

AUGUSTINE NYUMAH and ALFRED FREEMAN,
Petitioners v. HIS HONOUR GEORGE S.B.
TULAY, Assigned Circuit Judge, Sixth Judicial
Circuit, Montserrado County, December Term, A. D.
1989, and JESSE PAYNE, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE ON A MOTION TO
DISMISS PROHIBITION PROCEEDING.

Heard: November 1, 1999. Decided: December 16, 1999.

1. The petition for the writ of prohibition shall be verified by the petitioner himself; otherwise the petition shall be dismissed and the writ denied.

A judgment by default was rendered against appellants by the trial court in an ejection suit. Appellants fled to the Chambers Justice for the writ of prohibition to prohibit and restrain the enforcement of the judgment for reason that it was void. However, instead of appellants themselves signing the affidavit to the petition for the writ of prohibition, as is required by statute, one of their lawyers signed it. Appellees then moved the Chambers Justice to dismiss the petition and deny the issuance of the writ of prohibition for reason of improper verification of the petition; and this motion was granted by the Chambers Justice.

Appellants appealed to the Supreme Court for review; and while admitting to the improper verification of the petition, they submitted that in order to mete out transparent justice, the Supreme Court should issue the writ of prohibition so that the gross irregularities committed at the trial court would be corrected. Appellants submitted that the Supreme Court had granted similar dispensation.

The Supreme Court conceded that it had granted similar dispensation as the party in that case had no other recourse when his lawyer had committed the error of signing the

petition instead of having the party sign it. The Supreme Court, however, found that the instant case is not similar to the case in which such dispensation was given because this case showed a line of neglect and defaults on the part of the appellants from the time the complaint and writ of summons were served on them. The Supreme Court, relying on both the statutes and previously decided cases, ruled that the failure of one of the appellants to personally sign the affidavit was good and sufficient reason to dismiss the petition and deny issuance of the writ of prohibition.

Accordingly, the ruling of the Chambers Justice dismissing the petition and denying issuance of the writ of prohibition was *affirmed*.

A. Blamo Dixon appeared for Appellants. *Joseph P.H. Findley* appeared for Appellees.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is before us on appeal from the ruling of Mr. Justice J. D. Baryogar Junius, then presiding in Chambers during the March Term, A. D. 1989, of this Court. In the ruling, Mr. Justice Junius granted a motion to dismiss appellants' petition for a writ of prohibition on the ground that the appellants failed to sign the affidavit attached to their petition; instead, the said affidavit was signed by the late Counselor Moses K. White, one of counsel for appellants at the time.

The records in this case show that appellants were defendants against whom a default judgment was rendered by Judge Hall Badio, Sr. in an action of ejectment instituted by co-appellee Jessie Payne in the trial court. Appellants fled to this Court for the aid of the writ of prohibition, praying this Court to restrain and prohibit the enforcement of the trial court's judgment. However, appellants failed to sign the affidavit attached to their petition; rather the aforesaid affidavit was verified by the late Counsellor Moses K. White, one of counsel for appellants at the time of the filing of the petition

for the writ of prohibition. Consequently, appellees in the prohibition proceeding filed a two-count motion on December 11, 1998 to dismiss appellants' petition for their failure to properly verify the petition for the writ of prohibition.

The motion was resisted by appellants; and it was heard by the Chambers Justice and granted on 19 February, A.D. 1990, thereby denying and dismissing appellants' petition for the writ of prohibition for reasons herein earlier stated. Appellants excepted to this ruling and appealed to this Court *en banc* for appellate review and final determination.

The sole issue raised and argued by appellants is whether this Court, upon an improperly verified application for a writ of prohibition, may exercise its discretionary powers to correct gross irregularities arising from the attempted enforcement of a void judgment in the interest of justice.

Appellants contended that the verification of the application for a writ of prohibition by the late Counsellor Moses K. White was a harmless error, which did not affect the substantial rights of the parties. Appellants also urged this Court to tender justice with mercy, in that, the mistake of the late Counsellor Moses K. White should not cause the appellants to be evicted, ejected and ousted from the subject property without due process of law. Appellants therefore prayed this Court for modification of Mr. Justice Junius' ruling in the interest of justice with specific instruction to the trial court to resume jurisdiction and correct the gross irregularities.

Appellees, on the other hand, argued that the ruling of the then Chambers Justice Junius, dismissing the petition for the writ of prohibition, was pursuant to section 1:9.4 of the revised Civil Procedure Law, and, as such, said ruling was correct and should not be disturbed. Appellees therefore requested this Court to uphold the ruling of Mr. Justice Junius.

Appellants requested this Court to exercise its discretionary powers in the interest of justice and modify the ruling of Mr. Justice Junius by ordering the trial court to resume jurisdiction and correct its gross irregularities, as was done in the case *Kanawaty et al. v. King*, 14 LLR 241 (1960). In that case, the defendant was sued in an action of debt by attachment and a

judgment was rendered in favor of the plaintiff company. The defendant filed a payment bond which was signed by petitioner as a surety. During the March Term, A.D. 1960 of the trial court presided over by Judge Kandakai, the defendant-principal made payment of costs and part payment of the debt, including sheriff's collection fees. The defendant also tendered a post dated check drawn on the Bank of Monrovia for the payment of the balance debt in complete settlement of the judgment of the court. The check was received by the court, and the principal and the surety were released from further obligation by Judge Kandakai. However, they did not secure the return of their bond. Subsequently, Judge Samuel Cole assumed jurisdiction over the trial court during its June Term, A.D. 1960 and ordered a writ of sale of the surety's property on ground that his principal did not have sufficient funds to satisfy the judgment of the debt. The surety sought the aid of prohibition from this Court to restrain the enforcement of the void judgment. The Chambers Justice denied the issuance of prohibition on ground that it was not verified by the petitioner himself, but however ordered the correction of the gross irregularities arising from the enforcement of the judgment. This Court on appeal affirmed the ruling of Mr. Justice Pierre, notwithstanding the improper verification of the application for the writ of prohibition.

We still hold that this Court properly adjudged that case as the petitioner had no other remedy available to him.

In the instant case, appellants failed to file their formal appearance and/or answer to the complaint in the ejectment case even though they were served with a writ of summons. The records in this case also show that appellants' alleged grantor, in person of one Charles Johnson, filed a motion to intervene in the ejectment suit, but he and the appellants' counsel failed to appear for hearing and the motion was denied.

Appellants admitted in count two (2) of their petition for the writ of prohibition that they were served with a notice of assignment, for the hearing of this case on January 24, 1989 at 10:00 a.m., and were present, but denied that there was any hearing until they received a writ of possession. Appellants did

not prove before us that the case was never heard as scheduled, and they did not file in the court below any motion for relief from judgment in support of their allegations. Besides, appellants failed to verify their petition for a writ of prohibition, and now request this Court to tender justice with mercy after their own default in the trial court and the gross defect in their petition before this Court. Hence, the facts and circumstance in the *Kanawaty et al.* case and this case are not analogous.

In the case *Wilson v. Kandakai et al.*, 21 LLR 452 (1973), this Court held that "the petition applying for the writ of prohibition must be verified by the party seeking the relief." In the *Wilson* case, the petitioner was a defendant in an action of ejectment, whose motion for continuance due to his physical disability was denied by the trial court. The affidavit which supported the petitioner's petition for the writ of prohibition was signed by Counsellor D. T. Harris, one of counsel for petitioner. This Court on appeal confirmed the ruling of the Justice in Chambers dismissing the petition and denying the issuance of the writ for failure of petitioner to verify his own petition.

This Court also held in the case *Royal Exchange Assurance v. Barreire and Koroma*, 21 LLR 587 (1972), that "the petition applying for a writ of prohibition must be verified by petitioner and not his counsel."

Our revised Civil Procedure Law provides for verification and signing of pleadings of a party by "the attorney of such party; provided, however, that the complaint in an action to secure an injunction or in a prohibition proceedings shall in every case be verified by the party himself." Civil Procedure Law, Rev. Code 1:9.4(2)(b). The clear and plain language of the above quoted statute provides that a petition for a writ of prohibition shall be verified by the party himself, and not a counsel for such a party as in the instant case.

We therefore decline to disturb the ruling of Mr. Justice Junius denying petitioners' petition for a writ of prohibition for the reasons stated in this opinion.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers

Justice should be, and the same is hereby confirmed and affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and enforce its judgment in the ejectment suit. Costs ruled against appellants.

Prohibition denied.