T. O. DUSUMO JOHNSON, Petitioner, *v.* FRANK W. SMITH, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, et al., Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS GRANTING WRIT OF CERTIORARI TO CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 25, 1977. Decided November 25, 1977.

1. An answer interposed by one who acts as an attorney but is not licensed as such will not be recognized, and the defendant will be ruled to a general denial.
2. A defendant in an action at law who is ruled to a general denial because the person acting as his attorney was not licensed, may, in bringing certiorari proceedings growing out of the first action, raise the affirmative defense which was raised but not recognized in the answer in the original action.
3. A change of attorney in a second action involving the same parties and the same subject matter as an earlier action which has not been withdrawn, must be effected in the manner prescribed by statute for change of attorneys generally.

This was a certiorari proceeding which had its origin in an action in ejectment filed in July 1974, by the respondent Woosely Philips in the Circuit Court against the petitioner herein. That action was never determined. In 1976, plaintiff in ejectment filed a bill of information advising the Circuit Court of the inaction in the case. The information also remained undetermined. In July 1976, plaintiff commenced another action in ejectment against the same defendant for the same property involved in the 1974 suit, but with a different attorney representing him. No change of counsel appeared of record. When trial was commenced in the second action, defendant announced he would not participate. He then filed the petition for certiorari, and the second ejectment suit was halted by the alternative writ issuing out of chambers. The Justice in chambers before whom issues

were argued fully agreed that petitioner was entitled to the writ, and the *ruling* was *affirmed* by the Court en banc, with a mandate issued to the court below to resume jurisdiction over the issues pending in the earlier action of ejectment.

J. C. N. Howard for petitioner. *Moses Yangbe* for respondents.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.

On July 15, 1974, Attorney Horatio G. Hutchins filed an action of ejectment on behalf of his client Woosely Philips against defendant Dusumo Johnson, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. On July 23, 1974, Counsellor Samuel B. Cole filed an answer for his client Dusumo Johnson. Pleadings progressed as far as the reply and rested.

On January 31, 1975, defendant Dusumo Johnson filed a motion to dismiss the plaintiff's cause of action on the ground of fraud with reference to the plaintiff's title deed annexed to his complaint, stating that said deed was a forgery. No resistance to this motion is found in the record nor is there any indication that the motion was ever heard or determined in the court below.

On May 1, 1976, Attorney Hutchins filed information in the Civil Law Court of the Sixth Judicial Circuit, drawing the court's attention to defendant's failure to respond to repeated notices of assignment in the ejectment action. The defendant, the respondent in the information proceedings, filed a resistance contending that the disputed land was legally his. The record reveals that the information and resistance were never passed upon by the court below.

In spite of these circumstances, and while the ejectment case of July 15, 1974, still remained undetermined on

the docket in the Civil Law Court, Sixth Judicial Circuit, plaintiff Woosely Philips filed yet another action of ejectment against the selfsame defendant Dusumo Johnson, for the selfsame 25 acres of land originally sued for in 1974. However, it was not Attorney Horatio Hutchins but Counsellor Moses K. Yangbe who filed the second action of ejectment on behalf of the plaintiff by complaint dated July 20, 1976.

A second action of ejectment was thus instituted between the same parties for the same subject matter; and although the plaintiff employed the services of two different lawyers—a different one in each of the two cases—for asserting his claim to the disputed piece of property, there is no change of counsel appearing in either of the two files in the case.

The record further reveals that the defendant through his counsel filed an answer on July 30, 1976, raising the question of *lis pendens;* that is to say, the previous suit of ejectment, together with the failure to have changed counsel. This was also raised in the petition for certiorari before the Justice in chambers. The second case of ejectment was called before Judge Frank W. Smith, and trial began on February 8, 1977. The law issues having been previously passed upon, the judge asked for a jury to try the issues joined. It was at this stage that defendant Dusumo Johnson, the petitioner, through his counsel made the following record in the minutes of court: "Defendant wishes to give notice that he is taking no part whatsoever in the trial of this case, and will have no challenge to any of the jurors." After witnesses had testified for the plaintiff, the petition for certiorari was filed, and proceedings in the ejectment suit out of which those proceedings grow were suspended by the alternative writ issued out of the chambers of Mr. Justice Azango.

On February 9, 1977, petitioner applied for a writ of certiorari in the chambers of Mr. Justice Horace, but withdrew and filed through Counsellor MacDonald

Kradue, an "amended petition" on March 16, 1977. At this stage the matter was brought before Mr. Chief Justice Pierre when he took up duties in chambers on June 1, 1977.

As indicated by him, the amended petition contains seven counts which have raised the following issues: (1) that ejectment in the court below, out of which certiorari grows, was instituted in the Civil Law Court in Monrovia in the September 1974 Term, and is still pending before that court undetermined; (2) that it was attorney Hutchins who had represented the plaintiff in ejectment, Woosely Philips, the co-respondent in these proceedings, and prepared and filed the ejectment suit in 1974; (3) that there is no showing that there was any disposition of the former case of ejectment in the court below, to have justified the filing of the suit out of which these proceedings grow, and which second suit of ejectment is now being represented by Counsellor Moses Yangbe, without notice of change of counsel.

The amended return of the respondents raised several issues: they have contended that Counsellor Samuel B. Cole who alone had represented the defendant and filed an answer in the suit out of which these proceedings grow was not licensed to practice law at the time he prepared and filed the answer, and that this invalidated the pleading.

With respect to the first issue, the court is in agreement with the Justice in chambers that under the theory of *lis pendens* respondent Philips could not legally institute another action of ejectment against the selfsame defendant Dusumo Johnson for the selfsame 25 acres of land originally sued for in 1974 without first withdrawing the 1974 action. *Griffiths* v. *Republic,* 22 LLR 288, 295 (1973). Under the Civil Procedure Law, the pending suit is a valid defense and can be pleaded either in the responsive pleading or, at the option of the pleader, on motion to dismiss. Rev. Code 1:9.8, 11.2(1)(d). In other words, the pending suit was sufficient ground for dismissal of the

present suit from which these proceedings grow. This issue was properly raised in the answer to the second ejectment suit. But Counsellor Samuel B. Cole, counsel for defendant Johnson, was not a licensed lawyer and therefore could not appear before the court. An attorney, although qualified, is not entitled to practice before any court before obtaining the license to do so required by statute. Where the term of an attorney's license has expired, he is barred from practicing until it is renewed. *Republic* v. *Sherman,* 1 LLR 139 (1881).

The judge in the lower court was therefore correct in ruling the defendant to a general denial. Rev. Code 1:9.1(2). But would this dismissal of the answer in the Civil Law Court bar the petitioner in certiorari from raising the issue of *lis pendens?*

The plaintiff has failed to support his contention that failure of defendant's counsel to renew his license before representing defendant in the ejectment action and pleading *lis pendens* in that action bars a licensed counsel for the defendant from raising the same defense in certiorari proceedings before the Supreme Court. The defendant's lawyer in the lower court was disqualified, so that the petitioner was free and indeed entitled to get a qualified lawyer to represent him in the Supreme Court in the certiorari proceedings. Petitioner is entitled to counsel to plead his cause. Constitution, Article I, Section 6th. Therefore this Court concurs with the Justice in chambers that

> "since defendant's attorney was without a license before the Civil Law Court, the respondent judge was correct in dismissing the answer and ruling the defendant to a bare denial of the facts of the complaint. But would this dismissal of the answer in the Civil Law Court have prevented the petitioner in certiorari from raising the issues he has, as have been listed hereinabove?
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> "For instance, even if petitioner's lawyer in the

Civil Law Court was not qualified to have legally represented him, did that prevent a licensed lawyer from raising the issues before the Supreme Court in certiorari? It is true that ejectment was brought by Philips against Dusumo Johnson in 1974 through Attorney Horatio Hutchins, of counsel for the plaintiff, and it is also true that that case is still pending. It is also true that there is no change of counsel in the records in either of the two ejectment cases between the same parties in the case, growing out of the same subject matter; this can be shown by inspection of the case-file of the 1974 case, as well as the records of the second ejectment case made profert in these proceedings. In the circumstances, I do not see that it matters whether or not the answer in the second ejectment suit was filed by a disqualified lawyer, and therefore had to be dismissed."

The next issue is on the change of counsel. We have seen that in the 1974 ejectment suit, Attorney Horatio G. Hutchins represented co-respondent Philips, but that in the second ejectment suit he was represented by Counsellor Moses K. Yangbe. Yet there is no change of counsel on record. Respondent's contention in his return to the amended petition was that there was no need for change of counsel since there were two separate and distinct suits. This position is untenable. There is but one suit, since the parties and the subject matter are the same and the plaintiff had not withdrawn the first ejectment suit. Respondent was therefore under a duty to give notice of change of counsel according to law. Our law and practice are definite as to the mandatory requirement for change of counsel should a party decide that he needs to employ the services of another lawyer to represent him. An attorney of record may be changed by order of the court, or by filing with the clerk of court a notice of change signed by the attorney and the party with a copy served on the other parties. Rev. Code 1:1.8(2). Since

this law was not followed, Counsellor Yangbe cannot legally represent the respondent.

In addition to the above issues, the respondent further states that the amended petition was invalid since the petitioner had not paid respondent's cost in the withdrawal of the first pleading. A review of the record indicates that petitioner paid ten dollars as costs to the respondent. The record reveals a certificate under the signature of the marshal of the Supreme Court and receipt issued by the defendant's counsel Moses Yangbe that ten dollars was paid as "respondent's return costs."

Count 6 of the amended return does not indicate the amount which should have been paid or which the respondent regarded as full payment. If the ten dollars was not adequate "to settle completely" the amount of costs, it was the duty of the respondent to have given the petitioner notice of what the proper amount should have been. Under the circumstances the bench *en banc* agrees with the ruling in certiorari by the chambers justice and accepts ten dollars as complete settlement of any cost respondent might have incurred in the preparation of the amended return.

In view of the foregoing, the Supreme Court *en banc* affirms the ruling of the Justice in chambers in the certiorari proceedings in this case to the effect that the alternative writ of certiorari should be, and the same is hereby granted; and the Clerk of this Court is ordered to send a mandate to the court below, commanding the judge there to resume jurisdiction over the issues pending between the parties, giving preference to the suit filed in 1973, with its motion to dismiss and the information filed with reference thereto. These must be determined without further delay, allowing any party dissatisfied with the judgment to take appeal. Costs against the respondents. And it is so ordered.

Ruling affirmed.