

REPUBLIC OF LIBERIA, Appellant, v. **JOHN TOLBERT, et al.**,
Administrators and Administratrix of the INTESTATE ESTATE OF PRESIDENT
WILLIAM R. TOLBERT, JR., Appellees.

APPEAL FROM THE NINTH JUDICIAL CIRCUIT COURT FOR BONG
COUNTY, PROBATE DIVISION.

Heard: November 20, 1989 Decided: January 9, 1990.

1. Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading.
2. Admissions made by a party are admissible against him.
3. A decision of the Supreme Court affirming the lower court's decision on the merits put finality to the case and such final judgment bars subsequent action.
4. It is contrary to law and specifically forbidden for a circuit court judge of concurrent jurisdiction to review the actions of his predecessor.
5. Any attempt to obstruct through illegal manipulations the enforcement of the mandate of court is considered contemptuous.
6. The president in the exercise of his executive power and prerogatives is authorized to perform any act that the needs of the nation demand, unless such action is forbidden by the constitution and the laws of the Republic of Liberia.
7. The executive has the constitutional duty to execute the law in accordance with the legislative purpose as expressed.

On May 15, 1984, Commander-In-Chief Samuel Kanyon Doe, then Head of State and Chairman of the People's Redemption Council, issued a decree for the return to their original owners certain properties confiscated by the People's Redemption Council Government following the April 12, 1980 coup d'etat. However, the properties of certain individuals and entities were excluded from amnesty as follows: William R. Tolbert, Jr., Clarence L. Simpson, Jr., Bennie D. Warner, True Whig Party, business entities whose loan were guaranteed by the Government of Liberia, all farms contracted out by the Government of Liberia and all farms which were managed and operated by the Bureau of Reacquisition. Later, on July 26, 1986, Samuel Kanyon

Doe, then the constitutionally elected President, in his Independence Day speech said, among other things, that in order to give greater content to the reconciliation process and to allow all citizens to participate fully in the Green Revolution Program, he was directing that all farms and farmland confiscated following the April 12, 1980 coup be returned to their rightful owners. Before then, the acting Minister of Justice, Honourable Godfrey K. Williams had issued directives for the arrest of Mr. John Tolbert, one of the heirs of the late William R. Tolbert, Jr., in respect of the farm confiscated by the government. When the President pronouncement was made on July 26, 1986, acting Minister of Justice, Honourable William K. Godfrey, wrote the general manager of Willoria Estate, Mr. Saykor K. Doman, to revoke whatever directive he may have given to have Mr. John Tolbert or any heir or relative of the late William Tolbert, Jr. arrested for allegedly interfering with the farms originally owned by said late William R. Tolbert, Jr.

Based upon these developments, the appellees, as heirs and next-of-kin to the late William R. Tolbert, Jr., petitioned the Probate Division of the Ninth Judicial Circuit, Bong County for letters of administration to administer the intestate estate of the late William R. Tolbert, Jr. After the filing of said petition, the then circuit court judge for the Ninth Judicial Circuit wrote a letter to the county attorney of Bong County, forwarding copies of said petition for his attention. The county attorney, upon receipt of copies of the appellees' petition, filed objections to the granting of letters of administration to the appellees.

The Probate Division of the Ninth Judicial Circuit Court assigned the hearing of the objections and the resistance thereto, which assignment was acknowledged by counsel for the appellant and appellees. But the counsel for appellant failed to appear and the necessary rules and laws were invoked and the appellees' petition for letters of administration was granted by the trial court. After the granting of the letters of administration to the appellees to administer their late father's estate, appellant filed a petition for a writ of error before the Chambers Justice of the Honourable Supreme Court, alleging, among other things, that she did not have her day in court. But when the petition for the writ of error was called for hearing, appellant withdrew her petition without reservation, and the Supreme Court Justice in Chambers therefore ordered the lower court to resume jurisdiction over the proceedings and enforce its final judgment.

When the mandate of the Supreme Court which grew out of the petition for the writ of error was being read in the lower court, the appellant again filed an objection, this time for the exclusion of William R. Tolbert's Gbalatuah Farm, Bong County from

the inventory of properties of the said William R. Tolbert, Jr. to be administered. The appellant later amended her objection. The trial judge heard the amended objection and the resistance thereto and thereafter dismissed said objection and ordered that the Gbalatuah Farm be included for administration by the appellees. The appellant excepted and announced an appeal.

On appeal, the Supreme Court held that the Gbalatuah Farm being part of the intestate estate of the late William R. Tolbert, Jr., ought not to be excluded from the inventory of said intestate estate and, therefore, ruled that the trial judge did not err when he ordered that the Gbalatuah Estates be included in the inventory. The Supreme Court also held that the act of the appellant in attempting to obstruct, through illegal manipulation, the enforcement of the mandate of Supreme Court was contemptuous. The Court further held that the trial judge acted in keeping with statutes and the decree of May 15, 1984 when he granted the letters of administration to the heirs of William R. Tolbert, Jr. The judgment of the lower court was therefore *affirmed and confirmed*.

William K Godfrey, Deputy Minister of Justice appeared for the appellant. *G. Bona Sagbe* appeared for the appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

According to the facts in this case, on the 15TH day of May, A. D. 1984, Commander-In-Chief Samuel Kanyon Doe, then Head of State and Chairman, People's Redemption Council, issued the following decree:

"Decree By The People's Redemption Council of the Armed Forces of Liberia to Provide for the Return of Certain Properties Confiscated by the People's Redemption Council Government Following the April 12, 1980 Coup d'etat to Their Original Owners"

"SECTION 1: That Decree numbers seven, eleven, seventeen, eighteen, and nineteen promulgated by the People's Redemption Council of the Republic of Liberia are hereby repealed subject to the exceptions set forth in section 2.

SECTION 2: That all properties confiscated by the People's Redemption Council Government following the April 12, 1980 Coup d'etat through decrees by the People's Redemption Council of the Armed Forces of Liberia, or executive orders or

pronouncement are hereby returned to their original owners except for persons, organizations and categories of properties enumerated hereunder:

(i) All properties of William R. Tolbert, Jr., Clarence L. Simpson, Jr. and Bennie D. Warner;

(ii) All True Whig Party properties and any other political parties or organizations which existed prior to April 12, 1980;

(iii) All business entities whose loans were guaranteed by the Government of Liberia;

(iv) All farms contracted out by government for management and operational purposes; and

(v) All farms which were managed and operated by the Bureau of Reacquisition.

"This decree shall take effect immediately upon the signature of the Head of State and Chairman of the People's Redemption Council of the Republic of Liberia.

ANY LAW TO THE CONTRARY NOTWITHSTAND-ING. ISSUED THIS 15TH DAY OF MAY, A. D. 1984.

Sgd. Samuel Kanyon Doe

CIC SAMUEL KANYON DOE, HEAD OF STATE AND CHAIRMAN, PEOPLE'S REDEMPTION COUNCIL"

On July 26, 1986, the President, in his 26THday speech, said, among other things, the following:

"It may be recalled that a few years ago, government announced that it was returning all confiscated properties to their rightful owners in order to help unify the country and bring about national reconciliation. This decision however did not embrace farms and farmlands.

Following careful review of this matter and in order to give greater content to the reconciliation process, and at the same time allow all our citizens to participate more fully in the Green Revolution program, I hereby direct that all farms and farmlands confiscated following April 12, 1980 be returned to their rightful owners".

Following this announcement, on November 27, 1986, the acting Minister of Justice, Honorable William K. Godfrey, addressed a letter to Mr. Saykro W. Doman, general manager, Wiloria Estate, Gbalatuah, Bong County, with this content:

"Mr. Doman:

I refer to our letter #3061/4-6/DM-RA/'86 of November 21. The letter is hereby revoked in the light of the fact that the President of this nation, Dr. Samuel Kanyon Doe, in his speech on July 26, 1986, pages 29 and 30 to be precise, directed that all farms and farmlands confiscated following April 12, 1980 be returned to their rightful owners.

Attached hereto are copies of the pages referred to. You will therefore revoke whatever directive you might have given to have Mr. John Tolbert or any heir or relative of the late William Tolbert Jr. arrested in keeping with our letter of November 21.

"Very truly yours,

t/William K. Godfrey

s/William K. Godfrey"

Based upon these developments, appellees filed a petition for letters of administration before the probate division of the Ninth Judicial Circuit Court, Bong County, on November 12, 1988 to administer the Intestate Estate of the late William R. Tolbert, Jr. The petition reads:

"IN RE: THE PETITION OF JOHN L. TOLBERT, WILLIAM R. TOLBERT, III, STEPHEN A. TOLBERT, II, AND ROSE TOLBERT-HOLMES, PRAYING FOR LETTERS OF ADMINISTRATION TO ADMINISTER THE INTESTATE ESTATE OF THE LATE WILLIAM R. TOLBERT, JR., THEIR FATHER.

And now come John L. Tolbert, William R. Tolbert, III, Stephen A. Tolbert, II, and Rose Tolbert-Holmes, children of William R. Tolbert, Jr., deceased of the City of Monrovia, Montserrado County, Republic of Liberia, petitioners and showeth unto Your Honour as follows to wit:

1. That the deceased died sometimes in 1980 seized of both personal and real properties within the Republic of Liberia.

2. That your petitioners are surviving sons and daughter of the deceased aforesaid; petitioners having made every diligent search to ascertain whether or not the deceased left any last will and testament were unable to discover any. Hence, the deceased did die intestate. Wherefore, and in view of the foregoing, petitioners pray Your Honour sitting in probate division of this court to issue them letters of administration to enable them to administer the intestate estate of the deceased and to grant unto them further authority as is legal and just."

On November 22, 1988, His Honour Varnie D. Cooper, Assigned Circuit Judge for the Ninth Judicial Circuit Court, addressed a letter to the County Attorney for Bong County, stating the following:

"Mr County Attorney:

The clerk of the probate division of this Honourable Court brought to my attention a petition for letters of administration filed by John Tolbert, William R. Tolbert, III, Stephen A. Tolbert, II and Rose Tolbert-Holmes, children of the late William R. Tolbert, Jr., praying this Honourable Court for letters of administration to administer their late father's intestate estate.

Perusing said file, we observed some other documents, which according to them, gave them the authority to administer the said intestate estate. Before the Court can take any further step with regard to the probing into the petition and granting same, if necessary, this Court is hereby forwarding to you photocopies of the said petition for letters of administration and the other documents for your scrutiny and official attention.

This court wants to know from the Ministry of Justice, Republic of Liberia, as to whether or not it is aware of the fact that clearance has been issued the children to warrant them to apply to this court for letters of administration to administer the alleged intestate estate of their late father.

Since the petition is assigned for the 26th instant, the Court will highly appreciate your official attention before the assigned date of the petition.

"Very truly yours,

t/Varnie D. Cooper

s/Varnie D. Cooper

ASSIGNED CIRCUIT JUDGE PRESIDING"

After receiving this letter from the court, on the 25th day of November, A. D. 1988, the county attorney filed the following objections to granting letters of administration to William R. Tolbert, III, et al., alleging and praying in substance:

1. That the Government of Liberia, by and through the Ministry of Justice, herewith objects to the granting by the Ninth Judicial Circuit Court sitting in its November Term, A. D. 1988 or any other judicial circuit or any court of competent jurisdiction for that matter in the Republic of Liberia, of letters of administration to William R. Tolbert, III, et al., petitioners for letters of administration, to administer the intestate estate of the late William R. Tolbert, Jr. or to any of the deceased's heir or heirs or to his widow as the case may be applying for such letters for reasons as follows, to wit:

2. That the Ministry of Justice is in receipt of no directive, order or mandate from the government to turn over the properties of the late William R. Tolbert, Jr. to anyone including his heirs and widow.

3. That the late William R. Tolbert, Jr. was among those whose properties were confiscated immediately following the April 12, 1980 coup which brought to power the Government of the People's Redemption Council.

4. That the properties of the late William R. Tolbert, Jr., not being among the confiscated properties that were returned to their rightful owners, they cannot be subject of a petition from anyone whomsoever for Letters of Administration.

5. That the court should deny petitioners' petition for the letters of administration.

"To this objection, appellees filed a resistance, the substance of which is, as follows:

1. That the objections do not conform to the Decedents Estates Law of Liberia and the Probate Procedure Code.

2. That the trial court could not deny the letters of administration based on the objections of the Republic of Liberia since the same matter was once before decided by the Supreme Court on a writ of error with the Republic of Liberia as the plaintiff-in-error and it was then decided that the Republic of Liberia had abandoned its objections.

3. That since the objectors failed to contest the matter when it first went to the Supreme Court and the Supreme Court rendered a ruling in favor of petitioners, the objectors cannot now have the trial court review the Supreme Court's ruling;

4. That the objections are deficient in that they do not have attached thereto documents, such as an alleged PRC Decree No. 7 to which it refers and it does not have revenue stamps placed thereon as required by law;

5. That the objections had not been filed within the statutory period and there has been no court proceeding confiscating the properties of William R. Tolbert, Jr., especially in light of the public pronouncement by the President that all properties confiscated in the wake of the April 12, 1980 coup should be returned to their rightful owners.

On December 9, 1988, the matter was assigned for hearing on December 14, 1988, and the assignment was acknowledged by counsel for both parties. However, when the case was called for hearing, counsel for the Republic of Liberia was not present in court. Rule 7 of the Circuit Court Rules was invoked, the Republic of Liberia was declared as having abandoned its objections, the petition was heard, and the letters of administration was granted.

After the granting of the letters of administration, the Republic of Liberia, acting through the Ministry of Justice, filed an application for a writ of error with the Chambers Justice during the March A.D. 1989 Term of the Honourable Supreme Court, contending among other things that they had not had their day in court. Returns were filed; but when the matter was called for hearing, the Republic of Liberia withdrew its petition for the writ of error without reservation, leaving the Supreme Court with no alternative but to order a mandate to the court below to enforce its judgment.

When the mandate of the Supreme Court was being read and the judgment enforced, the Republic of Liberia, by and through the Ministry of Justice, again filed new objections to the inclusion of the Gbalatuah Farm of the late William R. Tolbert, Jr., located in Bong County as part of the inventory of properties to be administered. It is the ruling from this second objections that is now being disposed of by this Honorable Court.

In summary, the objections stated that: (1) the petition did not state and describe the properties, which the petitioners seek to have administered; (2) that a certain PRC

decree no. 7, which confiscated the properties of the late William R. Tolbert, Jr., is still in force and effect; (3) that under Article 7 of the 1986 Constitution, the trial court was without authority or jurisdiction to review or investigate or pass upon anything done by the People's Redemption Council, such as the confiscation of the properties of the late William R. Tolbert, Jr., particularly the Gbalatuah Farm.

The objectors therefore prayed that the trial court enter a decree excluding the Gbalatuah Farm from the inventory of properties to be covered by the letters of administration and administered by the appellees.

In response to these objections, appellees filed a five-count resistance which states in substance that: (1) the objections had not been filed within statutory time; (2) no court proceeding confiscated the properties of William R. Tolbert, Jr., especially during the era of constitutional government in Liberia which emphasized due process; (3) that even if the properties were confiscated, President Doe has declared to the world that all confiscated properties must be returned to their rightful owners, especially farm lands in order to promote the Green Revolution Policy; (4) that the objectors have failed to state any legal ground; and (5) the properties, being private property and not public property, the Republic of Liberia has no legal standing to object to the issuance of letters of administration.

This second objection by the Republic of Liberia was heard by His Honour, M. Wilkins Wright, Assigned Circuit Judge presiding over the February Term A. D. 1989 of the Ninth Judicial Circuit Court. For the benefit of this opinion, we hereby quote some relevant portions of his ruling/judgment, as follows:

"This matter having political implications, this court addressed a letter dated November 22, 1988 to the county attorney for Bong County, bringing to his attention the filing of the said petition and seeking clarification as to whether or not the Ministry of Justice was aware of a clearance being issued to the Tolbert children to warrant their applying to the Court for letters of administration to administer the said intestate estate.

On November 25, 1988, the Government of Liberia through the Ministry of Justice filed a three count objection praying this court to deny the petition and refuse to issue letters of administration to the petitioners as prayed for. The objector contended that the Ministry of Justice had not received any directive, orders or mandate from government to turn over the properties of the late William R. Tolbert, Jr. to anyone including his heirs and widow.

It was further contended by the objector that the properties of the late William R. Tolbert, Jr. were among those seized by the Government of the People's Redemption Council in 1980 following the April 12 coup. Finally, the objector contended that when the government decided to return confiscated properties to their rightful owners, the properties of the late William R. Tolbert, Jr. were not among those to be returned and so the Tolbert's properties could not be a subject of a petition for letters of administration.

On November 28, 1988, the petitioners, now respondents, filed their resistance to the objections filed by the Ministry of Justice. In count one of the resistance, the petitioners, now respondents, argued that the objections were not filed within a statutory time, while in count two, they contended that there is no court proceedings which ordered the confiscation of the said properties in this period of constitutional democracy and due process of law.

The respondents argued in count three that even if the said properties were confiscated, that confiscation was undone and revoked by Dr. Samuel Kanyon Doe's directive that all properties confiscated after April 12, 1980 coup should be returned to their rightful owners, especially farm lands, so as to successfully implement the Green Revolution policy. In count four, the respondents argued that the objections did not state any legal ground to bar the petition being granted. Finally, in count five of the resistance, it was contended that the government had no legal standing to object to the petition since the properties sought to be administered are private properties and not public properties; and also since there has not been filed any cancellation proceedings.

Following the filing and exchange of the above pleadings, the case was assigned for hearing on December 14, 1988 and both parties acknowledged the notice of assignment. For the objector, same was received by Counsellor William K. Godfrey, Deputy Minister of Justice, while for the petitioners/respondents, Counsellor Francis Y. S. Garlawolu signed. At the call of the case for disposition of the objection and the resistance, there was no appearance for the government/objector; neither Deputy Minister Godfrey nor the county attorney for Bong County appeared. Thereupon, counsel for respondents invoked Rule 7 of the Revised Rules of Circuit Courts and argued that the objector had abandoned its claim and therefore prayed the court to dismiss the objections and strike same from the records and allow respondents to prove their side of the case.

The court granted the application and petitioners/ respondents took the stand and presented evidence in support of their petition. Thereupon, the court, being satisfied with the proof offered, granted the petition and ordered the probate clerk to issue the letters of administration as prayed for by the respondents in their petition, and same was done. Immediately following the issuance of the letters of administration in favour of the petitioners, the Republic of Liberia, through the Ministry of Justice, filed a petition for a writ of error before the Associate Justice presiding in Chambers, alleging that she was deprived of her day in court by the trial judge.

The alternative writ was issued staying further action in the proceedings. The respondents filed their returns to the petition for a writ of error. The case was assigned for hearing of the petition and the returns on the 15th day of February, 1989. When the case was called as per assignment, Deputy Minister Godfrey appeared for the Ministry of Justice and informed the Supreme Court that the Republic of Liberia had filed with the Clerk of the Supreme Court a notice of withdrawal, thereby withdrawing her petition for a writ of error without any reservation. In view of the withdrawal, the Justice in Chambers on the same February 15, 1989, ordered the court below to resume jurisdiction over the case out of which the petition for a writ of error grew and to enforce its final judgment.

But before the court below could act, the Republic of Liberia on February 16, 1989 filed objections to the inclusion of the Gbalatuah Farm of the late President Tolbert as part of the inventory to be taken of the properties to be administered by the respondents. To these objections, the respondents filed their resistance on March 3, 1989. When the case was called for hearing as per assignment on the 4th of March, 1989, the objector again filed a three count amended objection, praying this court for an order or ruling excluding the decedent's Gbalatuah Farm from being administered by the respondents.

In count one, the objector contended that the petition for letters of administration as filed by the respondents was vague as it did not state specifically the various properties sought to be administered; while in count two, the objector argued that the farm sought to be excluded was confiscated by PRC Decree No. 7 which, up to the filing of the objections, was still in full force and effect as it had not yet been repealed; and that no statute or decree can be orally repealed. In count three of the amended objection, it was contended that the 1986 Constitution of Liberia at Article 97 forbids the court from reviewing, investigating or passing upon any act that was done by the PRC Government, and so for this court to include the Gbalatuah Farm

among the properties to be administered by the respondents would be tantamount to reviewing and, in fact, setting aside PRC decree No. 7.

The respondents there and then spread their resistance to the amended objections on the minutes of the court, contending in count one that the objector had violated the doctrine of *res judicata* in that the objector had once filed the same objections before this court which they abandoned when the petition for letters of administration was being heard, thereby giving this court the right to grant the said petition. In count two, the respondents contended that the objector, having thus abandoned her defense, fled to the Chambers of Justice of the Supreme Court with a petition for a writ of error which, when assigned and called for hearing, the objector (plaintiff-in-error) withdrew said petition without any reservation thus leaving the Supreme Court with no alternative but to send down a mandate to this court to resume jurisdiction and enforce its ruling. Therefore, the objector is estopped under the doctrine of *res judicata*. In count three, the respondents argued that PRC decree no.7 is a nullity because it was repealed on May 15, 1984 and repealed by PRC decree no. 86 and laws repealed have no force or effect. In count four, respondents argued that PRC decree no. 86 was itself in turn amended by Presidential Proclamation of July 26, 1986 in which Dr. Samuel Kanyon Doe said that in order to enhance the reconciliation process and give greater content to the Green Revolution program, all farms and farmlands were to be immediately returned to their rightful owners, since the earlier mandate to return confiscated properties to their owners did not extend to or include farms and farm lands.

It was argued further that pursuant to the July 26, 1986, Proclamation, the Ministry of Justice through its acting Minister, William K. Godfrey, wrote a letter to the manager of the said Gbalatuah Farm, revoking all previous letters and directives regarding that farm and the Tolbert heirs. Respondents then contended that one cannot repudiate his own acts, for it was the same Ministry of Justice through the very same Deputy Minister Godfrey who, in obedience to the proclamation, ordered the return of the farm and now it is the same Ministry of Justice again through Deputy Minister Godfrey, who has filed these amended objections; and therefore, same should not be entertained. Finally, in count five of their resistance, the respondents argued that they are not bound by any law to enumerate with particularity all the properties sought to be administered in a petition for letters of administration.

In view of the above, there is only one basic issue to be decided by this court upon which all other facts of this case would depend and that is: whether or not the objector/ Ministry of Justice is estopped under the doctrine of *res judicata* from filing

these amended objections, having once filed the same objections raising the same contentions and then abandoning her defense thereof at the call of the case in the trial court, whereupon, the said court granted the petition for letters of administration to which the objections were filed; and that the objector filed a petition for a writ of error and withdrew same without reservation and did not except to the final judgment of the Justice in Chambers, whereupon the Supreme Court mandated the trial court to enforce its judgment.

In other words, the question we have to answer is whether or not the Ministry of Justice had legal standing to sue? The answer to this question will determine all the other issues, and in fact will determine whether or not these issues will be addressed at all. The facts are not in dispute that the objector abandoned its defense by the failure of its counsels to appear before the trial court for the hearing of the said objections and the petition for letters of administration, even though the parties were duly notified, whereupon, the respondents invoked Rule 7 and presented evidence in support of their petition for letters of administration. The court was thus left with no other alternative but to grant the petition.

Accordingly, the failure of the objector to appear amounted to a waiver of their objections and a tacit admission of the allegations of the petition. It is provided that averments in a pleading (in this case the petition) to which a responsive pleading (in this case the objections) is required are deemed admitted when not denied in their responsive pleadings. Civil Procedure Law, Rev. Code 1:9.8. The abandonment of the objections had the same effect as if no responsive pleadings had been filed, or even had one been filed, it did not deny the allegations of the pleadings to which it was responding. It is further provided that admissions made by a party are admissible against him (Civil Procedure Law, Rev. Code 1:25.8(1); and since the objector, by its abandonment, admitted to the truthfulness of the allegations in the petition, the court properly granted the petition as there were no objections against it.

It was argued by the respondents that *res judicata* would apply and thus prohibit the objector from filing this subsequent pleading (the amended objections) because the Supreme Court had already decided the matter and in fact the lower court was bound by the decision of the Supreme Court. Both parties argued and agreed that *res judicata* would not apply if the decision of the Supreme Court did not put finality to the case. The objector argued that *res judicata* should not apply because the decision of the Supreme Court did not go to the merit of the case as to put finality thereto.

A review of the records revealed that the trial court passed upon the merits of the case when it granted a petition for letters of administration after the petitioners had presented evidence to support the allegations contained in their petition. The objector filed its petition for a writ of error, contending that when the merits of the case were passed upon by the trial court, the objector was deprived of her day in court. Then it is revealed that the objector/ plaintiff-in-error withdrew without reservation her petition for a writ of error. By that withdrawal, the plaintiff-in-error/objector conceded the decision of the lower court, which was based on the merits.

The decision of the Supreme Court ordering this court to resume jurisdiction and enforce its final judgment which was based on the merits, was in itself a final judgment on the merits as it confirmed what the lower court had done also on the merits, and since a decision of the Supreme Court affirming a lower court's decision on the merits puts finality to the case, the contention of the objector is not sustained; while the position of the respondents is upheld, since such a final judgment bars subsequent action. For reliance, see *Kiazolu-Wahab v. Sonni et al.*, 16 LLR 73 (1964); *Liberia Trading Corporation v. Abi-Jaoudi*, 14 LLR 43 (1960); *Phelps v. Williams*, 3 LLR 54 (1928).

The Constitution of Liberia, at Article 65, provides that judgments of the Supreme Court shall be final and binding; Article 66 following, provides that the Supreme Court shall exercise final appellate jurisdiction in all cases.... This principle is re-echoed in numerous Supreme Court opinions. See *Richards v. McGill and McGill-Hilton*, 6 LLR 81 (1937); *Manning v. Karpeh*, 6 LLR 172 (1938). In fact, it has been held to be contemptuous for the lower court to disregard or fail to execute mandates from the Supreme Court. see *Richardson v. Perry*, 14 LLR 7 (1960); *Amierable v. Cole*, 13 LLR 17 (1957). The Supreme Court, in its mandate of February 15, 1989, ordered the lower court to resume jurisdiction over the case and enforce its final judgment. This, it was bound to obey. For to entertain these amended objections would be the same as setting aside the Supreme Court's mandate and not enforcing this court's earlier final judgment, which granted the petition for letters of administration and ordered the administrators to take an inventory. This, as seen above, would be contemptuous of the highest grade of the Supreme Court, which this court will strenuously guard against, oppose and refuse to do. Not only that, but to entertain these amended objections would be equivalent to reviewing the actions of the judge's predecessor, a circuit judge of concurrent jurisdiction, which is contrary to law and is specifically forbidden. see *Kanawaty et al., v. King*, 14 LLR 241 (1960);

Bracewell and Caranda v. Coleman et al., 6 LLR 176 (1938) *Gage v. Pratt et al.*, 6 LLR 246 (1938).

The court held that it was not necessary to decide the other issues raised because same would be an exercise in futility, since it had just held that the objector does not have standing to sue due to its abandonment of its original objections in the trial court, and its subsequent withdrawal without reservation of its petition for a writ of error in the Supreme Court, whereupon the Supreme Court entered a final judgment. The objector is therefore estopped and *res judicata* prevents the objector from raising any further issue on the same subject matter by filing the same objections as those once abandoned.

The court therefore rules that in view of the foregoing laws, facts and circumstances, it is the judgment of this court that the amended objections as filed by the Ministry of Justice/objector be and the same is dismissed in their entirety and stricken from the records in the case as though they were never filed, and the request therein contained accordingly denied, and counts one and two of the respondents' resistance sustained while counts 3, 4, and 5 of the said resistance are set aside and not passed upon. In view of the above, this court in obedience to the mandate of the Supreme Court to resume jurisdiction and enforce our own final judgment, hereby re-emphasizing and reiterating the said final judgment granting the petition for letters of administration to the petitioners, now respondents herein.

Accordingly, the respondents are hereby reconfirmed as administrators/administratrix of the intestate estate of the late President William R. Tolbert, Jr., and pursuant to said mandate and appointment, they are hereby ordered to take an inventory of the aspects of the said estate, including the Gbalatuah Farm, subject of these amended objections, and submit to this court within twenty (20) days the said inventory, and to collect all debts due the estate and pay off all debts owed by the estate and thereafter have the estate closed within one (1) year as of today's date, the date of this final judgment. And it is hereby so ordered.

GIVEN UNDER MY HAND AND SEAL OF
COURT, IN OPEN COURT THIS 20th DAY OF
MARCH, A. D. 1989.

t/m. Wilkins Wright

s/m. Wilkins Wright

ASSIGNED CIRCUIT JUDGE PRESIDING"

It is from this final judgment under the gavel of Assigned Circuit Judge Wright that the Ministry of Justice entered exceptions and announced an appeal to this forum containing six (6) counts.

As to count one of the bill of exceptions, appellant/objector has contended that the trial judge committed reversible error when he ruled that the granting of letters of administration to the heirs of the late William R. Tolbert, Jr., then petitioners for the letters of administration, was the same as the objections to the inclusion into the inventory submitted or to be submitted by administrators and administratrix of the Gbalatuah Farm of the late William R. Tolbert, Jr., when the latter objections were not against the granting of letters of administration to petitioners but rather an objection for administrators and administratrix not to include certain properties in the inventory of properties to be administered.

This Court says that this count is not sustained because of inconsistency and contradiction, and incompatible defenses in points of facts and law. That is, they are so inconsistent that the truth of one defense would necessarily disprove the others. Therefore, they are destructive. The records reveal that when President Doe ordered the return of all confiscated properties to their rightful owners in order to help unify the country and bring about national reconciliation process and at the same time allow all our citizens to participate more firmly in the Green Revolution Program and directed that all farms and farmlands confiscated following the April 12, 1980, be returned to their rightful owners, this did not exclude any separate properties, both real and personal of the late William R. Tolbert, Jr. It included his properties anywhere and in any place. This was made clear in the letters of administration when it specifically stated, *inter alia*, as follows: That the late William R. Tolbert, Jr., being at the time of his death a resident of Monrovia, Montserrado County, Re-public of Liberia, and having at the time of his death properties within Bong County and elsewhere in the Republic of Liberia, "WE, THE MONTHLY AND PROBATE COURT, NINTH JUDICIAL CIRCUIT COURT, GRANT JOHN L. TOLBERT, WILLIAM R. TOLBERT, III, STEPHEN A. TOLBERT, AND ROSE TOLBERT-HOLMES, SONS AND DAUGHTER OF THE LATE WILLIAM R. TOLBERT, JR., OF BONG AND MONTSERRADO COUNTIES RESPECTIVELY, FULL POWER TO ADMINISTER THE ENTIRE INTESTATE ESTATE OF THE LATE WILLIAM R. TOLBERT, JR., TO DISPOSE OF AND DO HEREBY REQUIRE THEM TO FORTHWITH MAKE A TRUE AND PERFECT INVENTORY OF THE PROPERTIES OF THE SAID DECEDENT "

In other words, the Gbalatuah Farm, being part of the intestate estate of the late William R. Tolbert, Jr., ought not be excluded from the inventory. Hence, the trial judge committed no reversible error when he ordered that the Gbalatuah Estate be included in the inventory.

As to count two (2) of the bill of exceptions, we hold that not only the contention of appellant is baseless and unmeritorious, but inasmuch as the lower court was in the process of enforcing the mandate of the Supreme Court, which by several opinions of this Court it was required and incumbent upon the lower court to do, it did not commit any error in barring any attempt to obstruct the enforcement of the said mandate through the illegal manipulations of the appellant, not to mention the fact that the appellant's acts are highly contemptuous. Certainly lawyers for appellant could be held accountable for interfering with the enforcement of our mandate. Therefore, said count two (2) of the bill of exceptions is not sustained.

Count three (3) of the bill of exceptions is appellant's claim that the trial judge committed reversible error when he ignored objector's contention that no legislative enactment nor a decree nor a constitutional provision can be made null and void except by the body having authority to amend or repeal it and the judge ruled to the contrary disregarding Article 97 of the Constitution and PRC decree no. 86. It is our view that this is an inept, absurd and preposterous contention. Is appellant contending that Dr. Samuel Kanyon Doe, as Commander-In-Chief of the Armed Forces of Liberia, then Head of State of the Republic of Liberia and now President of Liberia was unauthorized to have issued PRC decree no.86? Is it not logical to conclude that at the time PRC decree no. 86 was promulgated, the Republic of Liberia was under military government; that it was then ruled by decree; that PRC decree no. 86 is one of such decrees; that it had full force and effect of law; and that C.I.C. Dr. Samuel Kanyon Doe had legal competence to issue the said decree and to abrogate any law or decree issued at that time? It is not difficult to see that PRC decree No. 86 was issued in compliance with the presidential executive power and prerogatives.

The Tolbert heirs are not questioning the executive, legislative, judicial or administrative actions taken by the People's Redemption Council or by any persons, whether military or civilian, in the name of that Council pursuant to any of its decrees in any proceeding whatsoever, so that in this exercise it would be unlawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act. The Tolbert heirs are not seeking to institute any action against the Government of Liberia, whether before or after the coming into force of this

Constitution or against any person or persons who assisted in any manner whatsoever in bringing about the change of Government of Liberia on the 12th day of April, 1980 in respect of any act or commission relating to or consequent upon the overthrow of the government in power in Liberia before the establishment of the Government of the People's Redemption Council or the suspension of the Constitution of Liberia of July 26, 1847, or the establishment and functioning of other organs established by the People's Redemption Council, or the imposition of any penalties, including the death penalty, or confiscation of any property by or under the authority of the People's Redemption Council under a decree made by that Council in pursuance of, but not limited to the measures undertaken by the Council to punish persons guilty of crimes and malpractice to the detriment of the Liberian nation, the people, the economy or the public interest and the establishment of the constitution. The plea of the Tolbert heirs was only to administer the intestate estate of their late father, which was granted in keeping with the pronouncement of President Doe.

According to the constitutional principles, the President, in the exercise of his executive power and prerogatives, is authorized to perform any act that the needs of the nation demands, unless such action is forbidden by the Constitution and the laws of the Republic of Liberia. He has the power to act according to his discretion for the public good without prescription of the law. Counsel for appellant therefore should have been very scrupulous in the point of questioning the prerogative of the President whilst it was in a tolerable degree employed for the use it was meant; that is for the good of the people. Counsel for appellant should have also taken into account that the Executive has the constitutional duty to execute the law in accordance with the legislative purpose as expressed. In the instant case, the act of the President did not in any way and manner frustrate the intent of Article 97 of the Constitution. The executive branch of government only exercised its constitutional responsibility. Moreover, in keeping with constitutional principles, the chief executive is authorized to assert his legitimate executive privilege, which was done in the instant case. This count therefore is not sustained.

As to counts 4, 5, and 6 of the bill of exceptions, we have already taken the position that the act of the trial judge in granting the letters of administration to the heirs of William R. Tolbert, Jr. was in keeping with statutes and the PRC decree no. 86 of May 15, 1984. Hence, it would be preposterous, redundant, and inconsistent to sustain the said counts contrary to our holding. The said counts are therefore not sustained as aforesaid.

In view of all that we have observed from the facts, law, and circumstances in the instant case, we are of the considered opinion that the judgment of the court below being in harmony with law, should not be disturbed. The said judgment is therefore affirmed and confirmed to all intents and purposes. The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment with instruction that it would resume jurisdiction over the subject matter and proceed to take an inventory of the assets of the late William R. Tolbert, Jr. including his Gbalatuah Farm, Willoria, and all other properties owned by him during his lifetime, both in the Republic of Liberia and abroad. And it is so ordered.

Application denied; ruling affirmed.