

Dean, Jr. et al v. Heirs of Dean [2012] LRSC 9 (6 July 2012)

Morris G. Dean, Jr. and Martha Dean of the City of Kakata Margibi County and the United States of America respectively PETITIONERS/APPELLANTS Versus The Intestate Estate of the late **David Z. Dean**, represented by its Administrators, **Thomas Travis, Edward Travis, Joseph Travis** and including **Thomas Popei** and the late **Samuel G. Dean, Sr.** of the City of Kakata, Margibi, RESPONDENTS/APPELLEES

PETITION FOR THE REOPENING OF INTESTATE

HEARD: October 26, 2011 DECIDED: July 6, 2012

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal comes from a hearing in the 13th Judicial Circuit, Margibi County predicated upon a mandate from this Court during its October Term 2009, reversing the trial Judge's ruling and remanding the case for a new trial.

A restatement of the facts of this matter is that Edward Dean and Yunah Dean, husband and wife had three children, Samuel Dean, Sr., Kneepo Dean and David Z. Dean. Edward Dean had a child outside of wedlock named Morris Dean. Samuel Dean, Sr. the older child married Beatrice Dean. The marriage was blessed with two children Samuel Dean, Jr. and Martha Dean. Kneepo Dean, the second child had a daughter, Bledde Dean. David Z. Dean, the youngest, had no child and it is alleged that he had a special affinity with his niece, Bledde Dean, who lived with him and was alleged to have been his adopted daughter. Later in life, Bledde Dean got married to Mr. John Travis and the union was blessed with several children, the appellees herein.

Samuel Dean, Sr. and David Z. Dean, during their lives, individually acquired real properties in Kakata, Margibi County. David Z. Dean predeceased his brother Samuel Dean, Sr., and Samuel Dean, Sr. petitioned the court and got Letters of Administration to administer the intestate estate of his brother, David Z. Dean. Subsequently, Samuel Dean, Sr. died and his wife, Beatrice Dean, her son, Samuel Dean, Jr. and one Ernest Palmer obtained Letters of Administration to administer his intestate estate. These administrators, it is alleged, co-mingled the administration of Samuel Dean, Sr. intestate estate with that of David Z. Dean's to the exclusion of other collateral heirs. This prompted Bledde Dean, niece, and alleged adopted daughter of David Z. Dean, and her children, the Travises, co-appellees, to petition the Thirteenth Judicial Circuit, Margibi County, for Letters of Administration to administer the intestate estate of David Z. Dean. The court upon hearing the petition, granted them the Letters of Administration.

As administrators, Bledde and the appellees filed a petition for ejectment, seeking to oust the Tenants that had been placed on the property by the administrators of Samuel Dean, Sr. and to have the court stopped them from further interfering with the intestate estate of David Z. Dean.

A legal tussle ensued for a protracted period and it is alleged that Samuel Dean, Jr. proposed that the parties meet and sit as a family and settle the matter out of court. Both parties met and accepted the proposal and agreed that all parties would withdraw their court papers and thereafter petition the court

to close the David Z. Dean's intestate estate. A survey of the intestate property was carried out, and both parties acquiesced to have Bledde take the 7.4 acres on the left side of the road, and Samuel Dean, Jr. take the 5.12 acres located on the right side of the road; thereby dividing per stripes the intestate estate of David Z. Dean between the lineal heirs of the legitimate siblings of David Z. Dean. The parties deeded out the parcel of land as agreed.

Based upon the understanding reached and the survey held, the administrators of the intestate estate, on November 4, 2003, informed the court of the compromise reached by the parties and requested the court for closure of the estate as agreed. At a court's hearing on November 8, 2003, Judge Mooney, the then Resident Circuit Judge of the 13th Judicial Circuit, ruled closing the intestate estate and allowing the distribution of the estate as agreed to by the parties. The various legal contentions relating to the said estate were then withdrawn by the parties.

We must note here that the appellees have alleged that one of the appellants herein, Martha Dean, daughter of Samuel Dean, Sr., was taken to America by some missionaries in 1952, at an early age and has not been heard from since. The other appellant, Samuel Dean, Jr., is the son of Morris Dean, Sr., David Z. Dean's half brother who lived in Grand Bassa County and is also alleged to have been estranged from the rest of the Dean family.

This legal tussle of the intestate estate of David Z. Dean, thought to have been finally settled, on August 26, 2004, Counsellor Richard Flomo filed a petition on behalf of Morris G. Dean, Jr. and Martha Dean, appellants herein, alleging misrepresentation and fraud perpetrated in the closing of the estate and requesting the court for reopening of the intestate estate. The petition filed before His Honor, Emmanuel M. Kollie, the Assigned Circuit Judge, by Morris G. Dean, Jr. and Martha Dean, reads:

PETITIONERS PETITION

And now come your humble Petitioners in the above entitled cause of action and most respectfully crave thru this petition for the RE-OPENING OF THE INTESTATE ESTATE herein stated supra for cause showeth therefore to wit:

1. Petitioners strenuously maintain that they are the natural children begotten in wedlock to Samuel G. Dean, Sr. and Morris Dean, Sr. and that the fathers just mentioned above died intestate during their tender ages.
2. And also because Petitioners further aver that after the death of the late Morris and Samuel G. Dean, Sr., Mr. Samuel G. Dean, Jr. administered the properties by "LETTERS OF ADMINISTRATION" from the Honourable Probate Court of Monsterrado County, at the time.
3. And also because during the civil crisis, in the year 1990, when the war intensified, Petitioners fled the Republic of Liberia into exile for safety. While in exile, without their consent, knowledge and awareness, upon their return to Liberia, November A.D. 2003, when asked as to what was the status of their fathers' estate, both the Probate Court, Margibi County, and co-respondent, Mr. Samuel G. Dean, Jr. informed your humble Petitioners that the entire estate had been distributed among the respondents mentioned herein supra.
4. That Petitioners not being satisfied over the premature and erroneous manner the said estate was distributed and closed, without the least consideration for them,

have decided to appeal to this Honorable Court and Your Honor to reopen the said estate so that they will be included as administrator/administratrix and not the Travises who have no relationship to them.

5. That Petitioners say Madam Bledée Dean is not the biological daughter of the late David Z. Dean to have benefited from Petitioners' fathers' estate and leave them out without any consideration.

WHEREFORE, it is the prayer of your humble Petitioners that, in view of the facts and circumstances above outlined, Your Honor and this Honorable Court will grant their petition to reopen the intestate estate so that their rights and benefits will not be infringed upon and grant them all such reliefs as seemeth just and legal.

The Respondents, appellees, filed their returns, stating that the entire petition was unclear as to which of the intestate estates Petitioners were petitioning the court to have reopened as the Petitioners' petition was ambiguous. Respondents said that the allegation made was false and unfounded as at no time did they participate in the distribution of properties belonging to the intestate estates of the late Morris Dean, Sr., and Samuel G. Dean, Sr., and at no time were they given properties as their share individually or collectively in the intestate estate of the late Morris Dean, Sr. and Samuel G. Dean, Sr.; that the Travises never served as an administrator for any of the intestate estate of Morris Dean, Sr. or Samuel G. Dean, Sr.

Also responding to the issue of Bledée Dean being the biological daughter of the late David Z. Dean, the appellees said that there are several legal grounds for which an individual shall benefit under an intestate estate and not only by biological means; that the late David Z. Dean, during his life, not having a child of his own body, took his sister's daughter, Bledée Dean, when she was a child and gave her the name Dean. She lived with him until his death, and during that period, the late David Z. Dean did everything within his power to ensure that Bledée Dean was recognized as his daughter by his family members; that as far as Respondents is concerned, at no time did Bledée Dean benefit from Petitioners' fathers' Morris Dean, Sr. and Samuel Dean, Sr. estates. It is therefore not clear as to which of the Petitioners' father's estate that Bledée Dean is alleged to be benefiting from.

A hearing for the law issues was called and heard and the Judge Presiding, Judge Emmanuel Kollie, ruled that the estate of the late David Z. Dean be reopened with the proviso that the appellees remain party to the case while the Petitioners, Morris G. Dean, Jr. and Martha Dean appear before the Court to prove their allegations.

The Respondents/appellees excepted to the Judge's ruling ordering a reopening of the intestate estate. Appellees stated that it was a gross error by Judge Kollie to set aside his predecessor Judge Mooney's ruling closing the estate when there was no showing of fraud or misrepresentation committed in the closing of the estate to warrant the re-opening of the estate. Besides, it was David Z. Dean's intestate estate that was closed and not Samuel G. Dean, Sr. or Morris Dean, Sr. estates.

Reviewing this ruling on appeal, this Court on January 21, 2010, ruled that the Judge did commit a reversible error by overturning his predecessor's ruling without taking evidence to substantiate that misrepresentation to the court or fraud had been committed in the closing and distribution of the intestate estate. The matter was remanded with instruction that the court below proceed to hear the allegation of misrepresentation and fraud made by the petitioners.

Based on this Court's mandate, the appellants were called to proceed to present evidence of fraud and misrepresentation as alleged.

Hearing began in the May Term 2010 of court before His Honor Judge J. Boima Kontoe, Presiding Circuit Judge. On June 17, 2010, the appellees filed a motion asking the court to strike the petition for the reopening of the estate as to Martha Dean, since Martha Dean has been outside the bailiwick of Liberia since the year 1952, when some missionaries took her to the United States of America; and in keeping with our law extant, a party who is outside the bailiwick of the country can only file a complaint by and through an Attorney-In-Fact duly appointed by such party; that there was no evidence of authorization from Martha Dean who lives in America, requesting the filing of the petition on her behalf, and which made the petition a subject fit to be stricken in keeping with our law extant.

On the same June 17, 2010, the appellees filed a motion to drop misjoined party, stating that the appellants by their own admission have alleged that they are natural children begotten in wedlock to Samuel G. Dean, Sr. and Morris Dean, Sr.; that the portion of the David Z. Dean's intestate estate which was deeded to Bledde Dean and was now being administered by her children, the appellees, was separate and distinct from the intestate estate of the late Samuel G. Dean, Sr. and Morris Dean, Sr. and this means that the motion to reopen the Samuel Dean, Sr. intestate estate and Morris Dean, Sr. intestate estate had nothing to do with the David Z. Dean, Sr. intestate estate which was closed by the late Judge James G. Mooney.

Chapter 5, Section 5.56 of our Civil Procedure Law provides that upon proper motion to drop by a misjoined party, the court may drop a party so misjoined at any stage of the action or on any terms that are just. Appellees submitted that since the petition for the reopening claims are against the Samuel G. Dean, Sr. and Morris Dean, Sr. intestate estates, the inclusion of the appellees who were administering a portion of David Z. Dean's estate deeded to their mother was erroneous; therefore, the motion to drop would lie as in keeping with law.

The appellants on the other hand, filed a bill of information stating that the deeds for the 7.49 and 5.12 acres were not issued by the court below, but rather fraudulently executed by one Thomas Popei and Thomas Travis, one of the appellees. Since there was no decree issued by the court authorizing them to issue out the deeds to the intestate estate, their action was a usurpation of the curator's function of the court and was therefore erroneous and void.

The case was called for argument on the law issues. Appellees' motions and appellants' information were all argued and the Judge stated that all the papers filed before the court presented issues of law and facts and so he ruled the matter to trial.

Immediately after the court's ruling of the matter to trial, counsel for appellants requested the court to put his witnesses on the stand. The request was granted and the appellants produced three witnesses who testified for the appellants.

The appellants having presented testimonies and rested evidence, the appellees moved the court below for Judgment during trial in accordance with Chapter 26.2 of our CPLR. The appellees alleged that they were entitled to judgment because the appellants, from their testimonies, had failed to prove fraud and had failed to establish a prima facie case before the law.

Section 26.2 of our CPLR speaks on Motion for Judgment during trial. It states:

§26.2 Motion for judgment during trial.

After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2).

Ruling on the motion for judgment during trial, the trial Judge ruled that the petitioners had alleged that while they were out of the country taking refuge, Samuel G. Dean, Jr. and the other co-respondents distributed their fathers' Samuel Dean, Jr. and Morris Dean, Sr. property amongst themselves to their exclusion. They also averred that Bledee Dean was not a biological daughter of the late David Z. Dean, and therefore she should not benefit from his intestate estate. On these issues raised by the petitioners to reopen the intestate estate, the Judge noted that there was no supporting evidence during the trial to substantiate the appellant's claims that their fathers own the disputed property and that there was fraud perpetrated against them. Co-petitioner Morris G. Dean, Jr., the court said, had admitted in open court that the petition to reopen the estate centers around the intestate estate of the late David Z. Dean and not the intestate estate of the Samuel Dean, Sr. or Morris Dean, Sr. as stated in their petition to reopen the intestate estate of their late fathers. Morris Dean, Jr. himself, the court said, had admitted that he is the lone administrator of his late father Morris G. Dean, Sr. estate and that said estate is located in Grand Bassa County and not in Kakata City, Margibi County where the subject estate is located. Upon these admissions, that the subject estate is separate and distinct from appellants fathers' property, this confirmed the movants/appellees' resistance, that there was no genuine issue of fact in dispute to warrant further taken of evidence in the case.

Ruling further, the court said, co-respondent Morris G. Dean, Jr. also testified that he was asked to represent the interest of Martha Dean, but there was no power of attorney executed to that effect in regards to the law of Liberia, which is clear as to how a person desirous of commencing an action before the courts of Liberia may proceed. In the absence of such instruments, no person or counsel in Liberia can claim to have authority to represent such parties. We are therefore in agreement with the appellees' challenge to the representation by Morris Dean of Martha Dean.

Determining the issue whether the David Z. Dean's intestate estate which had been closed forms part of the estate of Samuel Dean, Sr., the court again said, although petitioner's second and third witnesses tried to convince the court in their testimonies that the disputed estate of the late David Z. Dean's estate belonged to Samuel Dean, Sr., appellants gave no proof; and as to the claim of the appellants, that the appellees, children of Bledee Dean and grandnephews of David Z. Dean, cannot inherit property of David Z. Dean because they are not Deans, the court said this is an issue settled by the Decedent Estate Law. The court concluded that the allegations and averments contained in the pleadings were absent evidence; that there

were no genuine issue of fact to warrant taking of evidence beyond the testimonies of appellant/petitioner's witnesses. The Judge therefore granted the motion for judgment during trial and ordered that the intestate estate of David Z. Dean remains closed. The petition to reopen the estate was therefore denied.

The appellant filed an eight count Bill of Exceptions alleging irregularities that the trial Judge committed, but we shall consider counts 1, and 2 which we find relevant to the evidence presented and the determination of the appeal. Counts 1 and 2 read:

1. That Your Honor erred when you failed to fully execute the mandate of the Supreme Court of Liberia in that, the subject mandate ordered determination of the issue of fraud, which must be decided by a jury. Your Honor should have taken judicial notice of the law as required of all judges that all issues of fraud must be determined by a jury.

2. That Your Honor was in both error of law and fact when you granted respondents motion during trial, when in fact informants established cogent evidence as to the spurious and fraudulent acts of respondents, including but not limited to misrepresentation of co-respondents as heirs of the Deans, illegal apportionment of the then Intestacy and the illegal conveyance of portion of same in the purported capacity as administrators before closure of the Intestacy, the deed signed by co-respondents Thomas Travis and Thomas Popei bears the date October 31, 2003, and the court's ruling closing the estate is dated November 8, 2003, by His Honor the late Judge Mooney.

The appellants contend in count 1 of their bill of exceptions that the Judge did not proceed consistent with the mandate of the Supreme Court which instructed the court below to proceed with the hearing of the case and ascertain the allegation of misrepresentation and fraud allegedly engaged in by the appellees. In such case, appellants say, the Judge should have taken judicial notice of the law as required of all judges that all issues of fraud must be determined by a jury. The failure of the Judge to insist on a jury trial, appellants say, was erroneous and warrants an overturn of his ruling.

This brings us to the question, where fraud and misrepresentation are alleged, whether the trial judge is under an obligation to sua sponte empanel a jury to hear the matter?

The mandate from the Supreme Court overturning Judge Kollie's ruling reads:

that the Judge proceeds with the hearing of the case to ascertain the allegation of misrepresentation and fraud allegedly engaged in by the petitioners, and to proceed in accordance with law.

Does a reading of this mandate of the Supreme Court specifically mandated the court below to have a jury trial?

Firstly, the records show that His Honor, J. Boima Kontoe, who presided over this matter in the court below, sought to have the issues clearly set out when he requested the parties to appear for a pretrial conference setting out their legal contentious issues in a memorandum and have same filed and serve twenty-four hours before the conference. Both counsel for the parties failed to show up for the conference, but unlike the counsel for the appellees, who filed a legal memorandum, counsel for the appellants failed to file a legal memorandum clearly

setting out the issues of fraud as alleged and to pray the court to have these issues submitted to the jury.

When the case was called for hearing, counsel for appellants did not request a jury trial, but instead requested the court to qualify his witnesses. The request was granted and the Judge then proceeded to hear the testimonies of the appellants' witnesses without a jury.

Our CPLR Section 22.1, "RIGHT TO TRIAL BY JURY" reads:

a) Right preserved. The right to trial by jury as declared by Chapter III, Article 20(a) of the Constitution or as given by statute shall be preserved inviolate.

b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties.

c) Specification of issues. In his demand, a party may specify the issues which he wishes tried by jury; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten days after service of demand may serve a demand for trial by jury of any other or all of the issues in the action so triable.

d) Waiver. The failure of a party to serve a demand for trial by jury of an issue as required by this section and to file it as required by section 8.2 constitutes a waiver by him of trial by jury of such issue unless such a demand has been served by another party.

e) Relief for failure to make demand. Notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

f) Issues triable by a jury revealed at trial. When it appears in the course of a trial by the court that the relief required, even though not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury of such issues. Failure to make such a demand within the time limited by the court shall be deemed a waiver of the right to trial by jury. Upon such demand, the court shall order a jury trial of any issues of fact which are required to be tried by jury.

Nowhere in the records do we see a demand made by the appellants for a jury trial or request made upon the call of the case for empanelling of a jury. Also, no motion was subsequently filed by appellants requesting the court for a jury trial. Rather, the appellants' counsel, who was first to present evidence, requested for his witnesses to be qualified to testify without a demand to the Judge presiding. This failure of the appellants to make a demand for jury trial can only be interpreted as a waiver by them for trial by jury.

This brings us to count 2 of the bill of exceptions whether the appellants provided cogent evidence establishing the alleged fraud and misrepresentation made by the appellees in the closing of the David Z. Dean's intestate estate?

Count 2 of the appellants bill of exception states that the Honor was in both error of law and fact when he granted respondents motion during trial, when in fact informants established cogent evidence as to the spurious and fraudulent acts of respondents, including but not limited to misrepresentation of co-respondents as heirs of the Deans, illegal apportionment of the then intestacy and the illegal conveyance of portion of same in the purported capacity as administrators before closure of the Intestacy, the deed signed by co-respondents Thomas Travis and Thomas Popei bears the date October 31, 2003, and the court's ruling closing the estate is dated November 8, 2003, by His Honor the late Judge Mooney.

The appellants presented three witnesses to testify on their behalf. We shall take a look at their testimonies:

The first witness, co-appellant, Morris G. Dean, testified that the property in dispute was Samuel Dean, Sr. property. He stated that Samuel Dean, Sr., sometime before his death called his sister Kneepo Dean, the 'Travises' grandmother, and said, "You are my sister and also sister of David, but you are now part of another family." So, Samuel Dean, Sr. took one acre of land outside the commercial area and gave it to his sister Kneepo Dean, stating, "This is for you and your children; for now you are a part of another family; the balance property is for the Deans." Morris further testified that when Samuel, Sr. took over the property, every Dean used to be satisfied. When Samuel died, the Dean family got together and turned the property over to his wife and son, Beatrice Dean and Samuel Dean, Jr., who became administrators of the property. Once you were a Dean, Morris said, anytime you went to Mrs. Beatrice Dean for something, she would give it to you. Mrs. Dean died, and Samuel Dean, Jr. continued to serve as administrator for the property until the war broke out in 1990, and some family members left and went into exile. When he came from exile to Kakata, Morris said, he felt that the property had been mismanaged, that the property had been divided between Samuel Dean, Jr. and the Travises with the Travis on one side and Samuel Dean, Jr. on the other side. He then went to Samuel Dean, Jr. and asked why could he divide David Z. Dean's property without the involvement of other Deans, leaving he and Martha completely out. Samuel Dean Jr. responded that he was ill and was not involved in the division. On the cross examination, the co-appellant was questioned about the whereabouts of Martha Dean, the co-appellant. Morris replied that Martha Dean was in the country, but because she had to leave to go back to her family, she asked him to represent her interest. Also, when being cross examination about his father's Morris Dean, Sr.'s property, Morris Dean said that he was the administrator of his father Morris Dean, Sr.'s intestate Estate which was located in Grand Bassa County and not Kakata, Margibi County.

Appellants' second witness, Robert Dean, who testified that he was an adopted son of Samuel Dean, Sr., was told on the direct that the appellants had asked for the reopening of the David Z. Dean intestate, accusing the appellees of fraud and misrepresentation, and he was brought to substantiate their claim by telling the court of any fraudulent act or misrepresentation committed by the appellees.

This second witness of the appellants then testified that the property in dispute belongs to Samuel Dean, Sr. who got in trouble with the government and was imprisoned. Based upon the advice of his wife, Samuel had his property deeded over to his brother David Z. Dean for fear of the Government confiscating his property. Later, when Samuel was set free, he requested David to return his property which he did. He testified further that it was one Ernest V. Palmers, a close friend of Samuel Dean, Jr., who assuming that Bledde Dean was the daughter of David Dean, took the deed of the disputed property to Bledde Dean and her children,

the Travises. Thereafter, the Travises began to claim the property because it was said to be their mother father's property; a great disgrace brought upon the Deans, he said. This second appellants' witness spoke mainly on the family history, relaying the story about the property being originally owned by Samuel Dean, Sr. who had the property deeded to his brother David Z. Dean to avoid the property being confiscated by President Tubman.

This issue of whether Samuel Dean, Sr. was the real owner of the disputed property was delved into by this Court in one of its past opinions and will be referred to later in this opinion.

The appellants' third witness, Julia Dean, sister of Morris Dean, when asked on the stand to tell the court in short what she knew about the fraudulent act by the Travises, she stated that all she knew was that the Travises were not Deans, and they had taken the Deans' property. When questioned on the cross whether the Travises were the children of Bledde Dean, and grandchildren of Kneepo Dean, David Dean's sister, Julia Dean admitted that the Travises were the children of Bledde Dean and grandchildren of Kneepo Dean, but as far as she was concerned, the Deans and Travises were not one family.

It is obvious from the records that David Dean's property was managed by Samuel Dean, Sr. and treated as communal property by the Deans especially as David had no children. The fact that the Travises would come into the property through their mother, Bledde Dean, the niece and alleged adopted daughter of David Z. Dean and who appellants referred to as non-Deans, same to be the main contention for the reopening of the estate which the appellants second witness referred to as a great disgrace brought upon the Deans, and as the third appellants' witness said during her testimony, As far as she was concerned, the Deans and Travises were not one family.

Our law provides that in order for a court to overturn the judgment and orders of a predecessor judge, the successor judge must be convinced from the evidence presented that his predecessor acted upon fraud or misrepresentation; Page Vs. Ward, 31LLR 637, 642 (1983). Elements of fraud in this case must be where the appellants showed that the appellees acted under false pretense, and the judge acted based on his reliance on said pretense. The alleged fraud and misrepresentation must be specifically proved.

One of the court's question put to appellants second witness, Robert P. Dean was:

Ques: Mr. Witness, by your testimony so far, I get the impression that you are claiming that the estate that was closed on November 8, 2002, was that of your father (Samuel Dean, Sr.) that I suppose all of you are lineal heirs to inherit after his death. Am I correct?

Ans: Yes, because the land is for my pa that is why I am trying to claim it from whoever has it.

The court also posed these questions to the appellants' third witness, Julia Dean:

Ques: Madam witness, when did your uncle, Samuel Dean, Sr. tell you about the land transaction between he and David Dean?

Ans: I cannot remember the time; (It was) when he came from jail. David Z. Dean came from Buchanan at the time we were living at Borlorla Road, then he (Samuel

Dean, Sr.) say, I thank God my brother to see you at this time. He said, I put everything in your name, but as I am free from the trouble, you should come back and to turn everything over.

Ques: Madam witness, did David Z. Dean returned the property to his brother, and if yes, by what means did he returned the property to Samuel G. Dean, Sr. and when was that?

Ans: David Z. Dean returned the deed that was executed by Samuel G. Dean in favor of him, David Z. Dean, but I cannot remember the time.

On the cross examination of this appellants' third witness, this question was posed to her:

Ques: Madam witness, the petition to re-open the David Z. Dean's intestate estate for which you have come to testify before this court was filed by Morris G. Dean, Jr., your brother, and Martha Dean of the United States of America. Please tell this court the last time you and Martha Dean were together which made you come to testify on her behalf.

Ans: She and I were not together for her to tell me to come and testify. In fact, I have not seen her in my whole life

This matter of the Dean's estate which seems to be constantly appearing before this Bench requires an understanding of the Liberia traditional practice relating to real property, especially the Bassa Tribe from whence come the Deans. The Bassa Tribe, as it relates to ownership of property is patriarchal, and ownership of real property is normally handled in common among male siblings. When real property is purchased, especially by a younger sibling, the deed is normally presented to the senior brother who keeps the deed and exercises control over the property with the real owner acting as a nominal party. This obviously accounts for the myth that Samuel Dean, Sr. acquired the disputed property during President William V. S. Tubman's era when he was put in jail, presumably for political reason, and in order to avoid the government confiscation of his property, he deeded his property over to his younger brother David Z. Dean.

This Court, during its March Term 2010, in the matter, Rocky Ahmar vs. Madam Donzo and David Siaway, decided August 31, 2010, disposed of the claim that Samuel Dean, Sr. owned the disputed property. This Court said there was clear evidence that T.W. Leigh acquired twenty acres of land in Block # 1FL, in 1933 in Kakata, Margibi County and sold ten acres to David Z. Dean's in 1937, this very same property and the intestate estate which appellants now sought to reopen. This property the Supreme Court ruled, belonged to David Z. Dean, since Samuel Dean, Sr. could not have owned the disputed property and transfer it to David Dean during the Tubman era when the evidence shows that the purchase by David Z. Dean from T.W. Leigh was long before the Tubman's administration.

From the testimonies presented by the appellants, no where did they attempt to testify on, or prove any of the allegations made in their bill of information as brought forward in count 2 of their bill of exception. Their testimonies rather delved on how the property belonged to Samuel Dean, Sr. and not David Z. Dean. Nowhere was it also shown that the disputed property was that of Samuel Dean, Sr. or Morris Dean, Sr., fathers of the appellants, or that Martha Dean who is in the USA did authorize anyone to file or represent her interest in this matter. The law provides that such persons who desire to commence some form of legal

action in the courts of Liberia, but who lives in a foreign jurisdiction, should execute a power of attorney vesting in a person within Liberia the authority to commence the action on their behalf or in the alternative execute some form of a letter of authorization with the appropriate authentication. *Brvant v. The African Produce Company*. U.S.A, 6 LLR 27, 30 (1937). Besides, if she were to bring any action, it would be against the Samuel Dean, Jr. estate since the property he acquired from the David Z. Dean intestate estate was distributed per stripes and she falls under the Samuel Dean, Sr. lineage.

This Supreme Court has said that allegations of fraud and misrepresentation must be specifically proved. The Supreme Court, as previously stated hereinabove, said that the disputed estate belonged to David Z. Dean based on his purchase of said property from T. W. Leigh in 1937. Though the appellants in their testimony have stated that the Deans and the Travises are not the same, under our decedent estate law, the Travises are properly entitled to administer the disputed property based on their mother Bledde Dean's inheritance right as a distributee under the intestate estate of David Z. Dean.

Section 3.2 and 3.5 of our Decedent Estate Law deal with succession to real and personal property on intestacy, and 3.4 speaks to the division among relatives of equal and different degrees. In this case, Samuel Dean, Jr. and Bledde Dean petitioned the court, sitting in its probate section, to have the intestate estate of their uncle distributed per stripes, taking on the side of their father and mother, David Z. Dean's legitimate siblings. The issue that the Travises or their mother are not Deans has no place under our law. The portion of the estate that the appellees are administering was legitimately transferred to their mother under our decedent estate law, as their mother did acquire said property as an issue of Knepo Dean, who was the legitimate sister of David Z. Dean. The property legally being Bledde Dean's estate, legally her children are entitled to administer same.

We agree with the trial Judge that the appellants did not by their presentation of evidence prove fraud or misrepresentation in the closing of the David Z. Dean's intestate estate to warrant overturning his predecessor ruling or the re-opening of the David Z. Dean intestate estate. We therefore uphold his ruling on the motion for judgment during trial, ruling that the David Z. Dean intestate estate remains closed as per the ruling made by Judge Mooney, the then Resident Circuit Judge of the 13th Judicial Circuit, on November 8, 2003, with costs ruled against the appellants. AND IT IS HEREBY SO ORDERED.

The Appellants were represented by Counsellor Richard K. Flomo and the Appellees represented by Counsellor Cooper W. Kruah of The Henries Law Firm in association with the Gbaintor Law Offices.