

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT
MARCH TERM, 1958.

D. W. B. MORRIS, Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, URIAS DIXON, Sheriff, Montserrado County, and G. WALTON TAY, Appellants-Respondents, *v.* AMIN SAAD and D. BARTHOLOMEW COOPER, Counsellor at Law, Appellees-Petitioners.

APPEAL FROM ORDER IN CHAMBERS UPON APPLICATION FOR WRIT
OF CERTIORARI.

Argued March 17, 1958. Decided April 25, 1958.

1. Certiorari will lie to redress an irregular denial of right to appeal upon a bill of exceptions.
2. Litigants may, as of right, appeal from judgments of lower courts.
3. Judges of lower courts are required to respect the prerequisites of the Supreme Court.

In a summary investigation concerning a disputed bill of costs, petitioners appealed from a ruling of the lower court imposing penalties for contempt of court, and applied to this Court for a writ of certiorari as to enforcement of payment on the bill of costs pending prosecution of the appeal. Certiorari was granted by the Justice presiding in Chambers. On appeal to this Court, *en banc*, the order in Chambers was *affirmed*.

His Honor, D. W. Morris, and A. D. Peabody for appellants-respondents. *D. B. Cooper* for appellees-petitioners.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

These proceedings were instituted by petitioners against respondents as a result of the respondent Judge having allegedly shown a disregard of the law and rights of the petitioners in the conduct of the matter pending before him for adjudication.

The records in this case show the nature of the respondent Judge's conduct in an attempt to execute a mandate from the Supreme Court commanding the enforcement of its judgment with cost against petitioners. A bill of costs including several items, and aggregating \$397.45, involving principal or the damages awarded and costs, was duly prepared for taxing by counsel representing plaintiff and defendant. The damages having been previously paid by defendant, plaintiff's counsel taxed the bill for \$45.25. Counsel for defendant taxed said bill for \$21.20. Upon observing that defendant's counsel had reduced the bill to a sum lower than plaintiff's counsel, and this without explanation, the respondent Judge ordered the issuance of a writ of summons for the appearance of Counsellor D. B. Cooper to assign some reasons for not being willing to pay certain items included in the bill of costs, he having elected not to mention or make notation on the said bill showing reasons why he reduced the bill to such a low figure.

In obedience to the summons commanding his appearance in court, Counsellor D. B. Cooper, on July 16, 1956, appeared for the purpose of submitting to the summary investigation into the reasons leading to the reduction of the bill of costs which Counsellor Cooper expected to have

been conducted on the usual basis of questions and answers, but which did not obtain in the premises. In an effort to justify his actions, Counsellor Cooper approached the respondent Judge's desk in open court. This approach, as alleged, was met with an unfavorable reaction of the respondent Judge, who said that he would be controlled by the mandate from the Supreme Court, although the Supreme Court did not specify the amount of costs.

Because of this alleged arbitrary attitude of the respondent Judge, petitioner remarked that he would appeal to the Supreme Court in the matter. It would seem that the respondent Judge considered the foregoing expression as contemptuous, and threatened Counsellor Cooper with being held for contempt should he repeat said expression. The records reveal that said expression was repeated, which evoked wrath and vengeance from the respondent Judge, who imposed a fine of \$100 and imprisonment until payment of the said sum. To this ruling Counsellor Cooper entered exceptions and prayed an appeal to this Court, which was granted.

Obviously the exceptions thus taken involve the subject matter of the summary investigation which served as a supersedeas. In the face of the position taken by petitioners, it is to be observed, as revealed by petitioners and admitted by the respondents in their returns, that the respondent Judge ignored the exceptions taken by petitioners whereby the sheriff was ordered to proceed with the subject matter to the extent of collecting the bill of costs and retaining said amount, and if petitioners failed to satisfy same, an execution should be issued against them. Nor is there any showing that the amount collected by the sheriff as costs was not more than \$350 over and above the amount taxed by the lawyers on both sides; and notwithstanding this information was brought to the attention of the respondent Judge, although he denied same in his argument during the hearing of this matter by the full bench, the

sheriff was ordered to hold the amount against the protest of petitioners, which said protest he ignored with impunity.

For the benefit of this opinion, by way of making a clear picture of the irregularity and illegal conduct complained of by petitioners, we quote hereunder Counts "6," "7," "8," and "9" of the petition, which are as follows:

- "6. That, despite the exceptions entered, Judge Morris ordered the sheriff to collect the relative bill of costs, with further instructions that if petitioners failed to satisfy same, an execution would issue. At this stage, the sheriff informed the court that he had already collected the face of the bill of costs, including items that had been taxed by petitioners; the court then commanded the sheriff to hold the money.
- "7. That, although the court has no legal right to enforce payment of a bill of costs that has been questioned, and to command the sheriff to retain the money collected thereon in face of an appeal, yet he still exercises jurisdiction over the matter, which acts are materially prejudicial to petitioners.
- "8. That petitioners have applied to the sheriff for the sum of money illegally collected and withheld from them, but the sheriff refuses to return same to said petitioners, stating that he is subject to the orders of Judge Morris, which said acts of refusal and withholding are materially prejudicial to petitioners.
- "9. That Counsellor Cooper, in a futile effort to call the Judge's attention to the illegality and irregularity of the proceedings, did respectfully address Judge Morris repeatedly; but he lent him a deaf ear, and some time afterwards brushed the address off by saying: 'I have other matters before me,' or words having ignoring effect, which act is materially prejudicial to petitioners."

It is crystal clear that the attitude of the respondent Judge in the court below in conducting the subject matter, is not only reprehensible but repugnant to and incompatible with the spirit and intent of statute laws of this Republic. It is an inherent right of parties litigant to appeal from the judgment or ruling entered against them; and where, on court proceedings, a party declares he will appeal to a higher tribunal for review of his cause, he does so in the exercise of a legal right and should not be penalized for asserting his legal rights.

We quote word for word from our colleague's ruling in this case, from which ruling this appeal has found its way to the full bench for final determination:

"This case in some of its phases, is similar to and reminds one of a case decided by the Supreme Court during the April, 1939, term, wherein Mr. Justice Tubman, speaking for the Court said, among other things:

'We hold that a man who has attained to the high position of Judge, and who must see order preserved in his own court by litigants, Magistrates, Justices of the Peace, and practicing lawyers before him . . . should, upon the simple principles of fairness and of the golden rule, be most circumspect in his conduct toward the Supreme Court and the Justices thereof when presiding in Chambers and exercising their judicial functions. . . .'

"In the case referred to above, a Circuit Judge threatened to hold in contempt a certain lawyer whom he said had expressed the intention of taking him before the Supreme Court. The Court, in frowning upon this attitude of a Circuit Judge said:

"'It is greatly surprising to us that a Judge of the sensitive and zealous nature of His Honor, for the maintenance of the honor, dignity and power of his Court, as evidenced by the strenuous efforts which he manifested in that behalf, should be so unmindful

and indifferent of the dignity and honor of the Supreme Court. . . . He would do well to understand that, where the Supreme Court's dignity and authority begin, there his end, and that the privilege of a Circuit Judge is not above the dignity of the Supreme Court.' ”

In Count “5” of their returns, respondents contend as follows:

- “5. That the writ of certiorari is a remedial writ which should issue only while a matter is pending before a subordinate court. Respondents submit that said writ should not be issued after final judgment has been rendered by the lower court in a cause. In the case at bar, the petitioner, Counsellor D. B. Cooper was, in virtue of a final judgment of His Honor, the respondent Judge, fined in the sum of one hundred dollars for contempt of court, to which final judgment Counsellor D. B. Cooper, now petitioner, took exception and announced an appeal to this Honorable Court *en banc*. Said appeal was duly granted. Petitioner D. B. Cooper should have prosecuted his appeal in the regular manner as the law on appeals prescribes; but, instead, he has run up to this forum for a writ of certiorari which respondents say should be denied him and he be ruled to pay all costs incurred in these proceedings, for which respondents pray.”

Respondents thus contend, in substance, that an appeal from final judgment serves as a supersedeas to certiorari. Yet, as observed hereinabove, they have not denied that, after the appeal had been granted, matters were not permitted to continue in the state in which the appeal had placed them, thereby causing the payment of the costs, subject to these proceedings to be kept in abeyance until this Court could hear and finally determine the appeal. Instead, the lower court ordered execution if defendant failed to comply with the bill of costs.

It is further observed that the respondents, in Count "5" of their returns hereinabove quoted, strongly contend that, although petitioner D. B. Cooper took exceptions and announced an appeal to this Honorable Court *en banc*, he should prosecute said appeal, and the writ of certiorari should be denied him because, as brought out in their argument, certiorari does not lie under the circumstances.

As we perceive it, the two pertinent questions involved in these proceedings are: (1) Is certiorari the proper remedy of petitioners in these proceedings? and (2) What is the office of certiorari? We shall endeavor to answer these questions in reverse order.

The office and functions of the writ of certiorari are set forth as follows in the Revised Rules of this Court:

"Writ of certiorari—Where an action or proceeding is pending in any court or before a judge thereof, the Supreme Court, or any justice thereof in vacation, may grant a writ of certiorari to any party who by verified petition may complain that the decision or act of any trial judge is illegal, or is materially prejudicial to his rights. Said petition shall set forth the nature of the decision or the act complained against and shall bear the certificate of two members of the bar to the effect that in their opinion the contention of the petitioner is sound in law. Such writ shall command the judge to send up to this court a full and complete copy of the records of the proceedings in the matter on trial with a certificate under seal of the clerk of the court to the effect that the same is a true copy. . . ." R. Sup. Ct. I, 4 (2 L.L.R. 664).

Further, this remedial process has been defined as follows:

"The office of the common law writ of certiorari is to bring before the court for inspection the record of the proceedings of an inferior tribunal in order that the superior court may determine from the face of the record whether the inferior court has exceeded its juris-

diction, or has not proceeded according to the essential requirements of the law." 10 AM. JUR. 524 *Certiorari* § 3.

From the face of the records certified to this Court in these proceedings, it is most evident that the respondent Judge proceeded illegally and irregularly, after granting an appeal in the contempt proceedings which involved and embraced the summary investigation of the taxing of the bill of costs by Counsellor D. B. Cooper, the legal representative of his client, Amin Saad.

The arbitrary, illegal and irregular conduct of the respondent Judge, as revealed by the records before us, portrays abuse of power by the said respondent Judge.

Therefore, in view of the foregoing, the ruling of the Justice in Chambers is hereby affirmed with costs ruled against the respondents. And it is hereby so ordered.

Order affirmed.