

CIATTA SHERMAN, Petitioner, v. **HIS HONOUR FRANCIS TOPOR**,
Assigned Judge, Monthly and Probate Court For Montserrado County, and
MAMADEE DARAMI, Respondents.

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

Heard: July 10, 1995. Decided: July 27, 1995.

1. Prohibition cannot be granted on the mere apprehension of a party. There must be a showing that the judge was actually proceeding by wrong rule.
2. A trial court's judgment must be based on the proof presented in a case and not on the mere allegations stated in the pleadings.
3. Prohibition will not lie where a trial judge makes an interlocutory ruling without any attempt to enforce the same; the proper course for the party against whom the ruling was made is to take exceptions to the ruling and reserve the exceptions for for a regular appeal.

Upon the death of Madam Kutu, the Probate Court for Montserrado County granted letters of administration to Martha Moore, Joe Gordon and Mamadee Darami, to administer her intestate estate. Martha Moore and Joe Gordon died, leaving Mamadee Darami as the sole surviving administrator. The petitioner, Ciatta Sherman, petitioned the Monthly and Probate Court to revoke the letters of administration granted to Mamadee Darami. In a counter action, Mamadee Darami petitioned the Probate Court for sequestration of rents, charging that Petitioner Ciatta Sherman was interfering with the estate of Madam Kutu which he was appointed to administer.

The trial judge heard the petition for sequestration of rent and ruled that Ciatta Sherman, the petitioner, should turn over to the administrator, Mamadee Darami, the rents which she had collected and that her failure to comply with the ruling will subject her to punishment for interfering with the intestate estate. Ciatta Sherman excepted to this ruling and announced an appeal, which was denied by the trial judge on the ground that his ruling was interlocutory.

To prevent the enforcement of the ruling, Ciatta Sherman applied to the Chambers Justice for a writ of prohibition, which was denied on grounds that the trial judge had jurisdiction which he did not exceed and that he did not proceed by any wrong rule. The Chambers Justice held that the petition for revocation of the letters of

administration, which was still pending undetermined, was the main action and that the petition for sequestration of rents, from which the ruling was made, was ancillary to the petition for revocation, and hence interlocutory and unappealable.

From the ruling of the Chambers Justice, petitioner appealed to the full bench, contending, among other things, that she was never an administrator of the estate and so did not exercise any management of the affairs of the estate to have collected rents thereof. She also contended that there was no evidence, documentary or oral, adduced during the hearing, showing that the petitioner collected any rents for the estate.

The Supreme Court, upon review of the records, upheld the contention of the petitioner that there was no testimony or proffer of any documentary evidence, to show that she collected any rents, or the period for which the alleged rents were collected by her. The Supreme Court held that it was incumbent upon the trial court to have conducted such investigation. The Court also held that the mere apprehension of a party that a ruling will be enforced against him or her was not a basis for invoking the extraordinary writ of prohibition, and that there must be a showing that the judge was actually proceeding by wrong rules. Accordingly, the ruling of the Chambers Justice denying the prohibition was affirmed, with instruction to the trial judge to hear the petition to sequester the rents and take evidence therein. The Court also opined that enforcement of any ruling in the sequestration hearing should await the final determination of the petition for revocation of the letters of administration, the main action, subject to the exception and the right of appeal of the parties.

McDonald Krakue for petitioner. *G. Sam Karmon* for respondent.

MR. JUSTICE HNE delivered the opinion of the Court

The facts, as related by the records in this case, are that one Madam Kutu died intestate in 1979. Upon petition for the administration of the estate, Martha Moore, Joe Gordon and Mamadee Darami, the respondents in these prohibition proceedings, were appointed administrators of the estate by the Probate Court for Montserrado County. Martha Moore and Joe Gordon predeceased Mamadee Darami, and so the latter is the only surviving administrator. He served as administrator of the estate from the time of his appointment in 1979, except for his brief absence from the country in 1989 and 1990 due to the civil war.

Ciatta Sherman, the petitioner, petitioned the Probate Court for Montserrado County, for revocation of the letters of administration granted to Mamadee Darami. The records do not show the capacity in which Ciatta Sherman made her application for revocation. Mamadee Darami on the other hand, filed a petition to the Probate Court for sequestration of rents, charging Ciatta Sherman with interfering with the estate of Madam Kutu by unauthorizedly collecting rents from the lessees and/or tenants of the Estate of the late Madam Kutu, and specifically property located at Newport Street, Monrovia, of which the decedent died seized of.

Relieving Judge Francis Topor, who was assigned to hold over the probate court during the absence of Judge Gloria Scott, heard the petition for sequestration of rents. The judge ruled on June 15, 1994 that Ciatta Sherman turn over to the administrator, Mamadee Darami, the rents which she had collected and that after receiving the amount, the administrator should account to the court for the said amount on or before the 22nd day of June, 1994. He further ruled that failure by Ciatta Sherman to comply with this ruling of the court would subject her to the full punishment for interfering with the intestate estate of Madam Kutu. Ciatta Sherman, the respondent, excepted to the ruling and announced an appeal. The judge denied the appeal on the ground that his ruling was interlocutory.

To prevent the enforcement of the ruling, Ciatta Sherman sought a writ of prohibition from the Chambers Justice. Returns to the petition for prohibition were filed by the respondents.

Upon hearing the arguments in the prohibition proceedings, the Chambers Justice, Mr. Justice Frank W. Smith, denied the petition and ordered the alternative writ quashed. His view was that the judge had jurisdiction which he did not exceed and that he did not proceed by any wrong rule. He opined that the main action was the petition for revocation of the letters of administration which was still pending. The judge, he said, only heard the petition for sequestration of rents which was ancillary to the petition for revocation. The ruling sequestrating the rents was therefore not final but was interlocutory and, hence, not appealable.

In his brief and argument before us, counsel for petitioner/ appellant pressed the contention that the petitioner was never an administrator of the estate and therefore did not exercise any management of the affairs of the estate to have collected rents thereof. He stated further that there was no evidence during the hearing, documentary or oral, showing that the petitioner collected any rents of the estate. We must say here that the records support this contention of the petitioner. There is no

testimony or proffer of any documentary evidence to show that the petitioner collected rents, or the period for which she collected such alleged rents. It was incumbent upon the trial court to inquire by evidence if the petitioner collected any rents and the period for which she collected the rents. This is more so since the records showed that the corespondent, Mamadee Darami, was appointed as administrator in 1979 and remains and functions as administrator up to the present, except for the time he was absent from the country in 1989 and 1990, as stated earlier in the opinion.

How could Ciatta Sherman, the petitioner, who is said to be a stranger to the estate, have collected rents of the estate and be required to account for such rents from 1979 when the corespondent, Mamadee Darami served as an administrator? Mamadee Darami must have either been inept or negligent in his duties as administrator. The judge, upon such a finding, which could only have been derived from evidence, should have disciplined him or have him removed as administrator, especially if there was a finding that Ciatta Sherman did collect rents from 1979 up to the present, the period for which Mamadee Darami has been serving as administrator. It was therefore necessary for the judge to conduct a hearing into the petition for sequestration of rents, with proper evidence, both oral and documentary, for him to have reached an informed determination of the allegations made in the pleadings before him. His judgment should have been based on the proof in the case and not on the mere allegations of the pleadings.

The Chambers Justice, in his ruling, held that the trial judge had jurisdiction to hear the petition for revocation of the letters of administration and to hear the petition for sequestration, which jurisdiction he did not exceed or proceed by any wrong rule. We must express our full agreement with this ruling. The judge said that it is his ruling that all rents collected by Ciatta Sherman must be accounted for and turned over to the surviving administrator duly appointed by the court and that the surviving administrator, Mamadee Darami "should submit an account to this court after the receipt of said amount on or before the 22ⁿ d day of this month. Failure on the part of Ciatta Sherman to turn the said amount to Administrator Darami, the court will subject her to the full punishment for interfering with the intestate estate of Madam Kutu." This ruling was made on June 15, 1994. The judge set a deadline of one week thereafter, that is, June 22, 1994, for compliance therewith. It appears that the petitioner was apprehensive that the trial judge would enforce his ruling on June 22, 1994, but this should not give rise to invoking the extraordinary writ of prohibition because the writ is not granted on the mere apprehension of a party. There must be a showing that the judge was actually proceeding by wrong rule and not on the

apprehension of the party. We do not see how the judge would have proceeded to enforce his ruling when he already said that the ruling was not final but interlocutory. There was no attempt by the judge to enforce his ruling as would lead to the conclusion that he was proceeding by wrong rule.

The ruling is an interlocutory one, since the main action, the petition to revoke the letters of administration, is still pending. All that was needed to be done was for the petitioner to take exception to the ruling for later appeal.

In view of this, the ruling of the Chambers Justice denying the prohibition is hereby affirmed and confirmed, with instructions to the trial judge to hear the petition to sequester the rents and take evidence therein. Further, enforcement of any ruling in the sequestration hearing should await the final determination of the petition for revocation of the letters of administration, the main action, subject to exceptions by the parties and the exercise of the right of appeal.

The Clerk of this Court is hereby ordered to send a mandate to the court below directing the judge presiding therein to give effect to this opinion. Costs are to abide final determination. And it is hereby so ordered.

Petition denied.