

JEFF, JOHN, FORKPA, et al., Petitioners, v. **HIS HONOUR SEBRON J. HALL**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and **HER HONOUR AMY MUSU K. JONES**, Stipendiary Magistrate, Monrovia City Court, Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS
GRANTING THE PETITION FOR A WRIT OF PROHIBITION

Heard: March 24, 1999. Decided: June 3, 1999.

1. It is only the probate court or the circuit court sitting in its probate division that has exclusive power and jurisdictional authority to handle the affairs of decedents' estates.

Petitioner was granted letters of administration by the Monthly and Probate Court for Montserrado County, to administer the intestate estate of Madam Kutu Kiahon upon her death. For about ten years, petitioner lived in and managed Madam Kutu Kiahon's property, without having the said intestate estate closed. At the outbreak of the Liberian civil war he fled to the Republic of Guinea. During his absence, Madam Ciatta Sherman, claiming to be the next of kin of the intestate, moved in, took control of the subject premises and placed renters in the house. The Kiahon family members contended that Petitioner was never married to Madam Kutu Kiahon, and that he was attempting to take over her property by fraud and misrepresentation.

When petitioner returned from Guinea and demanded payment of rent from the occupants of the house, they refused on ground that they had been placed in the house by Madam Ciatta Sherman. Accordingly, petitioner brought an action of summary proceedings to recover possession of real property against the defendants. At the trial before the magistrate, Madam Sherman appeared, filed a motion to intervene, and challenged the standing of the petitioner to sue.

The motion to intervene was granted and thereupon the intervenor moved to suspend the hearing of the summary ejectment action until the Probate Court shall have passed on the challenge to petitioner's authority plaintiff's authority over the property. The motion was granted and petitioner, being dissatisfied with the ruling, instituted summary proceedings against the magistrate in the Civil Law Court of the Sixth Judicial Circuit. The Civil Law Court conducted a regular trial of the main suit of summary proceedings to recover possession of real property, entered judgment for petitioner and ordered defendants evicted, from which ruling defendants filed a petition for a writ of prohibition before the Chamber Justice.

The Chambers Justice, noted that the two contending parties are in *delicto* and whenever such a situation exists, then the *status quo ante* prevails. In the instant case, the Justice noted that one party, the objector/movant, relies on only a power of attorney to be the basis for attempting to exercise control over an intestate estate; while the other party, the respondent, Mr. Mamadee Daramy, relies on letters of administration issued and granted him by the court but which has now come under serious attack from the family of the intestate estate for having been procured by fraud, misrepresentation and falsehood. The Chambers Justice noting that the probate court is the best authority to pass on the validity of the letters of administration, and on the validity of the power of attorney as executed, held that the ruling of the stipendiary magistrate that all matters be suspended until the probate court shall have decided the rightful person to administer the property, was not in error. Accordingly, the Chambers Justice denied the petition, from which ruling, the defendants/petitioners appealed to the Full Bench.

Upon review of the records, the Supreme Court affirmed the ruling of the Chambers Justice and ordered the probate court to assume jurisdiction and determine who should administer the property. All of the other issues raised in the petition were not passed upon because the petitioners abandoned or decided not to pursue their appeal since they had already vacated the subject premises which was the cause of their being brought to court in the first place.

Frederick A. B. Jayweb appeared for petitioners. *Roger K Martin* appeared for respondents.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This case comes to the Full Bench on appeal from a ruling out of the Chambers of Mr. Justice M. Fulton W. Yancy, Jr., former Associate Justice, then presiding in Chambers. In his ruling, Justice Yancy denied the petition of these petitioners, and affirmed the ruling of the judge of the Civil Law Court which ordered the co-respondent magistrate to oust and evict the aforesaid petitioners who were, defendants in the action of summary proceedings to recover possession of real property.

The facts are that one Madam Kutu Kiahon died intestate and that one Mamadee Daramy, purporting to be her husband, and upon application duly made, was granted Letters of Administration by the Monthly and Probate Court of Montserrado County on June 7, 1979. He lived in and managed the property without having the said

intestate estate closed, until the outbreak of the Liberian civil war when he fled to the Republic of Guinea. The estate is still open even up to and including the date of this ruling. The property in question consists of one storey building located and situated on Newport Street, Monrovia.

While Mamadee Daramy was out of the country, one Madam Ciatta Sherman, claiming to be the niece and next of kin of the Intestate, moved in and took over possession and control of the subject premises, and placed renters and other occupants in the house. According to her, she was acting for and in the interest of the Kiahon Family, the larger family of which she is a descendant, by virtue of a power of attorney issued her by the other family members, with a view to protecting the property of their deceased aunt from deteriorating and from being in the hands of strangers. One of such strangers was Mr. Mamadee Daramy, who, according to the family members, was never married to their late aunty, but was only attempting by fraud, deceit and misrepresentation, to take over their aunt's property.

Upon his return from Guinea, Mr. Daramy demanded payment of rent from the occupants in the house who were not put there by him but they refused to pay him because they had been placed there by Madam Ciatta Sherman. This led Mr. Daramy to sue out an action of summary proceedings to recover possession of real property against them for being illegal occupants. The present petitioners were among those persons placed in the house by Madam Ciatta Sherman and were the defendants in the summary ejectment action in the magisterial court.

When the case was called for trial before the magistrate, Madam Ciatta Sherman appeared and filed a motion to intervene on behalf of the defendants, now appellants. She challenged the standing of Mr. Daramy to sue the defendants because his authority over the house was now in question as she, relying on the power of attorney earlier issued her by and on behalf of her family (i.e. her aunt's larger family), had already filed a petition in the probate court praying for the revocation of the letters of administration it had previously issued to Mr. Daramy. It was their family's contention that he was never married to their aunt and that he was of no relation to her, and as such he had obtained said letters of administration by fraud and misrepresentation and should therefore be divested of his authority to manage the affairs of her intestate estate.

The magistrate heard and granted the motion to intervene as filed by Madam Ciatta Sherman, thereby permitting her to join the case in the interest of the defendants, who were in the house at her instance. Having thus been permitted to intervene, she

moved the magistrate to suspend the case to allow the probate court to first determine the status of Mr. Daramy as the administrator of her aunt's intestate estate (i.e. the petition for revocation of the letters of administration); the rationale being that if the letters of administration are revoked, then Mr. Daramy would not have the legal capacity to maintain the action against the occupants placed in the house by her.

This latter request was also granted by the magistrate and the action of summary proceedings to recover possession of real property filed against the defendants, now appellants, by Mr. Daramy was ordered suspended until the probate court can pass on the revocation challenge raised by Madam Sherman against Mr. Daramy. It is this latter ruling of the magistrate suspending the trial of the summary proceedings to recover possession of real property that dissatisfied Mr. Daramy and drove him to the civil law court in a complaint of summary proceedings against the illegal and arbitrary action by the magistrate.

The civil law court assumed jurisdiction and ordered a full regular trial of the main suit of summary proceedings to recover possession of real property instead of only the complaint against the conduct of the magistrate. In that connection, the defendants filed a motion to strike the petition of the plaintiff because same was not properly verified. The trial judge did not pass on the motion but proceeded with the trial of the main suit and entered judgment in favor of the plaintiff, Mamadee Daramy, and ordered the defendants immediately evicted and ousted.

Upon being evicted, the defendants fled to the Chambers of the Supreme Court and filed a petition for a writ of prohibition. The alternative writ was issued wherein the defendants were ordered repossessed, and they were indeed repossessed. The Justice in Chambers heard and denied the petition, ordering the trial judge to resume jurisdiction and enforce his judgment. The petitioners being dissatisfied with the ruling of the Chambers Justice excepted thereto and announced an appeal to the Full Bench. The appeal was granted but the judgement was ordered enforced as to the eviction of the defendants, notwithstanding the appeal.

When this case was called for hearing, Counsel for petitioners informed this Court that the case was now moot as to their appeal because they, in an attempt to avoid humiliation and embarrassment, located and secured another place and had already moved out of the subject premises, and as such they were no longer interested in their appeal. Counsel was fined the sum of five hundred Liberian dollars which he paid.

At this point, even though the ejectment aspect of this case has already been disposed of in effect, there is still the more substantive and important element of the status of the property as regards supervision, management and control of the intestate estate, pending undetermined in the probate court because of this appeal. As stated earlier in this opinion, it is to be noted that the said intestate estate is still open even though the letters of administration were issued since 1979, some twenty years ago.

To all intents and purposes, the status of this property remains in limbo. The Chambers Justice found and observed in his ruling that the two contending parties are in *delicto* and whenever such a situation exists, then the *status quo ante* prevails. In the instant case, one party, the objector/movant relies on only a power of attorney to be the basis for attempting to exercise control over an intestate estate, while the other party, the respondent, Mr. Mamadee Daramy, relies on letters of administration issued and granted him by the court but which has now come under serious attack from the family of the intestate estate for having been procured by fraud, misrepresentation and falsehood.

The Chambers Justice held, and we wholly concur in the conclusion, that" the probate court being the best authority to pass on the validity of the letters of administration, and on the validity of the power of attorney as executed, the ruling of the stipendiary magistrate that all matters be suspended until the probate court will have decided the rightful person to administer the property is not in error." Because by law it is only the probate court or the circuit court sitting in its probate division that has exclusive power and jurisdictional authority to handle the affairs of decedents' estates. Judiciary Law, Rev. Code 17: 5.1 and 5.2.

There is an added element or dimension to this case, and that is that the estate has remained open since the death of Madam Kutu Kiahon many years ago and more significantly since 1979 when the administrator was appointed. This is in direct contravention of the law controlling intestacy; hence, the urgency it deserves. Accordingly, this case is remanded to the Monthly and Probate Court of Montserrado County with express and strict instructions to accord this case priority on its docket for prompt disposition of the petition or motion for revocation of the letters of administration filed by the family of the deceased thru Ciatta Sherman against the man holding himself out as the husband of the deceased and that the said probate court will immediately thereupon determine who the proper administrator of the property should be, and have him, her or them so appointed and qualified.

All of the other issues raised in the petition are no longer before the Court and cannot be passed upon because the petitioners abandoned or decided not to pursue their appeal since they had already vacated the subject premises which was the cause of their being brought to court in the first place.

WHEREFORE, and in view of the foregoing laws, facts and circumstances, this Court hereby rules that the ruling of the Chambers Justice appealed from, being supported by the law controlling, the same be and is hereby accordingly confirmed and affirmed, thereby denying the petition and ordering the probate court to assume jurisdiction and make a determination as to who is or should be the proper person to take over the affairs of the intestate estate of the late Madam Kutu Kiahon.

The Clerk of this Court is hereby ordered to send a mandate to the Monthly and Probate Court for Montserrat County ordering the judge presiding therein to assume jurisdiction over this case and immediately give preference and priority to it and determine who should be the administrator of the subject property. A mandate will similarly go to both the Civil Law Court and the magisterial court ordering them both to relinquish and or refuse further jurisdiction over this case until the probate court shall have made its determination in keeping with the orders herein given. And it is hereby so ordered. Costs to abide final determination.

Ruling affirmed