

OPINIONS GIVEN BY INDIVIDUAL JUSTICES PRESIDING IN CHAMBERS BY ROTATION, UPON ASSIGNMENT OF HIS HONOR THE CHIEF JUSTICE.

CHAMBERS OF HIS HONOR THE CHIEF JUSTICE.

JAMES E. T. MARKWEI, Petitioner-in-Certiorari, v. MOHAMMED AMINE, GEORGE W. STUBBLEFIELD, Esq., Justice of the Peace, Montserrado County, their Honors EDWARD SUMMERVILLE and NETE SIE BROWNELL, Circuit Judges, Respondents-in-Certiorari.

PETITION FOR WRIT OF CERTIORARI.

Argued June 5, 1934. Decided June 8, 1934.

1. Under rule of court a writ of certiorari will not be granted in a case in which final judgment has been rendered in the lower court.
2. By statute (2 Rev. Stat. § 1388) a writ of certiorari will not be granted if the matter forming the ground of complaint was determined more than thirty days before the filing of the application for the writ.
3. Applications for extraordinary writs will be strictly construed as they are in derogation of the statute governing appeals.

The petitioner, plaintiff in the lower court, brought an action of trespass against the respondent Amine in the court of a justice of the peace of Montserrado County, the respondent Stubblefield. Judgment was rendered against the petitioner and he appealed to the Circuit Court of the First Judicial Circuit, Montserrado County. The judgment was affirmed in that Court, and this is a petition for a writ of certiorari to obtain a review before this Court. *Petition denied.*

*Anthony Barclay* and *E. W. Williams* for petitioner. *Momolu Dukuly* for respondent Amine. *Judge Brownell* and *George W. Stubblefield* each appeared in person.

Messrs. Anthony Barclay and E. W. Williams, counsellors at law for James E. T. Markwei, on the first day of June, 1934, forwarded to our chambers a petition praying that a writ of certiorari might issue ordering the Judge of the Circuit Court of the First Judicial Circuit to transmit for review the record in a case of trespass in which James E. T. Markwei was plaintiff, and Mohammed Amine defendant. Other parties named as respondents in certiorari were His Honor Nete Sie Brownell, Circuit Judge then presiding in said Circuit, His Honor Edward Summerville who, while presiding in said Circuit, had heard the case on appeal from George W. Stubblefield, the justice of the peace for Montserrado County who had originally heard and determined the cause.

After carefully considering the application I caused copies thereof to be served upon the parties above named, with an order to appear in my chambers at 3 p.m. on Tuesday June 5, to show cause why the writ should not issue.

Accordingly, on the date and at the hour named, all of said parties, with the exception of His Honor Edward Summerville who the Marshal returned was too far from Monrovia to be served with the notice before the return day, appeared in person, and Mohammed Amine by Mr. Momolu Dukuly, his attorney, and made representations the relevant portions of which will be dealt with hereunder.

His Honor Judge Brownell returned that he had had nothing to do with the merits of the cause; that when assigned to the duties of the Circuit, the case had been tried and determined against petitioner, and an execution ordered issued against him which, in due course, was returned before him, the Judge; that when the execution

was taken up, petitioner reported having paid the sheriff ten shillings thereon, which amount he found had been credited petitioner on the back of the execution. Unable otherwise to comply with the execution either by making payment or exhibiting property, he had ordered petitioner committed to prison until the execution should be satisfied, and the respondent, Amine, to make provision for his board in prison as is required by law to be done in civil cases. But, on being informed of the issuance of the order, the subject of these proceedings, he had released petitioner upon his giving a proper bond pending our disposition of the petition.

This return of Judge Brownell's was substantially confirmed by Mr. Markwei, the petitioner, in his statement before this Court.

The verified petition of petitioner accuses Mr. Stubblefield, the justice of the peace, of gross irregularities which he denied; but at the same time he neglected to file an answering affidavit so as to bring in proper form before this Court the points he sets up in his defense. However, as the case was eventually appealed to the Circuit Court, and it is to correct errors alleged to have been committed by His Honor Judge Summerville in the review of the actions of the justice of the peace that a writ of certiorari has been applied for, the alleged irregularities do not, at this stage, claim our attention to the same extent as they would have done had it been possible to appeal directly from his court to this, without the necessity of having had first to have them reviewed by a Circuit Judge. In view of this fact and other circumstances brought out on the hearing, we can only reiterate the view previously expressed at the hearing, that if the irregularities complained of really occurred, and petitioned has been damaged thereby, he would not appear to be barred of his rights by anything done in the Circuit Court to pursue his proper remedy by due course of law.

Coming now to the representations of the respondent

Amine, in so far as they are relevant to these proceedings, Mr. Dukuly contended that the writ cannot legally be issued because:

"The party desiring such writ of certiorari, or someone on his behalf, shall apply . . . within thirty days after the determination of the matter forming the ground of complaint, and such . . . Justice shall have power to issue such writ." 2 Rev. Stat. 246, § 1388.

As complementary to this citation, Mr. Dukuly was able to show that the final judgment in the case had been rendered by His Honor Judge Summerville on the 17th day of April, 1934, and that the application for the writ of certiorari had been filed only on the first day of June thereafter, which was far more than the thirty days prescribed by statute.

He then added another citation from Rule IV, subsection 4 of the Revised Rules of the Supreme Court, 1915, the relevant portion of which is:

"Where an action or proceeding is pending in any court or before a judge thereof, the Supreme Court, or any justice thereof in vacation, may grant a writ of certiorari to any party who by verified petition may complain that the decision or act of any trial judge is illegal, or is materially prejudicial to his rights. . . ."

It is clear that the law cited from the Revised Statutes and Rule of Court will at some future time have to be harmonized; but I have not yet been able to foresee any possible reconciliation of the two which would be favorable to the application of petitioner. Nevertheless, it may be useful to observe in passing the practical application which has been by this Court given to the provisions of law cited. Although a writ of certiorari has not been allowed to issue after a final judgment, but only while a cause was actually pending, yet it lay only to an order of the trial court which had some element of finality; as, for example, whenever the trial judge gave an order which, although interlocutory in character, necessitated

a compliance which appeared to be impossible or materially prejudicial to the rights of the party affected, but with which he must either comply or be liable to be attached for contempt; in all such cases a writ of certiorari would lie. *Peakeh v. Nimrod*, 2 L.L.R. 102, 1 Lib. Semi-Ann. Ser. 21 (1913).

The case, the subject of these proceedings, has been shown to be no longer pending but finally determined, which places it without the rule of this Court; and the final judgment was rendered more than thirty days before the filing of the application, which places it outside the statute.

Messrs. Barclay and Williams for petitioner contended that this Court has a wide discretion in matters of certiorari, and because of the irregularities they alleged were committed by Mr. Stubblefield, and the dispatch with which the case was disposed of by Judge Summerville in the absence of Mr. Barclay, the original attorney in the case for Markwei, the writ of certiorari should be granted so as to enable Mr. Barclay to correct, for his client, omissions alleged to have been made by Counsellor Taylor, who represented his said client during the hearing of the appeal in the Circuit Court. According to his representations he, Counsellor Anthony Barclay, was lawyer for Mr. Markwei when in the court of the justice of the peace, and, before the calling of the appeal in the Circuit Court, Counsellor Barclay left the jurisdiction for a vacation, having first made oral arrangements with His Honor Judge Aaron J. George to refrain from disposing of any case in which he was interested during his absence. Soon after his departure from Monrovia, Judge George died rather suddenly, and Judge Summerville was as unexpectedly assigned to carry on the chamber work in the First Judicial Circuit. No record of the arrangement between the deceased judge and absent counsel had been made, nor had the counsel even taken the precaution of filing in the office of the clerk a list of cases in which he was concerned; nor does

it appear that Mr. Markwei brought to the attention of the court any fact which would justify its awaiting the return of Counsellor Barclay. On the other hand he, petitioner, without demurrer, retained Counsellor Taylor. This newly retained counsel was granted an adjournment of seven days to attend a meeting of a fraternal organization, and on his return, and making an application for a further adjournment to obtain witnesses, the judge ruled that the first adjournment of seven days had been granted on condition that when again the case was called, all the parties would be ready to proceed, and hence denied the application. It appears, moreover, that after final judgment Mr. Taylor desired to remove the case to this Court by applying for a mandamus; his client, the present petitioner, disagreed because, in his opinion, that was not the correct remedy, and thus lawyer and client fell out, whereupon no appeal was taken, and a writ of execution was ordered issued in due course. Counsellor Barclay subsequently returned, and after some time initiated these proceedings. For these unfortunate incidents the Court cannot be held responsible.

The trend of the recent decisions of this Court has been to construe very strictly all applications for extraordinary writs, as they are in derogation of our statute of appeals. The case *Wodawodey v. Kartiehn*,\* decided at the April term, and *Jantzen v. Williams*,† also decided at our said April term, are the most recent examples. In the latter the Court held in essence that to obtain the remedial process of this Court it must appear that the appellant lost his right of statutory appeal without laches on his part.

Taking the citation made by Mr. Dukuly in opposition to the petition, together with the facts brought out at the hearing and the precedents above referred to, I am of opinion that the petition for the writ of certiorari should be denied with costs against petitioner; and it is so ordered.

*Petition denied.*

\* 4 L.L.R. 102, 1 Lib. New Ann. Ser. 105.

† 4 L.L.R. 110, 1 Lib. New Ann. Ser. 113.