

RULINGS IN CHAMBERS

UNION NATIONAL BANK, INC., Petitioner, *v.*
HON. EDWIN G. HODGE, Judge of the Debt
Court, Maryland County, and ZAKI ABRAHAM,
Respondents.

PETITION FOR A WRIT OF CERTIORARI.

Decided July 13, 1971.

1. Certiorari is not the remedy for a party seeking relief from a judgment rendered in its absence, for a writ of error is applicable in such cases.
2. As prohibition is the form of relief for allegations of arbitrary conduct of a trial judge.
3. Certiorari applies only to proceedings not finally disposed of and not to the instant case, where a final judgment was entered and costs therein imposed.
4. Costs are to be borne by the losing party.
5. Upon a mandate being sent to the lower court informing it an appeal has been stricken from the docket of the Supreme Court, by necessary implication the terms of the lower court's judgment are to be enforced; herein, where the losing party had attached goods, the lower court rightly ordered their release upon receipt of the mandate from the Supreme Court.

The plaintiff's appeal in an action of debt by attachment was withdrawn by its counsel, and the judgment of the Supreme Court granting such application ordered the appeal stricken from its docket and a mandate to such effect to be sent to the lower court. Upon receipt of the mandate the Debt Court ordered the goods attached to be released and the plaintiff in the action petitioned for a writ of certiorari, contending the lower court had erred in releasing the goods in the absence of counsel, because the judgment of the Supreme Court granting the application to withdraw the appeal did not specify

what was to be done with the goods attached in the action decided against the plaintiff. Petitioner also contended that the lower court acted arbitrarily and wrongly assessed costs in enforcing the judgment as ordered by the Supreme Court. The *petition* was *denied*.

Appearances not indicated.

PIERRE, C. J., presiding in chambers.

The petition for certiorari in these proceedings has stated several things, among them, that a ruling was made against the petitioners in the Debt Court in his absence, and also in the absence of his lawyer. It is contended that at this hearing a mandate of the Supreme Court striking petitioner's appeal from the Supreme Court docket in an action of debt by attachment was read and enforced.

Count three of the petition states that there was no mandate from the Supreme Court commanding the respondent judge to take any action in the matter; it just notified him that the case had been stricken from the docket of the Supreme Court. The petition further states that in the circumstances the judge should not have released the goods held on attachment in the debt case before him, from which the appeal to the Supreme Court had been dismissed. Perhaps it might clarify the situation if we read the directions in the Supreme Court's judgment referred to in the mandate sent to the Debt Court in Cape Palmas.

“. . . the application of the appellant's counsel [to withdraw the appeal] is, therefore, granted and the case ordered stricken from the docket with costs against appellant. And the Clerk of this Court is hereby instructed to send a mandate to the court below informing it of this judgment.” [Four of the five justices signed the judgment.]

At this point the goods which the Union Bank had seized on attachment were still held by the Debt Court, pending determination of the Bank's appeal. Therefore, there was nothing that could have been done in the face of the Supreme Court's judgment but to have (1) the trial court resume jurisdiction; and (2) enforce the judgment which the court had rendered against the Bank. Count three of the petition says that although the Supreme Court had dismissed the Bank's appeal, and although there was a judgment against the Bank pending in the Debt Court, because the judgment did not specifically say what should have been done in respect to the goods held under attachment, the Debt Court judge erred in releasing the goods which the Bank had attached in debt. I cannot see what else the trial judge could have done in the circumstance, and in the face of the Supreme Court's judgment.

The petition contends that carrying out of the mandate with respect to release of the goods held on attachment was done in its absence and in the absence of its lawyer. I have wondered if in such circumstances certiorari is the proper remedy. Usually error will lie in such cases.

The final portion of count three states that it is contended that the respondent judge proceeded by rule different from that which should be observed at all times. If this is true, could we grant relief in certiorari? As far as we have been able to find, prohibition is usually employed for redress in cases where the trial court proceeds by rule different from that which should obtain at all times.

Count four of the petition also denies the right of the Debt Court to assess costs, since it had no jurisdiction in the matter.

The position taken in count four is inconsistent, because it was the Bank that sued in the Debt Court, which they now claim had no jurisdiction over the \$700.00 sued for. It was also the Bank which voluntarily withdrew

its appeal in the Supreme Court, on the ground of want of jurisdiction in the Debt Court over the subject matter. Now, it is the same Bank that seeks to benefit by its own error in suing before the Debt Court which it now says had no jurisdiction. If it knew that the Debt Court had no jurisdiction over the subject of the suit, why did it sue before this court, and submit to its jurisdiction?

Again, this court questions the right of the judge to have assessed costs against the Bank, which was the losing party. It is elementary in our practice for the losing party to pay costs. Besides, the Supreme Court judgment had specifically ordered that costs should be assessed against the appellant Bank. And this Court has held in *Liberia Trading Corp. v. Abi-Jaoudi*, 14 LLR 42 (1960), that payment of costs is always by the losing party; and when costs are paid in a subordinate court without review by the appellate court of the ruling or judgment, the losing party hereby admits legal justification for the said ruling or judgment.

Petitioner's counsel admitted during the hearing that the costs assessed by the trial court had been paid, but that his client did not know any better, and had done so under pressure. The payment of costs and compliance with a ruling or judgment leaves nothing more to be done in respect to the subject case.

In count seven of the respondent's return it has been contended that certiorari would not lie to review the final judgment of the case of debt by attachment, which was withdrawn by the Bank and which has been concluded by mandate from the Supreme Court. The Supreme Court has held that the writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party. *Williams v. Clarke*, 2 LLR 130 (1913).

The Bank has brought another action of debt against Zaki Abraham, and this was brought before the Magis-

terial Court in Harper, and has been appealed to the Debt Court, where it is still pending. That action was brought without attachment and has nothing to do with the first case. As far as has been shown there is no irregularity as yet committed in the handling of that case. In view of the circumstances we have no alternative but to deny the issuance of the peremptory writ of certiorari. The Clerk is instructed to send a mandate to the Debt Court ordering the judge to resume jurisdiction over the case and conclude the trial, allowing any who choose to take an appeal. Costs are ruled against the petitioner.

Petition denied.