

MONROVIA BREWERIES INC., by and thru its  
General Manager, Petitioner, v. HIS HONOUR  
EUGENE L. HILTON, Assigned Circuit Judge,  
presiding over the Civil Law Court, Montserrado  
County, and LEWIS TARPLAH, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE  
PETITION A WRIT OF CERTIORARI.

Heard: October 13, 1993. Decided: February 18, 1994.

1. Certiorari will not lie to review a ruling on the law issues unless such ruling is manifestly prejudicial to the interest of a party.
2. Termination of a case takes effect at the moment the trial judge renders final judgment in the matter, not after the expiration of the sixty days allowed for appeal.
3. The payment of accrued costs is not a pre-requisite for the issuance of the writ of certiorari.
4. The purpose of section Rev. Code 1: 2.73 is to advance the interest of an aggrieved party ensuring that his otherwise legitimate claim is not scuttled on technical grounds, and to promote the public policy of putting an end to litigation.
5. Certiorari will be issued to review a ruling on law issues by a trial judge who rules to trial a case which has been finally terminated by the same court.

The appellee instituted an action of damages for slander against the appellant. Upon the disposition of law issues, the trial judge dismissed the complaint in its entirety. The appellee excepted to the ruling of the trial judge, announced an appeal, but failed to perfect the appeal in keeping with the statute. Eight months thereafter, the appellee filed the same action against the appellant. The appellant interposed an answer to the complaint contending that the doctrine of *res judicata* and *stare decisis* barred the appellee from resurrecting the action. The trial judge ruled the appellant to a bare denial, holding that the doctrines of *res judicata* and *stare decisis*, respectively, were inapplicable to the appellee's case. Thereupon, the appellant filed a petition for a writ of certiorari before the Chambers Justice who, upon hearing the petition, upheld the ruling of the trial judge on the

grounds that the doctrine of *res judicata* was inapplicable in the instant case because the case had not been decided on its merits. The Chambers Justice also held that the petition could not be granted because the appellant failed to pay accrued cost which, according to him, is a precondition to the issuance of the writ of certiorari.

On appeal to Full Bench, the appellant contended that the payment of accrued cost and the posting of bond are not preconditions for the issuance of the writ of certiorari, and that the filing of the subsequent action does not square within the provision of Revised Code 1: 2.73, as erroneously contended by appellee, because it was not filed within six months after the termination of the original action. The appellee, on the other hand, contended that the petition should not be granted because the subsequent action did fall within the provision of the Civil Procedure Law, Rev. Code 1:2.73, because the word "termination" as used in the said provision, does not take effect until after the expiration of sixty days allowed for completion of the appeal process. The appellee also averred that: (1) the writ should not be granted since the ruling from which the petition for certiorari arose was made on the law issues, and hence would presuppose that the Supreme Court determines cases in piecemeal; (2) the non-payment of accrued cost renders the application fatally defective; (3) the doctrines of *res judicata* and *stare decisis* do not apply to the instant case.

After hearing arguments *pro et con*, the Court distinguished between a writ of error and a writ of certiorari and held that unlike the former, the payment of accrued cost is not a precondition for the issuance of the latter. The Court disagreed with the appellee on the interpretation of Revised Code 1: 2.73, holding that in accordance with said provision, the termination of a case occurs on the date the court makes a ruling terminating the case. Therefore, the termination of the six months put finality to the case. The Court stated that Revised Code 1: 2.73 had a dual aim: (a) to advance the interest of an aggrieved party, ensuring that his otherwise legitimate claim is not scuttled on technical grounds; and (b) to promote public policy by putting an end to litigation. The Court concluded that certiorari will lie to review a ruling on the law issues on a case that has been

earlier terminated by the same court. Hence, it *granted* the petition and ordered the writ issued.

*H. Varney G. Sherman* appeared for the appellant. *Jonathan Williams* appeared for the appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

The records of this case show that Lewis Tarpleh, the above named appellee, filed an action of damages for slander against the appellant, Monrovia Breweries, Inc his former employer, during the June 1981 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County. Upon disposition of the law issues on July 3, 1982, the assigned judge entered a ruling dismissing the complaint together with the action. The appellee announced an appeal to the Supreme Court, October Term 1982.

The appellee, however in spite of his announcement of an appeal, did not file any approved bill of exceptions nor take any other step required by statute to prosecute his appeal. The appellant, on the other hand, did not move the court to dismiss the appeal for failure to proceed in keeping with the right reserved unto him in the Civil Procedure Law, Rev Code 1: 51.16.

On march 3, 1982, the appellee instituted a new action of damages against the appellant, having the same subject matter and resting upon the same facts and circumstances as the previous action of June 1981.

In filing the new action the appellee relied upon Rev. Code 1: 2.73. The section reads as follows:

Section 2.73. Effect of Termination of Action. "If an action is timely commenced and is terminated in any manner other than by a dismissal of the complaint for failure to prosecute the action or a final judgment on the merits the plaintiff may commence a new action upon the same right to relief after the expiration of the time limited by statute thereof and within six months after the termination, and the defendant may interpose any defense or counter-claim which might have been interposed in the original action."

To this latter action the appellant filed an answer to dismiss

the action on the grounds of *res judicata* and *stare decisis*, the second ground being founded upon the civil law court's ruling of July 3 1982 dismissing the former action. During the September 1983 Term of the Civil Law Court the assigned judge dismissed the appellant's answer holding that the principles of *res judicata* and *stare decisis* were inapplicable to the case, and ruled the appellant to a bare denial. Appellant then applied to the Chambers Justice for a writ of certiorari.

The Chambers Justice heard the certiorari proceedings and on 20<sup>th</sup> January, 1987, denied the writ of certiorari on the grounds that firstly, neither *res judicata* nor *stare decisis* applies to case and, secondly, that the appellant failed to pay accrued cost, which is a prerequisite for his petition for a writ of certiorari..

The appellant appealed from the ruling of the Chambers Justice and has come before us for a final determination.

In his brief and argument before us, the appellant contends:

- (1) That the appellee filed the new action eight (8) months after the termination of the former action and thus falls outside the provision made for such action under Rev Code 1: 2.73.
- (2) That the payment of accrued costs and posting of bond are not mandatory prerequisites for a writ of certiorari;
- (3) That certiorari will lie to review a ruling on law issues where such ruling would result in material injury and inconvenience by having a party litigant submit to the entire trial of a case which has been finally determined by the same court.

The appellee on the other hand contends:

- (1) That his new action was commenced within six months as provided for by section 2.73 of the Civil Procedure Code, Rev. Code 1.
- (2) That the principles of *res judicata* and *stare decisis* do not apply to the present case.
- (3) That the non-payment of accrued costs renders the application for a writ of certiorari by the appellant fatally defective;
- (4) That certiorari will not lie from the ruling of the trial court on law issues since the Supreme Court does not hear appeals in piecemeal.

The Chambers Justice dealt with the principles of *res judicata* and *stare decisis* and determined that they are not applicable to the case. As to *res judicata* he said that the case had not been decided on the merits in order for the principle to apply; and as to *stare decisis* he said that there is no precedent in our case law on which to rest the application of the doctrine. He relied upon definitions in Ballentine's Law Dictionary (3<sup>rd</sup> ed.), pages 1105 and 1209, as well as our case law, as found in *Kiazolu-Wahab v. Sonni et al*, 16 LLR 63 (1964) text at 74, 78 and *Richards v. Coleman* 6 LLR 285 (1938) text at 290.

The issues presented for our determination, therefore, are:

- (1) Whether the payment of accrued costs is a mandatory pre-requisite for a petition or a writ of certiorari to be issued?
- (2) Whether certiorari will lie from a ruling on law issues by a lower court?
- (3) Whether the appellee's new action was within section 2.73 of our civil procedure statute.

The Civil Procedure Law, Rev. Code 1: 16.23(3) on the procedure on certiorari provides as follows:

*"3. Payment of accrued costs; bond.*

The petitioner shall pay all the accrued costs and he may be required to give a bond, conditioned on paying the respondent such damages as he may sustain if the writ is dismissed."

A similar requirement is fixed for securing a writ of error. Under section 16.24(1) of the Revised Civil Procedure Code page 148-149, we find the following:

"As a prerequisite to issuance of the writ of error the person applying for the writ of error to be known as the plaintiff-in-error shall be required to pay all accrued costs and may be required to file a bond in the manner prescribed in section 51.8. Such bond shall be conditioned on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed."

Here we have two writs whose features are not the same:

Certiorari, on the one hand, deals with a case that is still in progress as its function is to review an intermediate order

or an interlocutory judgment; while a writ of error re-opens a case which has terminated and reviews the final ruling in that case within six months after its entry.

In error, the payment of accrued costs and the tender of a bond are made mandatory to secure the defendant in error against unwarranted application for the writ and unjustifiably suspending the execution of the judgment awarded him. A bill of costs is issuable at the entry of the final judgment by the trial court, and if the plaintiff in error announced an appeal, he would have had to file an appeal bond.

This imposes upon the applicant for the writ of error the mandatory requirement of payment of accrued costs and the filing of a bond.

Certiorari, in contrast to error, calls for the review of an intermediate order or an interlocutory ruling during uninterminated proceedings, hence the posting of a bond is discretionary, as the Chambers Justice well stated in his ruling.

Of contention still, however, is whether the payment of accrued costs is a mandatory prerequisite for the issuance of a writ of certiorari?

As distinguished from error, no bill of costs is issuable against the petitioner at the stage of the underlying case from whose intermediate order or interlocutory judgment he seeks relief in the certiorari proceedings. At the final determination of the case, costs will be payable by the losing party. It consequently follows that payment of costs should be delayed until the final determination of the certiorari proceedings or the underlying case in the lower court.

In the case *American life Insurance Co., v. Sarsih* decided March Term, 1986 this Court distinguished between certiorari and error and held that payment of accrued cost is not a prerequisite for certiorari, whereas in error it is ... a pre-requisite for the issuance of the writ," as laid down in section 16.24 (d) of our civil code relative to the writ of error.

Following the holding in *American Life Insurance Company v. Sarsih*, which was reaffirmed by this Court in the case *JIDSANC, Inc. v. Pearson*, 35 LLR 767 (1988), decided October Term 1988, it was error for the Chambers Justice to have denied the writ of certiorari for non-payment of accrued costs when he

delivered his ruling on January 20, 1987, at which time *American Life Insurance Company v. Sarsih* was already part of our case law. His reliance on *Dixon v. Kandakai*, 25 LLR 562 (1976) was therefore misplaced.

Counsel for appellant argues, both in his brief and oral argument, that the Chambers Justice failed to pass upon whether certiorari lies in this case. He concedes that certiorari normally does not issue from a ruling on law issues, but argues that where such ruling is manifestly prejudicial to the interest of the party against whom it is made and would subject such party to another trial of a case having the same parties and the same court, certiorari would be made available to such party to review that ruling. He wishes us to take cognizance of the policy and rule of *res judicata* that there should be an end to litigation and a party should not be vexed twice for the same cause.

The appellant says that while our case law has established that *res judicata* applies to a cause determined on the merits, our case law is silent on whether *res judicata* will apply when a case is terminated by a court of competent jurisdiction on issues other than the merits. He further submits that section 2.73 of the Revised Civil Code is aimed at the public policy of bringing an end to litigation, and thus is founded upon the attributes of *res judicata*. Section 2.73 allows six months within which to resurrect a case provided the condition specified therein are met. (See section 2.73 as quoted above).

Here we have a case which had been terminated by dismissal of the complaint and the entire action when law issues were heard. An appeal was announced but no other appellate jurisdictional step was taken up to the expiration of the time allowed by statute. This puts finality to the case unless there is proper ground to renew the action under section 2.73 of our Revised Civil Procedure Code Volume 1, which does not appear to be the case as we shall discuss later in the opinion. To permit the new action to proceed would be invidious and prejudicial to the defendant by subjecting him to another trial unnecessarily.

We tend towards the view that the present case raises an exception to the general rule that certiorari will not call for review of a ruling on law issues.

We therefore hold that certiorari will issue to review a ruling

on law issues by a trial judge which rules to trial a case which had been finally terminated by the same court, as in the present case.

The last issue for our consideration is whether the appellee's new action was within section 2.73 of the civil statute.

The ruling of the lower court dismissing the case filed by the appellee was given on July 3, 1982. The complaint for the new action was filed by the appellee on March 3, 1983, eight months later. Section 2.73 permits a party up to six months after termination of a case to institute a new action. The appellee argues, however, that termination takes place after the expiration of the sixty days allowed him by statute to complete the appeal. From our reading of the statute, it is clear to us that the termination of a case occurs on the date of the court's ruling terminating the case. The appellee was therefore outside the period provided for in section 2.73 when he filed the new action. The termination of the six months puts finality to the case.

It is our view that section 2.73 has a dual aim:

- (a) To advance the interest of an aggrieved party ensuring that his otherwise legitimate claim is not scuttled on technical grounds; and
- (b) To promote the public policy of putting an end to litigation.

In view of what we have said herein above, the ruling of the Chambers Justice is hereby reversed, and the peremptory writ of certiorari granted. The Clerk of this Court is hereby directed to send a mandate to the court below to the effect of this opinion. Cost against the appellee. And it is so ordered.

*Petition granted.*