

MESSRS MUSA KIAZOLU and **EDWIN KIADII**, Petitioners, v. **HER HONOUR LUVENIA ASH-THOMPSON**, Judge, People's Monthly and Probate Court, Montserrado County, the Clerk of the aforesaid Court, **MARY HOWE**, The Sheriff, Deputized Officers of Court and **A. B. CLARKE et. al.**, purported Heirs of the late Chief Bai's Intestate Estate, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING
ISSUANCE OF THE WRIT OF PROHIBITION.

Heard: June 16, 1986. Decided: July 31, 1986.

1 The unreserved withdrawal of the defendant's answer/objection or returns is an admission of the truthfulness of all averments laid in the plaintiff's complaint and that the defendant no longer contests the case.

2 Where the defendant has unreservedly withdrawn his response, the court can safely, without the defendant, proceed as in the case of a default, to hear and determine the cause based on evidence adduced by the plaintiff. Such action will not constitute an abuse of discretion on the part of the trial judge.

3 There is no point in having a defendant present in court to announce an appeal to the ruling on a matter in which the defendant has withdrawn without reservation.

4 Prohibition does not obtain, and is rendered impotent, when the act a party seeks to prevent or undo has been settled before the petition for the writ is filed.

5 Prohibition obtains to restrain an inferior court from acting in a case which falls outside its jurisdiction or, having jurisdiction, attempting to proceed by rules other than those which ought to be observed at all times.

6 A writ of prohibition not only halts whatever remains to be done by the court against which it is issued, but also gives further relief by undoing what has been done.

7 The probate court has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person, and proceeding without a party who has unreservedly withdrawn his response is within the norm of the rules governing our circuit and probate courts.

Respondents herein, A. B. Clarke and others, filed a petition with the Monthly and Probate Court requesting that the letters of administration granted petitioners herein, Musa Kiazolu and others, to administer the intestate estate of the late Chief Bai Bai be revoked for failure to properly manage the estate between 1982 - 1985. Kiazolu and others objected to the petition for revocation, but they all being members of the same clan convened a family meeting to resolve the matter amicably, whereupon the objections were withdrawn. The Probate Court then appointed petitioners (respondents herein) as administrators of the said estate in the absence of the objectors.

The objectors/respondents, Kiazolu and others, then petitioned the Chambers Justice for a writ of prohibition to prevent the new administrators and the Probate Judge from administering the estate, accusing the said judge of abuse of discretion. The Justice denied the writ on the grounds that objectors/petitioners had withdrawn their objection without reservation, therefore rendering prohibition an inappropriate remedy. The full bench of the Court affirmed.

Edwin Kiadii appeared for the petitioners. *M Fahnbulleb Jones* appeared for the respondents.

MR. JUSTICE TULAY delivered the opinion of the Court.

The parties to this petition are but a few of the descendants of Chief Bai Bai and his people to whom the Republic of Liberia executed an Aborigines Grant Deed for certain acres of land lying and listed in Matadi Gbove Town, Oldest Congo Montserrado County. The original grantees lived on and enjoyed the land until they all departed this life.

Petitioners herein then petitioned the Monthly & Probate Court, Montserrado County on the 22ⁿ of April A. D. 1982 for letters of administration to enable them to administer and save from waste the intestate estate of their forebears. The petition was heard and granted and they were placed under oath. The records do not show what developed further. It is, however, noteworthy that for the years 1982-1985, during which petitioners had the estate in their charge, it was not brought to a close.

On the 15th of July, A. D. 1985, respondents petitioned the same Probate Court for revocation of petitioners letter of administration for the self same estate, have them removed and replaced by respondents on the strength of their own petition, then before court for letters of administration.

When petitioners were duly summoned, they appeared and filed their objections to the petition for revocation filed by respondents. The objection contain the following:

"MUSA KAIZOLU, EDWIN KIADII and ISAAC KARN-LEY, Objectors to the above entitled petition, pray for denial of said petition for reasons showeth the following, to wit:

"1. Because objectors say they have no knowledge of the statement made about them in count two (2) of said petition but rather took them by surprise, that in to say, "that because of the advance age of Mr. Musa Kaizolu" one of the administrators and the fact that Messrs Edwin Kiadii and Isaac Karnley, the other two (2) administrators, have been too occupied with more pressing activities, the within estate has not been given the attention and devotion it really deserved;" they being the administrators.

2. And also because the objectors say that the appointment or substitution of administrators to administer said estate does not necessarily require legitimate heirs of the late Chief Bai Bai but also person or persons with degree of consanguinity descending out of (30) members of the family along with Bai Bai in whose name the entire property is vested may also be appointed or substituted if need be.

3. And also because the objectors say that with the pendency of final decision of this Honourable Court in re: Momo Sonii, grandson of the late chief Bai Bai, informant versus Musa Kiazolu and EdWin Kiadii, respondents, BILL OF INFORMATION, in which this Court has just passed upon law issues, ruling said case to factual trial, appointment or substitution at this time will be inconsistent to the law controlling and guiding the administrators especially so when there is no probable cause for such. Hence requesting Your Honour to take judicial notice of the record.

WHEREFORE, in view of the foregoing legal and factual reason, the objectors pray for the denial of the said petition in its entirety."

Before the court could call up the case for trial, the parties to this suit, we repeat, being members of one and same large family of.

Chief Bai Bai and his peoples, the original grantees, convened a family meeting. After the meeting petitioners withdrew their objections filed against respondents' petition for revocation of petitioners' letters of administration. On July 30, 1985, counsel for objectors made the following record in open court with objectors present:

"Counsel for respondents/objectors say that he withdrew the response to the information filed into this court on the 10th day of August A. D. 1984 when with the objection, filed in favor of the objectors on the 22nd day of July, A. D. 1985 in favor of the respondents/objectors Messrs Musa Kaizolu, Isaac A. Karnley and Edwin Kiadii, for reason that it has been unanimously agreed by the Bai Bai family for the sake of unity that it should not be any matter against the family in question before this Honourable Court so as not to interrupt such a smooth understanding among the family and hence the withdrawal of the petition and the information previously filed before this Honourable Court by Counsellor James D. Gordon. To which Counsellor M. Agbaje concedes and also withdrew the respondent's returns as well as the objectors' objection: And since it is a unanimous agreement of the Bai Bai family to substitute the previous administrators, legally appointed by this Court, in persons

of Messrs Musa Kaizolu, Isaac K. Karnley and Edwin Kiadii to that of A. B. Clarke, Sr., Sekou Fahnbulleh and Alfred B. Roberts as the new administrators, counsel for the respondents/objectors interposes no objection, provided however the new administrators will abide by the statement made by the petitioners' counsel as statute course of this Honorable Court. And respectfully submit." The court then heard the petition, ruled on it, and after revoking petitioners' letters of administration, granted respondents their letters of administration.

Petitioners herein then filed this writ of prohibition before the Justice in Chambers praying that this Court restrains the respondents (and the court below) from administering the subject estate and order the revocation of respondents' letters of administration with further orders that they, the petitioners, be reinstated to resume the administration of the estate. The Chambers Justice refused to grant the petition and petitioners have brought the case before the full bench on appeal from the ruling of the Chambers Justice.

In listening to the arguments before us the following questions need to be determined:

- a. Was the position taken by the lower court correct when it heard respondents' petition and granted it, revoked petitioners' letters of administration and replaced them in their absence?
- b. May the ruling of the chambers Justice appealed from be affirmed or reversed?

In the arguments before us it was brought out that petitioners withdrew the objections to respondents' petition for the revocation of their letters of administration, wherein the court below proceeded, without them, to hear and determine respondents' petition. The net effect of withdrawal of the plaintiffs' complaint, without refiling, is that the matter is no longer before the court. The unreserved withdrawal of the defendant's answer/ objection or returns is an admission of the truthfulness of all the averments laid in the plaintiff's complaint,

and the defendant no longer contests the case. As in the case of default trials, the court can safely proceed without the defendant to bear and determine the cause on the evidence adduced by the plaintiff. *Cole v. Industrial Building Contractors*, 17 LLR 476 (1966). It was, therefore, no abuse of discretion on the part of the trial judge to have proceeded in the manner she did.

On the issue advanced by petitioners, that they did not announce an appeal from the decree entered against them because they were absent from the court, what would have been the purpose of announcing an appeal considering they had withdrawn their objection without reservation?

Petitioners also told the court that the writ of prohibition is the appropriate writ that obtains in this case. They, however, knew that the act they had asked this Court to prevent or undo, that is, the revocation of respondents' letters of administration and petitioners' reinstatement as administrators of the estate in point, had been done and the matter closed before the petition was filed, a fact that always renders a writ of prohibition impotent. *Fazliah v. National Economy Committee et. al.*, 8 LLR 85 (1943). Prohibition obtains to restrain an inferior court from acting in a case which falls outside its jurisdiction or, having jurisdiction, it attempts to proceed by rules other than those which ought to be observed at all times. In this case the court below has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person and proceeding without petitioners here, objectors below, after they had formally withdrawn their objection, is within the norm of the rules governing our circuit and probate courts.

A writ of prohibition not only halts whatever remains to be done by the court against which it is issued, but also gives further relief by undoing what has been done. It, however, does not obtain where the act complained of has been completed. *Coleman et. al. v. Cooper et al.*, 12 LLR 226 (1955).

It having been shown that the trial judge acted within the pale of the law when she proceeded to grant respondents' petition for letters of administration, in the absence

of petitioners herein, who had formally withdrawn their objections interposed to respondents' petition, and it having been proved that revocation of petitioners' letters of administration had been decreed and that the respondents had been substituted for them before this petition was filed, this Court hereby affirms and confirms the ruling of the Chambers Justice quashing the peremptory writ of prohibition and rules costs against petitioners. The Clerk of this Court is hereby ordered to send a mandate to the court below to this effect. And we so hold.

Petition for prohibition denied.