

**THE INTESTATE ESTATE OF THE LATE JEBAH SWARY**, by and thru  
the Administrator, VAMMA B. S. ZWANNAH, Plaintiff\Appellant, v. **SIAGA  
SARNOR, et al.**, Defendants\Appellees.  
APPEAL FROM THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL  
CIRCUIT.

Heard: December 3, 1987. Decided: January 25, 1988.

1. An order determining a motion, whether made by a court or a judge, shall be in writing if made upon supporting papers. It shall be signed by the judge who made it, state the court of which he is judge along with the place and date of his signature, recite the papers used, and give the determination or direction.
2. A trial judge must dispose of and pass upon a motion for a declaratory judgment in which he has entertained arguments before proceeding to the rendition of final judgment.

The appellant, who had filed in the Circuit Court for the Eleventh Judicial Circuit for Bomi County, an action of summary ejection against the appellees to recover possession of real property claimed by it as part of the intestate estate of the late Jebah Swary, made application, during the trial, for a declaratory judgment. Arguments were had on the application and the case suspended to await ruling thereon.

However, when the hearing resumed, the trial judge proceeded to render final judgment dismissing the action. From this judgment of dismissal, the appellant appealed to the Supreme Court.

The Supreme Court *reversed* the judgment, holding that the trial court should have first disposed of the application for a declaratory judgment which had already been argued before the court. The case was therefore *remanded* for proper disposition of the application for declaratory judgment by the lower court.

*Roger K Martin* and *David D. Gbala* appeared for the appellant. *Francis Y S. Garlawulo* and *J. Laveli Supunwood* appeared for the appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The records transmitted from the lower court to this Court reveal that appellant filed an action of summary proceedings against the appellees to recover possession of real

property. During the proceedings in the lower court, the appellant filed an application or motion for the entry of declaratory judgment. The application/motion reads word for word as follows:

"To declare the legal rights of Seku Swary, Massah Swary and Jendoa Swary under the deed bearing the name of their late father, Jebah Swary, in whose name the deed for said intestacy was made, which deed was admitted into evidence without objection from defendants".

He further said that the failure of the trial judge to have made an order determining the motion of appellant prior to the rendition of the final judgment violated the Civil Procedure Law, Rev. Code I:10.9.

The appellees resisted the motion as follows:

"Appellees contend that under the law, a court consolidates actions involving a common question of law or fact pending before it, this may be done upon motion by any party, or the court *sua sponte* may order a joint trial and properly rule thereon". Civil Procedure Law, Rev. Code I: 6.3.

The case was then suspended to resume September 2, 1986, both appellant and appellees have submitted arguments *pro et con* on the action for declaratory judgment.

When the case resumed, the trial court proceeded to render final judgment as follows, instead of disposing of the motion: "Administrator Vamma B. S. Zwannah applied for letters of administration to administer the intestate estate of the late Jebah Swary. This petition was granted. Vamma B.S. Zwannah, one of the grand children of the late Jebah Swary was qualified as administrator of the said estate of the late Jebah Swary. After a brief time, the said administrator instituted an action of summary ejectment to eject Saifa Samor and others from the said parcel of land.

During the trial, it was discovered that the late Jebah Swary had four (4) children, namely: Hawah Swary, Jendoah Swary, Massah Swary, and Sekou Swary. As the trial proceeded, we discovered that Jawah Swary died without leaving children or issues of her body and Massah Swary, who also died, left issues or children, one of whom is Vamma B. S. Zwannah who is now the administrator. At the trial we came to know that Jendoah Swary is not in favour of the ejectment proceedings which was filed by the administrator, and that as a result she registered a strong contention against the ejectment proceedings which was filed by the Administrator Vamma B.S. Zwannah.

As a result, she disassociated herself with the said action of ejectment.

Since the property of the late Jebah Swary should be handed down to his children, in keeping with the Decedent Estates Law, Rev. Code 8: 3.2 (b), and since indeed Jendoah was one of the lawful heirs of the late Jebah Swary and who also had the legal right to the property as the other children of the late Jebah Swary, the property of the late Jebah Swary would have to be apportioned equally among the surviving heirs; but since Jendoah Swary is presently against the action of summary ejectment filed against Siafa Samor et. al. and the property has not been divided for each of the heirs to have their rightful portion, the said action of ejectment is hereby dismissed.

Furthermore, the letters of administration granted Vamma B. S. Zwannah is hereby revoked, since his appointment did not meet the approval of all the living children of the late Jebah Swary. The curator of Bomi County, Joseph B. Parker, is hereby ordered to take charge of the said property, take an inventory and submit same to the court below. The said curator is to be in charge of the property until the relatives of the family shall have appointed some one from each of the two living children of the late Jebah Swary, and also someone from the late Massah Swary, to be appointed as administrators, to administer the intestate estate of the late Jebah Swary to avoid misunderstanding."

Under the statutes of Liberia, a motion should be determined by order determining same. "An order determining a motion, whether made by a court or a judge, shall be in writing if made upon supporting papers. It shall be signed by the judge who made it, state the court of which he is judge and the place and the date of the signature, recite the papers used on the motion and give the determination or direction in such details as the judge deems proper". Civil Procedure Law, Rev. Code 1: 10.8. Also, the statute states that "an order determining a motion shall be entered and filed by the clerk of the court where the action or proceeding is triable". Civil Procedure Law, Rev. Code 1: 10:9.

The trial judge was obliged under the law to dispose of and pass upon the motion for declaratory judgment in which he had entertained argument before he proceeded to render the final judgment. He therefore erred.

In view of the foregoing, the case is remanded with instruction that the motion for declaratory judgment be disposed of, i.e. heard and ruled on before the final determination of the case. Costs are hereby ruled against appellees. And it is hereby so ordered.

*Judgment reversed; case remanded.*