

MARY KING, Petitioner, v. CHARLES D. B.
KING, et al., Respondents.

PETITION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT,
EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Decided May 24, 1974.

1. An application for a writ of prohibition must be duly verified by the party himself and not by counsel.
2. Statutory requirements related to applications for remedial writs should be strictly observed.

Petitioner sought a writ of prohibition to postpone the matrimonial proceedings for which she had retained counsel. Counsel was otherwise engaged and could not proceed on the date steadfastly adhered to by the respondent judge. Petitioner also alleged her physical illness which would prevent presentation of her testimony.

All issues presented to the Justice were once again subordinated unwillingly to the procedural issues raised by respondents, in that the application for a writ of prohibition must be duly verified by the party seeking the relief, with which the Justice felt compelled to agree. The petition was *denied*.

HENRIES, J., presiding in chambers.

These proceedings evolved from a petition for alimony *pendente lite* and suit money filed by the petitioner in the Eighth Judicial Circuit Court, Nimba County. The petition is relevant and precise and, therefore, is set forth in its entirety.

"1. That there are pending in the Circuit Court of the Eighth Judicial Circuit, Nimba County, an action of divorce filed against her by her husband, the co-

respondent in these proceedings, and a petition for alimony pendente lite and suit money instituted by her.

"2. That these cases were assigned for trial but because of my present engagement in the representation of cases in the chambers of Your Honor it has not been nor is it still possible for me to attend upon the trial of these cases in the Circuit Court in Nimba. In view whereof, I wrote the judge asking for a postponement of these cases until I shall have completed the cases which I am handling before the Supreme Court; but the respondent judge seems intent on trying the cases under any circumstances and has again assigned the cases for Wednesday morning at 9:00 stating that if I and my client are not present he shall proceed with the trial of the case by default.

"3. Your petitioner further submits that she is the defendant in the divorce action and the petitioner in the alimony suit and, therefore, is a material witness in these cases. Because of ill health which renders it inconvenient to attend the trial she filed a motion for continuance supported by a medical certificate which the respondent judge arbitrarily denied. Petitioner respectfully submits that should the judge proceed with the trial of these cases it would be prejudicial to her rights and interest and a denial of due process. In controverting these allegations, the respondent filed a four-count return, but we shall quote only the first count since it raises an issue which must be determined before consideration can be given to the other issues.

"1. Respondents say that the writ should be quashed, and these prohibition proceedings dismissed because the affidavit accompanying . . . the petition is seriously defective and incurably so because although the law governing prohibition provides that the petition shall be verified by the petitioner herself and not by her counsel, yet, Counsellor J. Dosse

Richards, petitioner's counsel, has elected to sign said affidavit."

We have concluded that this contention by respondents is correct in that the petition is verified by counsel, but let us see whether it affects the petitioner.

Our Civil Procedure Law applies with respect to verification in prohibition proceedings.

"Person required to verify. The verification 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).

In addition thereto we find several opinions of this Court which hold that an application for a writ of prohibition must be duly verified, and cannot be granted if not verified. *Kanawaty v. King*, 14 LLR 241 (1960).

This Court has also held that the statutory requirements governing remedial writs should be strictly followed. *Goodridge v. Kennedy*, 17 LLR 584 (1966). Also see *Montgomery v. Kandakai*, decided May 3, 1974.

Since the petition is verified by counsel and not the party herself, we are precluded from going into the merits of the petition, a situation which we regret. However, in consonance with the foregoing we are left with no other alternative but to quash the alternative writ, with costs against the petitioner. The Clerk of this Court is ordered to send a mandate to the court below ordering it to resume jurisdiction over this case and proceed to determine same. It is so ordered.

Petition denied.