

ANNA C. SANCEA, headwife of CHARLES B. SANCEA, by and through her husband, Petitioner, v. ALDRED B. MALLOBE, Circuit Judge presiding over the August 1971 Term of the Seventh Judicial Circuit, Grand Gedeh County, and HARPER S. BAILEY, Respondents.

PETITION FOR WRIT OF CERTIORARI.

Decided May 18, 1972.

1. The filing of a bond in certiorari proceedings by the petitioner is not mandatory, but may be required in the discretion of the Justice presiding in chambers.
2. A Justice of the Peace is not precluded from simultaneously serving as a Registrar of Deeds and does not lose his legal office thereby.
3. Natural persons who are sureties to a bond need not be freeholders in the county where the action is venued, so long as they own land in the Republic.
4. Counsel certifying the legal soundness of a petition in certiorari need only be members of the bar, though they have not obtained an annual lawyer's license by payment of the fee.
5. Issues of law must be ruled upon by the court before the issues of fact are tried by the jury.

*Frank W. Smith* for petitioners. *Harper S. Bailey* for respondents.

HENRIES, J., presiding in chambers.

Petitioner alleged that an action of ejectment was filed against her by Harper S. Bailey during the August 1971 Term of the Seventh Judicial Circuit Court of Grand Gedeh County; that the respondent judge did not hold chamber sessions before the regular jury session and while judgment in a murder case was pending the respondent judge ordered the ejectment case called up for hearing on the issues of law; petitioners applied to court for postponement of this hearing until during the chamber session after the adjournment of the regular jury session, but

the application was denied and the case ruled to trial by jury without the court first hearing and deciding the issues of law raised in the pleading. It is against this ruling that petitioners are seeking a writ of certiorari.

The co-respondent first attacked the petition for certiorari by contending that the petition is defective because the sureties named in petitioner's bond are not real property owners in Grand Gedeh County; that a revenue certificate is not attached to the bond; that the bond is not approved; that the Justice of the Peace who signed the affidavit of sureties is no longer a Justice of the Peace because he is now Registrar of Deeds for the county; and that one of the lawyers who signed the certificate of counsel is not a practicing lawyer in the county because he does not have a lawyer's license for the year 1972. A review of the certified record shows that the petitioner's bond is not approved and is not accompanied by a revenue certificate, but the petitioner argued that the filing of a bond in certiorari proceedings is not mandatory, and, therefore, the filing of one is mere surplusage. He then cited the Civil Procedure Law, L. 1963-64, ch. III, § 1623 (3), which states that: "The petitioner shall pay all the accrued costs, and he *may* be required to give a bond, conditioned on paying the respondent such damages as he may sustain if the writ is dismissed [emphasis supplied]." Respondents have not been able to cite any authority to refute this contention. It is our opinion that the filing of a bond in these proceedings is not mandatory, and that the use of the word "may" makes such filing discretionary with the Justice presiding in chambers. Under the circumstances, the complaints against the bond can be of no avail.

With respect to the Justice of the Peace who signed the affidavit of sureties, the respondents have brought no evidence to show that he is not a Justice of the Peace. The fact that he is the Registrar of Deeds does not preclude him from being a Justice of the Peace, as it is not

uncommon in Liberia for a Justice of the Peace to be also employed in another capacity.

Where natural persons are sureties to a bond, the statute only requires that they be freeholders in the Republic of Liberia, not necessarily in the county where the action is venued. The relevant statute, Civil Procedure Law, L. 1963-64, ch. III, § 6302 (2), supports this observation.

“Lien on real property as security. A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property is located, or, if it is in the Hinterland, in the office of the clerk of the Circuit Court in the nearest county. Each bond shall be recorded therein by an entry showing the following: (a) The names of the sureties in alphabetical order; (b) The amount of the bond; (c) A description of the property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond; (d) The date of such recording; (e) The title of the action, proceeding or estate.”

As for the contention that one of the lawyers who signed the certificate of counsel is not a practicing attorney because he has not acquired his lawyer's license for 1972, this is untenable because according to section 1623(c), *supra*, all that is required is that there be “certification by two members of the bar that it is their opinion the contention of the petitioner is sound in law [emphasis supplied].” The respondents have not denied that the lawyer is a member of the county bar. Neither have respondents shown that membership in the bar is predicated upon acquisition of a license to practice.

Having disposed of the alleged defects in the petition, our attention must now be turned to the allegations in the petition which have not been denied. The ruling of the respondent judge for which the petitioner seeks the remedial writ of certiorari is set forth in its entirety.

"At the call of this case, defendant through his counsel requested court to postpone the disposition of law issues until the ten-day chamber session of court convened. This was resisted by the plaintiff who is representing himself.

"The case having been filed in the clerk's office since the 20th of May, 1970, which pleadings end on the 18th day of June, 1971.

"Even though the law states that law issue should be disposed of in chamber session, this is not binding for the Supreme Court has said that the judge should use his sound discretion in criminal as well as in civil cases. *Killix v. Republic*, 8 LLR 173 (1943); see also Circuit Court Rules as revised, that the utmost concern of a judge is to clear the trial docket. It is true that the jury session is not yet ended. But the judge cannot impanel another jury session at the present time where four days for the jury session remain. While sitting there may be a short case that comes to the attention of the jury.

"From the reading of the record in the given ejectment case and since an action of ejectment is composed of law and facts, this case is hereby ordered advanced on the trial docket to be heard on its merits."

It is elementary that at any trial all issues of law raised by the parties shall be disposed of before the questions of fact are tried by the jury. Circuit Court Rules as revised, Rule 7; *Nah v. Nagbe*, 16 LLR 89 (1964); *Payne v. Atim*, 17 LLR 578 (1966). Therefore, it was error for the respondent judge to rule the case to trial without first determining the issues of law.

In view of the foregoing, the petition is granted and

the trial court is directed to first hear and determine the issues of law raised in the pleadings before trying the questions of fact.

*Petition granted.*