

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF JUSTICE  
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE  
 BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE  
 BEFORE HIS HONOR: YUSSIF D. KABA ..... ASSOCIATE JUSTICE  
 BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, Sr. .... ASSOCIATE JUSTICE

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Madam Kortu Carmmo and all those acting under her )  
 authority of Barnersville, Montserrado County, Liberia )  
 .....1<sup>ST</sup> Appellant )

AND )

APPEAL )

The Intestate Estate of Mabutu Vlah Nyanpan, )  
 by and thru its Administrators, and Administratrix, of the )  
 Township of Barnersville.....2<sup>ND</sup> Appellant )

VERSUS )

The Intestate Estate of Alhaji Musa Turay by )  
 and thru Its Administrators of Gardnersville )  
 .....Appellee )

GROWING OUT OF THE CASE: )

The Intestate Estate of Alhaji Musa Turay by )  
 and thru Its Administrators of Gardnersville )  
 .....Petitioner )

VERSUS )

) PETITION FOR THE WRIT OF  
CERTIORARI )

His Honor Yamie Quiqui Gbeisay, Assigned Circuit )  
 Judge, Sixth Judicial Circuit, Montserrado County )  
 .....1<sup>ST</sup> Respondent )

AND )

Madam Kortu Carmmo and all those acting under her )  
 authority of Barnersville, Montserrado County, Liberia )  
 .....2<sup>ND</sup> Respondent )

AND )

The Intestate Estate of Mabutu Vlah Nyanpan, )  
 by and thru its Administrators, and Administratrix, of the )  
 Township of Barnersville.....3<sup>RD</sup> Respondent )

Heard: October 24, 2022

Decided: May 19, 2023

## MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The present appeal emanates from a Ruling of our Distinguished Colleague, Mr. Justice Yussif D. Kaba, while presiding in Chambers during the October Term 2021, following a hearing on a petition for the writ of certiorari filed by the appellee herein, the Intestate Estate of Alhaji Musa Turay against the 1<sup>st</sup> and 2<sup>nd</sup> appellants, Madam Kortu Carmmo and the Intestate Estate of Mobutu Vlah Nyepan, respectively.

The records show that on May 30, 2019, the 1<sup>st</sup> appellant, Madam Kortu Carmmo filed an action of summary proceedings to recover possession of real property in the Sixth Judicial Circuit, Civil Law Court, Montserrado County. The appellee, the Intestate Estate of Alhaji Musa Turay filed its answer averring therein that title being in dispute, the action of summary proceedings to recover possession of real property could not lie, and that the proper form of action was ejectment.

The records also show that while the matter was pending undetermined before the circuit court, the 1<sup>st</sup> appellant sold the disputed property to Mobuto Vlah Nyepan; that both the 1<sup>st</sup> appellant and Mobuto Vlah Nyepan ousted and evicted the appellee from the subject property without a court order, thus prompting the appellee to file a bill of information before the trial court to that effect. This Court notes that Mobuto Vlah Nyepan died during the pendency of the case and was subsequently substituted by his Intestate Estate, the 2<sup>nd</sup> appellant herein.

The records further show that the appellee proceeded to file a motion to join the Intestate Estate of Mobuto Vlah Nyepan as party plaintiff to the action of summary proceedings to recover possession of real property, and that on August 16, 2021, following a hearing on the said motion to join, the trial court granted same and ordered the Intestate Estate of Mobuto Vlah Nyepan to file its responsive pleadings within 10 days; that on August 30, 2021, the 1<sup>st</sup> appellant filed a notice of additional counsel and on the self-same date filed a notice of voluntary discontinuance to abate the cause of summary proceedings to recover possession of real property. The trial judge, His Honor Yamie Quiqui Gbeisay, Sr., approved the 1<sup>st</sup> appellant's request for voluntary discontinuance, thus prompting the appellee to file a petition for the writ of certiorari before the Chambers Justice.

In its petition, the appellee contended that the action of the trial judge in granting the 1<sup>st</sup> appellant's request for voluntary discontinuance was contrary to law; that the bill of

information and motion for newly discovered evidence which were pending before the trial court for determination should have been heard and disposed of before the trial court proceeded to entertain the notice of voluntary discontinuance. Predicated on the allegations contained in the petition, the appellee therefore prayed for the issuance of the alternative writ of certiorari.

The Justice issued the alternative writ and ordered the 1<sup>st</sup> and 2<sup>nd</sup> appellants to file their returns, which order was complied with. In their returns, the appellants asserted that the trial judge's approval and granting of the notice of voluntary discontinuance, abated the entire action of summary proceedings to recover possession of real property, leaving nothing to be reviewed through a remedial process; that because the writ of certiorari is only applicable to interlocutory rulings, certiorari will not lie in the present case; and also because the term of the trial judge had already expired and he had been assigned to another circuit, the petition for a writ of certiorari was a legal nullity.

Following a hearing on the petition and returns thereto, the Justice in Chambers determined that there was only one issue dispositive of the petition for a writ of certiorari, *viz.*: “*whether the respondent judge erred when he approved the notice of voluntary discontinuance in the face of pending motions before the court, and if so, will certiorari lie?*” The Chambers Justice held that the trial judge was in error based on the provision of the Civil Procedure Law, Revised Code 1:11.6(2) and that certiorari will lie to correct the said error. The said provision of the law states as follows:

“... 2. Except as provided in paragraph 1, an action shall not be discontinued by the claimant except upon order of court and upon such terms and conditions as the court deems proper.”

In giving interpretation to the above provision of the Statute, the Justice in Chambers opined as follows:

“... The compelling question that begs for an answer is whether the approval of the co-respondent's notice of voluntary discontinuance stipulated any terms and conditions in the face of pending motions? Our search of the records shows no such stipulation. This leaves us to wonder how could the co-respondent judge order a discontinuance of the matter in the face of a grave allegation by the petitioner that it had been evicted and ousted from the disputed property by the co-respondent

Intestate Estate? In the resolution of similar question urged upon the Supreme Court of Liberia twenty years ago, the Court in deciding a petition for a writ of certiorari espoused in the *Case, Friends of Liberia Association v. Thompson et al*, 41 LLR 174, 179 (2002), that our statute provides that the trial judge is clothed with the statutory authority to order a voluntary discontinuance, we note that he cannot grant a discontinuance.... without a stipulation signed by counsel of all parties, which is filed with the trial court... so as to ensure and enhance fair and transparent justice to all the parties in the litigation... we hold the same view today given the facts and circumstances of this case being analogous to the *Friends of Liberia Association Case*. This Court holds that the co-respondent judge could not have ordered the cause discontinued without the stipulation of the parties in the face of pending motions, particularly, the petitioner's bill of information which alleged a violation of the substantial right of the petitioner to the due process of law to quiet the contest over title to a disputed property..."

In the *Friends of Liberia Association Case*, the facts are that after pleadings had rested, but prior to the filing of the notice for voluntary discontinuance, there were several motions and bills of information filed with and pending before the trial court undetermined. As to the issue of whether or not the trial judge erred when he granted a voluntary discontinuance after pleadings had rested without a stipulation signed by counsels for all the parties, the Supreme Court opined thus:

"... the records before us are replete with several motions and bills of information filed with and pending before the lower court undetermined after pleadings had rested... We are also taken aback by the trial judge's ruling granting of a voluntary discontinuance when no instrument was filed praying for such relief and assignment was issued for hearing of the same at the time the appellants' motion for joinder of party was called... that although our statute provides that the trial judge is clothed with the statutory authority to order a voluntary discontinuance, we note that he cannot grant a discontinuance.... without a stipulation signed by the counsels of all parties, which is filed with the trial court... so as to ensure and enhance fair and transparent justice to all the parties in the litigation..."

The Justice in Chambers stated in his Ruling that the *Friends of Liberia Association Case* is analogous to the present case. Hence, we revert to the records on the petition for a writ of certiorari to ascertain whether or not the facts and circumstances of the present case, are analogous to the referenced case that would allow for the applicability of the principles of

law enounced therein by the Supreme Court to the present case.

In the present case, the records authenticate that in addition to the complaint filed by the 1<sup>st</sup> appellant and the answer thereto filed by the appellee, a bill of information and a motion for newly discovered evidence, which had been filed by the appellee, were pending before the trial court undetermined, prior to the trial judge granting the 1<sup>st</sup> appellant's notice of voluntary discontinuance.

In both cases, pleadings were exchanged and rested, but several motions were pending undetermined before the court; and without disposing of said motions, the trial judge proceeded to grant the voluntary discontinuance.

The law governing the voluntary discontinuance of a claim pending determination before court states thus:

“Voluntary discontinuance

1. Without an order. Except as otherwise provided by law any party asserting a claim may discontinue it without an order
  - (a) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading or a motion for summary judgment is served, whichever first occurs, and filing the notice with proof of service with the court; or
  - (b) By filing with the court a stipulation in writing signed by the attorneys of record for all parties.
2. By order of court. Except as provided in paragraph 1, an action shall not be discontinued by the claimant except upon order of the court and upon such terms and conditions as the court deems proper.
3. Discontinuance after submission. A discontinuance may not be granted after the case has been submitted to the court or jury to determine the facts except upon the stipulation of all parties.” *Civil Procedure Law*, Rev. Code 1:11.6(1,2,3).

Pursuant to the law quoted above, this Court says that while a claimant may voluntarily discontinue the pursuit of a claim without the consent of the adversary party, this is only

permissible where pleadings have not yet rested; and even in such instance, the law requires that the opposing party be duly notified of said action. On the other hand, after the parties have exchanged pleadings and rested, the voluntary discontinuance of a claim may be done, but only if the counsels of both parties sign a written stipulation to that effect.

As the Supreme Court held in the *Friends of Liberia Association case* that the trial judge's ruling granting the submission for voluntary discontinuance was not final, we hold as to the present case, that the granting of the 1<sup>st</sup> appellant's notice of voluntary discontinuance by the trial court was interlocutory in nature because the said ruling granting the voluntary discontinuance did not settle all of the issues in dispute; further action by the trial court was needed to settle the controversy.

Our Civil Procedure Law states that "*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 or interlocutory judgment of a court.*" Rev. Code 1:16.21(1). Moreover, the Supreme Court has opined 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, and when such errors materially prejudice or injure the rights of a party.*" *William v. Clarke* 2 LLR 130,132 (1913); *TRADEVCO v Mathies, et. al.*, 39 LLR, 578, 585 (1999); *Friends of Liberia Association v. Thompson et al*, 41 LLR 174, 179 (2002). Hence, the granting of the voluntary discontinuance by the trial court, the ruling by the trial court granting the 1<sup>st</sup> appellant's notice of voluntary discontinuance in the face of pending motions and bill of information is *ultra vires*, because it did not consider the issues in dispute. Therefore, the said ruling is considered as interlocutory, for which certiorari will lie, and we so hold.

Now, before concluding this Opinion, we note the 1<sup>st</sup> appellant's wanton disobedience to the trial court's mandates ordering the appellee's repossession of the disputed property. The records attest that on May 20, 2019, Judge Scheaplor R. Dunbar reversed a ruling by Magistrate Tweh Wesseh dispossessing the appellee and ordered that the said appellee be repossessed of the disputed property, and to which order, the Magistrate complied, by repossessing the appellee. However, the 1<sup>st</sup> and 2<sup>nd</sup> appellants subsequently arbitrarily ousted the appellee from the property which necessitated the issuance of a preliminary injunction by Judge Peter W. Gbeneweleh on February 24, 2020, enjoining the 1<sup>st</sup> and 2<sup>nd</sup> appellants from entering the property. Approximately one year later, that is, on May 28, 2020, Judge Scheaplor R. Dunbar upon succeeding Judge Gbeneweleh issued a contempt

order against the appellants and several arrest orders for their refusal to comply with the trial court's mandate.

It is appalling to note, that after arbitrarily ousting the appellee from the disputed property and disregarding several orders by the trial court, the 1<sup>st</sup> appellant proceeded to file for voluntarily discontinuance of her action of summary proceedings to recover possession of real property while at the same time leaving her grantee in physical possession of the disputed property.

This Court sees the 1<sup>st</sup> appellant's voluntary discontinuance as an attempt to circumvent the law in order to keep her grantee in possession of the disputed property, coupled with her wanton disobedience and disrespect to the orders and rulings of the trial court as noted above. Hence, in the interest of substantive justice, the 1<sup>st</sup> and 2<sup>nd</sup> appellants are mandated to strictly comply with the trial court's orders of May 20, 2019, and February 24, 2020, respectively, which enjoined the 1<sup>st</sup> and 2<sup>nd</sup> appellants from entering upon the disputed property; and the lawyers representing them are ordered to cooperate with the trial court and ensure that their clients are in full compliance with this Mandate or risk being held in contempt of the Supreme Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Ruling of the Justice in Chambers is affirmed. The alternative writ of certiorari is confirmed and the peremptory writ ordered issued. The Clerk of this Court is ordered to send a mandate to the Sixth Judicial Circuit, Civil Law Court, Montserrado County, commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the 1<sup>st</sup> and 2<sup>nd</sup> appellants. AND IT IS SO ORDERED.

*Reversed*

*When this case was called for hearing, Counsellor Eugene L. Massaquoi of the Jallah Law Firm appeared for the appellants. Counsellors Alhaji Swaliho A. Sesay and Amara A. Kenneh of Sesay, Johnson & Associates Law Chambers appeared for the appellee.*