VAMPLY OF LIBERIA, INC., Appellant, *v.* JAMES M. T. KANDAKAI, Assigned Circuit Judge, March 1972 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, NATIONAL LABOR AFFAIRS AGENCY OF THE REPUBLIC OF LIBERIA, and MAX BRANLY, Appellees.

APPEAL FROM RULING OF JUSTICE DENYING ISSUANCE OF WRIT OF CERTIORARI.

Argued July 2, 1973. Decided July 13, 1973.

1. Under the parol evidence, no oral evidence can be offered to contradict or vary the contents of a written document in the absence of fraud.
2. The National Labor Affairs Agency has statutory power to award damages for breach of employment contracts.
3. Its findings of fact are conclusive if supported by sufficient evidence in the record before it as a whole.
4. When a statute provides a remedy for a wrong or injury, its provisions must be strictly followed.
5. In matters over which a government agency has been expressly given original jurisdiction, a court is prohibited from exercising original jurisdiction.
6. Failure to seek remedial process from the Justice presiding in chambers will be deemed a waiver of objection to a trial court's jurisdictional irregularity.
7. A ruling which seeks to enforce a previous ruling without more, as in this case where a successor Circuit Court judge implemented the ruling of his predecessor, is not a reversal of the earlier ruling.
8. Certiorari will not lie when the writ is sought to review the final judgment of a court, as in the present case.
9. Moreover, a writ of certiorari will not be granted when the petitioner has been guilty of laches in seeking his remedy.
10. Nor will certiorari lie when an ordinary appeal has been abandoned without showing good cause.

Appellee alleged breach of an employment contract in a complaint he presented to the National Labor Affairs Agency, basing his claim on a letter of employment dated March 9, 1970. After a hearing before an officer, a ruling in favor of the employee was issued, directing the employer to pay the wages agreed on for the balance of

the employment period contained in the letter. An appeal was taken to another official of the Agency, who affirmed the decision. Again the employer company appealed, this time to the Deputy Director General of the Agency, and once again the decision was affirmed.

During the pendency of the matter before the Agency, the employer petitioned the Circuit Court for cancellation of a subsequent employment contract, alleging fraud. The contract was cancelled, but the Agency ruled it had no bearing on the matter before it, which was based on the aforesaid letter of employment.

The employer had excepted to the last decision of the Agency but failed to perfect its appeal within the thirty days allowed. The employee thereupon petitioned the Circuit Court for enforcement of the decision of the Agency. The Circuit Court judge ruled that prior to ordering enforcement of the decision, the signatures of at least two members of the Labor Review Board would be required. The employer excepted to the ruling. The term of the Circuit Court judge expired, and the employee applied to his successor for enforcement of the Agency's decision. The judge provided for enforcement of the decision at once upon obtaining the necessary two signatures of officials of the Agency, for the Labor Review Board's functions had in fact been virtually assumed by the Agency. Again the employer company excepted, but no appeal was actually taken from the two rulings in the Circuit Court.

Five months later, a petition for a writ of certiorari was filed by the company in chambers of a Justice, in which, in effect, it challenged the rulings of the Circuit Court judges. The petition was denied by the Justice and an appeal was taken therefrom to the full Court. The denial was *affirmed*.

Lawrence A. Morgan for appellant. *Toye C. Barnard*

and *The Henries Law Firm, Moses Yangbe* of counsel, for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

According to the record certified to this Court, co-respondent Max Branly, through a letter of employment dated March 9, 1970, signed by Clyde D. Jernigan, Executive Vice President and General Manager of Vamply of Liberia, Inc., was employed to work for Vamply for a period of two years at a salary of $1,000.00 per month, effective as of April 10, 1970. Mr. Branly's employment was terminated on August 10, 1970. In the meantime he received compensation for his services totaling $3,000.00 for the first three months he had worked for the company.

On August 17, 1970, Mr. Branly filed with the National Labor Affairs Agency a complaint of illegal dismissal against Vamply, asking for $21,000.00, relying on sections 1508(1) and 1511(17) of An Act to amend the Labor Practices Act with respect to employment in general, approved December 20, 1966:

> "Sec. 1508(1): No employer shall dismiss any employee with whom he is bound by a contract for a definite period before the end of the period unless it is shown that the employee has been guilty of a gross breach of duty or a total lack of capability to perform. Where this has not been proven, the dismissed employee shall be entitled to claim full remuneration for the unexpired portion of the contractual period."

Section 1511(17) empowers the Bureau of Labor to enforce the foregoing provision. It is necessary to note here that the Bureau of Labor was established as an autonomous government agency known as the National Labor Affairs Agency by an Act of the Legislature, approved March 21, 1967.

Hearings were commenced before J. Fannoh Sie, Chief, Labor Relations, in the National Labor Affairs Agency, after the parties were cited. He ruled on September 3, 1970, that the company had illegally dismissed Mr. Branly and should pay him $21,000.00, on September 11, 1970. The company appealed to Mr. Edwin L. Rogers, Director of Labor Standards, who in a decision dated November 19, 1970, affirmed Mr. Sie's ruling. The company appealed again to the Deputy Director General of the Agency, Mr. J. Lamax Cox, who, on March 25, 1971, also affirmed the ruling of Mr. Rogers and Mr. Sie. The company excepted to this ruling and announced an appeal, which appeal was never perfected.

During the pendency of the hearing of this matter before the National Labor Affairs Agency, that is to say on November 30, 1971, after both Mr. Sie and Mr. Rogers had given their rulings on this matter, the company allegedly filed in the Third Judicial Circuit Court, Sinoe County, a petition for cancellation of an employment contract dated April 10, 1970, allegedly fraudulently entered into between the company and Mr. Branly. The agreement was cancelled. It is necessary to mention here, however, that, according to the ruling of Mr. Sie of the National Labor Affairs Agency, the complaint before the Agency was based upon the letter of employment which was quoted in the ruling, and not the allegedly fraudulent agreement. Prior to his ruling, Director Cox requested the company on March 17, 1971, to present a certificate from the Third Judicial Circuit Court stating that a cancellation suit was pending. Whether this was done does not appear from the records.

Upon the company's failure to perfect its appeal taken from Director Cox's ruling within the statutory time of thirty days, as provided for in section 203 of An Act to provide for administration and enforcement of the law governing labor practices, Mr. Branly petitioned the Civil Law Court for the Sixth Judicial Circuit for en-

forcement of the decision of the National Labor Affairs Agency. The company raised several interesting issues, and Judge Dennis ruled upon them on November 3, 1971, concluding that under the aforesaid Act governing labor practices, a Labor Practices Review Board of three persons to review matters was required, of whom two constituted a quorum. In this case, he said, only one person had made the decisions.

It appears that Judge Dennis' term in the Sixth Judicial Circuit expired before he was able to send the necessary instructions to the National Labor Affairs Agency for implementation of his ruling. Thereupon, Mr. Branly applied to the court, presided over by Judge James M. T. Kandakai, to issue the necessary directives to the Ministry of Labor and Youth, formerly the National Labor Affairs Agency, for the required signatures, in keeping with Judge Dennis' ruling. Judge Kandakai granted the application in his ruling.

> "The application for an order of this court . . . to have the judgment signed in keeping with the ruling of Judge Dennis is hereby granted with the proviso that instead of sending the same judgment here for a separate and additional order for enforcement of the said judgment, it is hereby ordered enforced, after having been duly signed by the necessary quorum. And it is hereby so ordered."

To this ruling Vamply excepted and announced an appeal, which was granted. This ruling was made on May 31, 1972, yet Vamply failed to take any other steps for perfecting its appeal. Instead, on October 12, 1972, nearly five months after announcing an appeal from Judge Kandakai's ruling, Vamply filed a petition for a writ of certiorari, the substance of which is summarized:

> (1) that during the pendency of cancellation proceedings Mr. Branly sought to enforce the ruling of the National Labor Affairs Agency without the matter being heard by the Labor Practices Review Board;

(2) that not only did the National Labor Affairs Agency not have jurisdiction to award damages; but the contract on which Mr. Branly had based his claim was fictitious and had been cancelled, and therefore the basis of the award of $21,000 no longer existed, and no action could be brought to enforce the contract;

(3) that Judge Kandakai's ruling was illegal and prejudicial because it reversed the ruling of his colleague, Judge Dennis.

The petition was heard by Mr. Justice Azango, Justice in chambers, who dismissed the petition, ordered the alternative writ quashed, and instructed that the lower court send the ruling of the National Labor Affairs Agency to the Ministry of Labor and Youth for the necessary signatures. Petitioner Vamply excepted to this ruling and appealed to this Court sitting en banc.

We shall deal with the issues raised in the petition in the order in which they appear above.

(1) With respect to the issue of the matter not being heard by the Labor Practices Review Board before seeking enforcement of the ruling of the National Labor Affairs Agency, Justice Azango observed that "it is an obvious fact that the National Labor Affairs Agency has taken over most of the functions of the Labor Practices Review Board; hence, it has adhered strictly to the applicable provisions of law." This fact is substantiated by the Handbook of Labor Law of the Republic of Liberia, first edition, January, 1965, put out by the Bureau of Labor, Department of Commerce and Industry, which notes in a comment on page 43 that, "reference to Labor Practices Review Board is obsolete. Under the present administrative organization the Bureau supervises the inspectorate." Likewise on page 141 of the Labor Laws of Liberia, compiled and edited by the Law School of the University of Liberia, September 10, 1967, in a comment on section 4700(3), it is stated that "in place of Board

and Labor Practices Review Board (substitute) National Labor Affairs Agency Labor Relations Section, Labor Standards Division." It appears that the reason for such comment is that the Board had not been functioning because there had been no appointment of members to the Board for several years. Be that as it may, this issue would have come up in an ordinary appeal, if Vamply had perfected the appeal which it announced after excepting to the ruling of the National Labor Affairs Agency. It is not properly raised in these proceedings because it is not the ruling of Judge Kandakai, from which the petitioner applied for certiorari.

(2) As to the contention that the contract on which Mr. Branly allegedly based his claim is nonexistent because it had been cancelled, it is necessary to reiterate that the Labor Affairs Agency's decision is based upon the letter of employment from the former general manager of Vamply. There has been no showing that this instrument was fraudulent or that it was cancelled. Although the petitioner alleged that Mr. Branly was employed by a verbal agreement between him and the former general manager, under the parol evidence rule, in the absence of a showing of fraud, no oral evidence can be taken to explain, contradict, or alter the contents of a written document. Rev. Code 1:25.9; *Butcher's Association of Monrovia* v. *Turay,* 13 LLR 365 (1959).

The Justice in chambers, in ruling on this issue, cited the aforesaid section 203 of the 1961 Act governing labor practices. "The findings of the Board as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole." He also stated that this "rule would be applicable to the findings of the National Labor Affairs Agency as to the factual issues presented in this matter. In the circumstances I am of the opinion that the Agency's decision is supported by sufficient evidence, and more importantly, the records indicate

that the petitioner, Vamply, has not produced substantial evidence to support its claim that the contract of employment was fraudulently executed."

In addition, the contention raised in count 9 of Branly's returns, to the effect that the certificate of the clerk of court of the Third Judicial Circuit, which carries a twenty-five-cent stamp and which petitioner made profert of as exhibit "A" to show that the agreement had been cancelled, is of no legal value, must be sustained because of insufficient stamps, for a fifty-cent stamp must be affixed to a court certificate, 1956 Code 35:570; and section 573 thereof prohibits receiving into evidence documents not bearing the required stamps.

As to the issue of the National Labor Affairs Agency not having jurisdiction to award damages, it must be pointed out that this case involves illegal dismissal, over which this Agency does have jurisdiction in accordance with sections 1508(1) and 1511(17) of the Labor Practices Act quoted, *supra*. Also, where a statute provides a remedy for a wrong or injury, its provisions must be strictly followed. *Attia* v. *Summerville,* I LLR 215 (1888). Moreover, under the Judiciary Law the Circuit Court is prohibited from exercising original jurisdiction in matters over which a government agency has been expressly given original jurisdiction by constitutional or statutory provisions. 1956 Code 18:510. Furthermore, where a party to judicial proceedings admits by some act or conduct the jurisdiction of a court, he may not thereafter, simply because his interest has changed, deny the jurisdiction. *King* v. *Williams,* 2 LLR 523 (1925); *Gardner* v. *Neal,* 13 LLR 422 (1959). And failure to seek remedial process from the Justice presiding in chambers will be deemed a waiver of objection to a trial court's jurisdictional irregularity. *Sherman* v. *Clarke,* 16 LLR 242 (1965).

(3) As to the issue that Judge Kandakai's ruling is illegal and prejudicial because it reversed the ruling of

his colleague, Judge Dennis, the Justice presiding in chambers held that "both Judge Dennis and Judge Kandakai, acknowledging the limitations and inconclusiveness of the ruling of the Labor Affairs Agency sought to be enforced, recognized that the Agency has not satisfied the mandates of the statute governing this case, hence, [they] declared that the decision of the Board should be 'duly signed by a quorum of not less than two and thereafter be enforced.'" We concur with this ruling of the Justice, for it is clear that Judge Kandakai's ruling by its on wording was merely enforcing the ruling of Judge Dennis. A ruling which seeks to enforce a previous ruling without more is not a reversal of the earlier ruling, and hence cannot be considered as illegal or prejudicial. According to law writers, it is "a general principal that reviewing courts indulge presumptions very freely for the purpose of sustaining the actions of lower courts, and very sparingly for the purpose of overthrowing them. Generally speaking, presumptions unfavorable to the judgment and for the purpose of reversing it will not be indulged in. A record will not be interpreted to show error if it is susceptible of reasonable interpretation to the contrary but must be given such construction as will support the judgment if such construction can reasonably be made." 3 AM. JUR., *Appeal & Error,* § 923; *Hunter* v. *Hunter,* decided April 26, 1973.

Having traversed the issues raised in the petition, we now go to the crux of the proceedings, that is, whether certiorari will lie. But before going further we should like to observe that petitioner has not met fully the following procedural steps in applying for the writ of certiorari:

(1) The certificate of counsel filed by the petitioner pursuant to the requirements of the Civil Procedure Law, Rev. Code 1:16.23(1)(c), is of a general character for it makes no reference to the title of the case in litigation, and hence does not fully meet the requirement of our

Civil Procedure Law, Rev. Code 1:8.1(3), which provides that "Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the file number of the action if one has been assigned. In a complaint or a judgment the title of the action shall include the names of all the parties, but in all other papers it shall be sufficient to state the name of the first party on each side with an appropriate indication of any omissions."

(2) Contrary to the aforesaid section 16.23, paragraph 3 thereof, the petitioner has not paid all the accrued costs or given a bond to secure the respondent in the event he sustains damages if the writ is dismissed.

(3) As has been pointed out, the petition refers to rulings made by Judge John Dennis, but the petitioner did not seek certiorari to review those rulings. Instead it sought this remedial writ to review Judge Kandakai's ruling. If it were the petitioner's desire to have the prior ruling reviewed in these proceedings, it should have named Judge Dennis as a necessary co-respondent. It is the practice in this jurisdiction that in proceedings of this kind the tribunal whose rulings are being reviewed is a necessary respondent.

According to our Civil Procedure Law, "Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court." Rev. Code 1:16.21(1). This Court has also held that the main purpose of a writ of certiorari is to review the record and correct prejudicial errors of a lower court during the pendency of a case. *Williams* v. *Clarke,* 2 LLR 130 (1913); *Vandevoorde* v. *Morris,* 12 LLR 323 (1956).

Having stated the purpose of the writ of certiorari, we must now determine whether the ruling sought to be reviewed is interlocutory or final. It must be remembered

that when Mr. Branly, now co-respondent, petitioned the Circuit Court to enforce the decision of the National Labor Affairs Agency, Judge Dennis ruled that this decision could not be enforced unless it was signed by the necessary quorum of the Labor Practices Review Board. Petitioner Vamply excepted to this ruling. Judge Kandakai, in an effort to enforce the previous ruling, ordered the Agency's decision sent to the Ministry of Labor and Youth for the required signatures. Vamply announced an appeal from this ruling, never perfected the appeal, and later on applied for a writ of certiorari.

According to section 203 of the Labor Practices Act, *supra,* which deals specifically with appeals from orders of the Labor Practices Review Board, and enforcement of such orders, any respondent aggrieved by an order of the Board may appeal therefrom and the Board may obtain an order of the court for enforcement of its own order in a proceeding brought in the judicial circuit of the Circuit Court of the County in which the Board held its hearing in the case. Such proceedings are initiated by the filing of a petition together with a written transcript of the record of the Board's hearing. The findings of the Board as to the facts are conclusive if supported by sufficient evidence on the record considered as a whole. "The judgment and order of the Circuit Court shall be final, subject only to review by the Supreme Court." Section 203, *supra.*

It is clear from this statute that the facts being conclusive and the legal issues having been disposed of in favor of Mr. Branly, the ruling by Judge Dennis sending the decision to the Board for the necessary signatures was final. The mere act of Judge Kandakai in returning the decision to the Ministry for the signatures was in implementation of the prior ruling, and therefore it cannot be regarded as being interlocutory. Petitioner realized this and therefore announced an appeal therefrom. The difference between an interlocutory and a final judgment is

clear. According to authority "as a general rule, the fact of the judgment is the test to finality. . . . The fact that other proceedings of the court may be necessary to carry into effect the rights of the parties, or that other matters may be reserved for consideration, the decision of which one way or another cannot have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily prevent the decree from being considered final, unless there is some further judicial action contemplated by the Court." 2 AM. JUR., *Appeal & Error,* § 24. This Court has also held that " 'A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits, or after trial, by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties.' 23 CYC. of Law & Proc., *Judgments,* § 9, at 672 (1906)." *Halaby* v. *Farhart,* 7 LLR 124, 125 (1940).

If, for the sake of argument, it could be assumed that Judge Dennis' ruling was interlocutory, how could this Court review it by certiorari when there is no application for such a review? Likewise, if Judge Kandakai's ruling from which Vamply announced an appeal is assumed to be interlocutory, how could we review it upon a regular appeal before final judgment? It is our opinion that just as one cannot appeal from a ruling implementing a final judgment, *Hunter* v. *Hunter,* decided April 26, 1973, so can one not seek certiorari from a ruling implementing a final judgment, *Markwei* v. *Amine,* 4 LLR 155 (1934), nor from a ruling on issues of law, which is the ruling of Judge Dennis that Judge Kandakai was enforcing. *Raymond Concrete Pile Co.* v. *Perry,* 13 LLR 522 (1960).

But more than this, if Vamply mistakenly announced an appeal from an interlocutory ruling, what caused it to

wait for nearly five months before applying for remedial process? In the absence of special statutory provisions, it is settled that the court will not grant a writ of certiorari where the petitioner has been guilty of laches in seeking his remedy. 10 AM. JUR., *Certiorari,* § 6; *Markwei* v. *Amine, supra,* 160.

Another point of interest is that petitioner did not take an appeal from the ruling which settled the controversy, but rather from the ruling implementing the earlier ruling. When an appeal has been granted, the lower court loses jurisdiction over the cause. *Horace* v. *Horace,* 13 LLR 200 (1958). In such a case the matter cannot be regarded as pending, which is a prerequisite for the granting of certiorari. Moreover, instead of perfecting its appeal, the petitioner resorted to certiorari. In such a case, this Court has held that if an aggrieved party has elected another remedy under which he can obtain full redress he cannot resort to certiorari also. Nor will certiorari be granted where adequate relief can be obtained through the regular process of appeal; and where an appeal has been abandoned, certiorari will not issue without the showing of good cause. *Harris* v. *Harris,* 9 LLR 344 (1947). For all these reasons certiorari will not lie, and this Court is precluded from giving that relief which petitioner might have been entitled to had it not abandoned its appeal.

In view of the foregoing, the ruling of the Justice presiding in chambers is affirmed, with costs against the petitioner. And it is so ordered.

Affirmed.