

**KOLLEH KAINGBAH, Petitioner, v. HIS  
HONOUR JOHNNY K. BEAMAH, JR., Judge,  
People's Debt Court, Bong County, and  
MONROVIA KERKULAH, Respondents.**

PETITION FOR A WRIT OF CERTIORARI TO THE PEOPLES'S DEBT COURT, BONG  
COUNTY.

Decided October 4, 1982

1. Verification of a pleading may be done in a judicial circuit other than the circuit in which the action is to be tried.
2. Where no pleadings are filed and no proceedings held, there can be no accrued costs to be paid as a prerequisite to the granting of a petition for certiorari.
3. Where a motion to dismiss is filed, the judge cannot refuse and neglect to pass upon it, but is duty bound to dispose of the motion by either granting it, or denying it and ordering the trial to be proceeded with.
4. Affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer oath.
5. A pleading may be verified in a judicial circuit other than the circuit in which the action is to be tried; it must be in writing, signed and sworn to as true, or in the belief that it is true, by the affiant, whose capacity in the case must be shown before an authorized official; the jurat must be indicated and the exact title of the case set forth.
6. 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 interlocutor judgment of a court. Rev. Code 1: 16.21(1).

Petitioner instituted an action of debt in the justice of the peace court in Bong County against Co-respondent Monrovia Kerkulah. After a trial, judgment was rendered in favor of the petitioner. From this judgment, an appeal was announced to the debt court. However, prior to the court hearing the appeal, petitioner filed a motion to dismiss, alleging that the co-respondent had failed to serve a notice of the filing of the appeal bond on the petitioner; that the bond was not accompanied by a sureties affidavit; and that the revenue stamp thereon was insufficient. The co-respondent judge refused to entertain the motion and the resistance, however, holding that the court would not engaged in technicalities. He therefore dismissed the motion

and the resistance and proceeded to hear the case on the merits. From this ruling, the petitioner sought certiorari before the Chambers Justice.

The Justice granted the petition, holding that the motion to dismiss the appeal raised issues which were of a purely legal nature and that, under the law, the judge was bound to rule on those issues before proceeding to the determination of the merits of the case. The Chambers Justice also rejected the contention of the co-respondents that the petition be denied because the affidavit attached thereto was signed by a justice of the peace in Montserrado County rather than a justice of the peace in Bong County, noting that once the justice of the peace was duly commissioned to sign affidavits, he or she could do so regardless of the venue of the case.

*Richard K. Flomo* appeared for petitioner. *Lewis K. Free, Sr.* appeared for respondents.

SMITH, J., presiding in chambers.

The facts in these proceedings, as disclosed by the records before us, are that the petitioner was plaintiff in a debt action instituted in a justice of the peace court in Bong County against Co-respondent Monrovia Kerkulah. Judgment in the said case was rendered in favor of the petitioner and Co-respondent Monrovia Kerkulah being dissatisfied, appealed from said judgment and perfected his appeal. When the case was called before the People's Debt Court for Bong County, counsel for the petitioner, appellee in the court below, moved the court to dismiss the appeal on the grounds that: (1) notice of the filing of the appeal bond was not served on the opposing counsel; (2) the appeal bond was not accompanied by sureties' affidavit and certificate of property valuation from the Bureau of Revenues; and (3) the revenue stamp was insufficient. The motion was resisted and the co-respondent judge ruled setting aside the motion and the resistance on the ground that mere technicality "should not be entertained." I hereunder quote the relevant portion of the co-respondent judge's said ruling for the benefit of this ruling:

"In view of the above, and for transparent justice, as much as the court would not like to deprive any litigant with the fruit of justice, also as in keeping with *Dennis v. Gooding*, 10 LLR 123 (1949), which says that mere technicality which does not affect the substantial rights of a party should not be entertained by the court of justice, this court hereby sets aside the motion made and the resistance and rules the case to trial *de novo*. The clerk of court is hereby instructed to make an assignment in this appeal case for hearing. And it is hereby so ordered" (sic).

It is from this ruling petitioner has sought the Chambers of this Court by certiorari to review the ruling of the co-respondent judge, petitioner having noted exceptions thereto and given notice to take advantage of the controlling statute before the Supreme Court.

Respondents filed returns to the petition wherein, they did not deny that the co-respondent judge had ordered the motion and the resistance set aside because of "mere technicality" and ruled the case to trial *de novo*. They, however, contended that certiorari will not lie to review interlocutory ruling on law issues, and further prayed the Court to quash the alternative writ of certiorari because of the non-payment of accrued costs and defectiveness of the affidavit to the petition, it not having been taken before a justice of the peace in Bong County where the case originated, but rather before a justice of the peace in Montserrado County, contrary to law.

The issues which arise and are pertinent to the fair determination of the proceedings are:

1. Whether or not the interlocutory ruling of the co-respondent judge as quoted herein above is reviewable by certiorari?
2. Whether or not any costs accrued in the Debt Court which ought to have been paid as prerequisite to the granting of the petition; and
3. Whether or not verification of a pleading filed before the people's Supreme Court or any other court for that matter MUST be done in the county in which the case out of which the proceeding grew originated?

I will proceed to discuss these issues in the reverse order,

taking first the issue of the affidavit to the petition for certiorari proceeding being taken before justice of the peace Etna Scott-Acolatse, Clerk of the People's Supreme Court of Liberia. As contained in the returns, counsel for respondents argued before me that "the petition should have been verified before a justice of the peace in Bong County where the case originated.

Affidavit, as defined by Black's Law Dictionary (4<sup>th</sup> ed.), is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer oath. Mrs. Etna Scott-Acolatse is a justice of the peace duly authorized, by virtue of her executive commission, to take affidavit; and any affidavit taken before her cannot in any way be invalid whether or not the affiant is resident of another county, or whether or not the subject matter originates from another county. In the case *Tuning et. al. v. Thomas*, 21 LLR 33 (1972), this Court held that a pleading may be verified in a judicial circuit other than the circuit in which the action is to be tried. The verification must be in writing, signed and sworn to as true, or in the belief that it is true, by the affiant, whose capacity in the case must be shown before an authorized official; the jurat must be indicated and the exact title of the case set forth. The affidavit in these proceedings as attacked by the respondents has met all of the necessary requirements; therefore, the contention of it not having been taken in Bong County where the matter originated, is legally untenable.

The next question is the nonpayment of accrued costs by the petitioner as a prerequisite to the filing of the petition. In the mind of the Court, since there was no pleading filed in the People's Debt Court and the case not gone into and determined by which costs might have accrued, there can be no costs which could have been paid as a prerequisite to the granting of the petition.

Respondents aver in count one of their returns, and their counsel argued before me, that certiorari will not lie to review an interlocutory ruling. Here is our statute on the point:

"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 interlocutor

judgment of a court" (emphasis mine). Civil Procedure Law, Rev. Code 1:16.21(1).

In this case, the co-respondent judge had before him a motion to dismiss appeal for alleged defectiveness of the appeal bond. This was purely an issue of law, which according to law must be heard and disposed of before trial. The co-respondent judge in ruling on the motion refused and neglected to pass on the issue, but rather he ordered the motion and the resistance thereto set aside to go into the merits of the appeal. This ruling was interlocutory. It is therefore my holding that the co-respondent judge should have first disposed of the motion by either granting or denying it before ordering the trial of the appeal proceeded with, if he saw legal reason to justify this course.

In view of the foregoing, it is my considered opinion, that the petition for a writ of certiorari be, and the same is hereby granted and the peremptory writ of certiorari ordered issued, commanding the co-respondent judge to resume jurisdiction, vacate his ruling and hear the motion to dismiss the appeal and rule thereon before proceeding to hear the appeal on its merits if the motion can legally be denied. Costs against the respondents. And it is so ordered.

*Petition granted.*