title. She prevailed in the lower court, and an appeal was taken from the judgment. However, the appeal before the Supreme Court was dismissed without prejudice, by reason of a defective appeal bond. Thereafter, Mary Morris, one of the appellants, petitioned the Supreme Court for reargument but she subsequently moved to withdraw her petition and the Supreme Court thereupon dismissed the proceedings, instructing the lower court to cancel the deeds in accordance with its judgment. Subsequently, the aforesaid Mary Morris instituted an action in equity against the petitioner in these proceedings to quiet title and also moved for an injunction, the property involved therein being the same property covered by the cancelled deeds.

On December 7, 1972, Rebecca Johnson, the petitioner herein, applied to the Supreme Court for a writ of prohibition, requesting the Court to issue an order prohibiting the trial court from entertaining the pending suit in equity in which she was the defendant, alleging primarily

that all issues regarding the title to the property involved had been adjudicated by cancellation of the deeds.

For the reason that the petition had not been verified by the petitioner herself, as required in prohibition proceedings, but had been verified by counsel, the petition was *dismissed* by the Supreme Court, and the observation made that no further comment would be made in the matter before it, by virtue of the pending suit in equity which could come before the Court for appellate review.

Nete-Sie Brownell for petitioner. *Moses K. Yangbe* for respondents.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

On December 7, 1972, Rebecca Johnson, hereinafter referred to as the petitioner, filed in this Court a petition for a writ of prohibition against Judge Alfred B. Flomo, Special Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and Mary Morris. The petition asked this Court to issue an order prohibiting the trial court from entertaining a bill in equity filed by respondent Mary Morris against the petitioner to remove a cloud on title.

According to the record on April 5, 1971, the petitioner brought suit against Weah Morris, Gueh Morris, and Mary Gueh Morris, the last named being the respondent herein, seeking the cancellation of two deeds which she alleged were fraudulent, and to remove a cloud on title. After trial, judgment was rendered for the petitioner. Thereupon, an appeal was prayed for and granted. At the call of the case before this Court, however, the appellee filed a motion for dismissal of the appeal on the ground that the appeal bond was defective. The motion was granted and the appeal dismissed, without prejudice to any of the parties.

Thereafter Mary Morris petitioned this Court for re-argument, which was resisted by the appellant. When the case came up on the docket, however, appellee withdrew her petition, which resulted in the dismissal of the proceedings and a mandate to the trial court to enforce its judgment. The trial court, in conformity with the mandate of the Supreme Court, cancelled the deeds. Subsequent to the cancellation of the deeds, Mary Gueh Morris filed a bill in equity against the petitioner herein to quiet title and also made a motion for a writ of injunction, both actions involving the same property covered by the deeds which had been cancelled.

It is the contention of the petitioner in this proceeding that the appeal taken in the cancellation suit was dismissed by the Supreme Court on the basis of a defective appeal bond, and the respondent had no right, therefore, to reinstitute any action for the recovery of the same property when the deeds were cancelled in conformity with the judgment of the Supreme Court. It is also the contention of the petitioner that although the Supreme Court, in dismissing the appeal, said that it was done without prejudice to the parties, it did not give the respondent the right to institute another action over the same subject matter and rely in such action on the deeds which had been cancelled.

In the course of respondent's return, it is contended and rightly so, that the petition presented to this Court is defective, in that petitioner's counsel verified it and the petitioner herself had not, though required to by our Civil Procedure Law.

"The verification [of a written pleading] shall be made by: (a) the party serving the pleading, or, if there are two or more parties united in interest and pleading together by at least one of them; or (b) by the attorney of such party; provided, however, that the complaint in an action to secure an injunction or

in a prohibition proceeding shall in every case be verified by the party himself." Rev. Code 1:9.4(2).

An examination of the affidavit attached to the petition shows it to be signed by petitioner's attorney rather than by petitioner herself as required by statute. Petitioner's counsel contends, however, that in preparing the affidavit he did not consult the Revised Code but rather the 1956 Code, under which he claims he is permitted to sign as counsel for the petitioner. We find this contention to be baseless, for the repealed Civil Procedure Law provides that "An application for a writ of prohibition shall be made in writing, verified by the petitioner, . . ." 1956 Code 6:1221. Both statutes impose the obligation upon the petitioner alone. Thus, petitioner's counsel could not and should not have signed the affidavit, for by so doing he rendered the petition defective. Presented with such fact, we have no alternative and must dismiss the petition.

But notwithstanding the dismissal of the petition we feel we ought to make a few comments in passing as regards our opinion in *Morris v. Johnson* above referred to. In that case we mentioned that our judgment was without prejudice to any of the parties. Hence, on second thought, we have decided to refrain from further comment on the merits of the petition for prohibition. It is most probable that the losing party in the case now pending in the court below will eventually appeal to this Court, at which time this Court might be required to pursue all issues in the case.

In view of the defective verification of the petition as aforesaid, the alternative writ of prohibition is quashed and the petition dismissed, in consequence of which we hereby deny the issuance of the peremptory writ with costs against the petitioner. It is so ordered.

Petition dismissed.