

A. DASH WILSON, JR., GEORGE T. WILSON, MARGARET T. WILSON,
et al., children of the late A. DASH WILSON, SR., Appellants, v. **FRANCES C.**
WILSON, Widow of the late A. DASH WILSON, SR., and **EMMA SALOME**
IVY, Substituted by R. ALEXANDER BREWER, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL
CIRCUIT, MARYLAND COUNTY.

Heard: December 1& 8, 1993. Decided: February 18, 1994.

1. A fraudulent conveyance generally may be defined as transaction by means of which the owner of real property makes such conveyance which operates to the prejudice of the legal or equitable rights of other persons.
2. Whenever the strict enforcement of a rule of procedure tends to hamper or prevent the supreme purpose of the fair administration of justice, the rule should be abandoned.
3. Although it is a legal requirement that deed conveying realty must be registered and probated within four months from the date of execution and delivery to the grantee, in the absence of such probation and registration, the conveyance is not *ipso facto* void, but may be so where a third party, who for valuable consideration, received a deed executed in his favor for the same property and from the same grantor and registers his title within the four months required by statute, and the prior grantee failed to register his title within the four month period.
4. Whenever fraud is alleged, the facts and circumstances constituting the fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial; and the burden of proof rests entirely on the party who alleges the fraud.
5. Rules of court are for the purpose of aiding the speedy and orderly determination of causes.

Appellants, petitioners in the trial court, filed a petition for the cancellation of two warranty deeds for 750 acres of fully developed rubber farm land located in Maryland County, which was owned by their late father. One of the deeds was executed by their father and their stepmother, Frances C. Wilson, coappellee in these proceedings, transferring said farm land to co-Appellee Emma Salome Ivy; and the other executed

by coappellee Emma Salome Ivy, transferring the same property back to co-appellee Frances C. Wilson.

The appellants alleged that fraud was perpetuated in the execution of the deeds, as said deeds were registered and probated without the three-day publication notice required by the probate court. In response to the petition, the appellees denied committing fraud in coming into possession of the deeds, and averred that during the lifetime of the appellants' father, he conveyed the farm to his wife, co-appellee Frances C. Wilson, and that such mode of transfer was adopted because, at the time, the Liberian law did not provide for a direct transfer of property from the husband to wife. Appellees also contended that the deceased had every right to transfer such property without reference to his children, and that petitioners failed to state in their petition upon whom and by whom the fraud was committed. Judgment was rendered in the trial court against appellants and they appealed to the Supreme Court for review.

The Supreme Court held that what constitutes fraud must be particularly proven and established by production of evidence. The Court observed that the appellants had failed to produce any evidence to show that fraud was perpetuated in the transfer of the deeds. The Court also noted that appellants had failed to show that their father was not the owner of the property at the time of the transfer. As regards the time required for the registration and probation of deed, the Court held that in the absence of such probaton and registration, the conveyance is not *ipso facto* void, but may become void under the statute if a third party who had, for valuable consideration, received a deed executed in his favor for the same property and from the same grantor, registers and probates his title within the four-month period and the other party failed to act within four months of the date of his grant. The Court further held that the three-day publication rule for probating a title deed for real property is merely intended to prevent fraud, and that failure to comply with such a rule cannot invalidate one's title to said property. The Court also held that the mode of transfer adopted by appellants' father was in accordance with the law existing at the time.

M Kron Yangbe for appellants. *Joseph P.H. Findley* in association with *Stephen B. Dunbar, Jr.* for appellees.

Mr. CHIEF JUSTICE BULL delivered the opinion of the Court.

This is a matter in which nine children of the late A. Dash Wilson, Sr. namely, A. Dash Wilson, Jr., George T. Wilson, Margaret T. Wilson, Antoinette D. Wilson,

Sarah E. Wilson-Acquaye, Adeline H. Wilson-Hedd Williams, Catherine C. Wilson-Woods, Julia A. Wilson-Berlin, Martha V. Wilson, filed a bill in equity before the Fourth Judicial Circuit Court, Maryland County, seeking the cancellation of two warranty deeds for 750 acres of fully developed rubber farm land located in Maryland County, which was owned by the late A. Dash Wilson, Sr., the father of petitioners. One of the deeds was executed by A. Dash Wilson, Sr. and his wife, Frances C. Wilson, transferring the said farm land to one Emma Salome Ivy, and the other deed was executed by Emma Salome Ivy transferring the same property back to Frances C. Wilson, the wife of the late A. Dash Wilson, Sr., now his widow. The proceedings in equity names as respondents Frances C. Wilson, widow of the late A. Dash Wilson, Sr., and Emma Salome Ivy of Harper City, Maryland County.

Petitioners alleged in their petition that after the demise of their father, and before his estate was opened, the curator for Maryland County applied for sequestration of the proceeds from the 750 acres rubber farm believed to be the estate of the late A. Dash Wilson, Sr. The court ordered the proceeds sequestered. It was then that respondent Frances C. Wilson presented a deed executed to her for said farm by Emma Salome Ivy to show that the 750 acres of rubber farm was now owned by her in fee simple absolute.

Petitioners alleged further that they also discovered a deed which had been conveyed by A: Dash Wilson, Sr. and his wife, Frances C. Wilson, to Emma Salome Ivy for the same rubber farm land for a consideration of \$1,000.00. Both deeds, the one from Emma Salome Ivy and the one from A. Dash Wilson, Sr. and Frances C. Wilson, according to petitioners, were executed on the 13th day of January 1970, probated the following day, January 14, 1970, and ordered registered immediately; and that the probation and registration of these deeds were done without the three-day publication notice provided for under the probate court rule. These acts, petitioners concluded were a series of fraudulent transactions and chicanery perpetrated by the respondents herein.

In their answer to the petition, the respondents denied coming into possession of said property through any fraudulent means. They averred that during the lifetime of the late A. Dash Wilson, Sr., he conveyed the rubber farm to his wife, Frances C. Wilson, through Emma Salome Ivy. The deceased chose this mode of conveyance because at the time of the transaction, Liberian law did not permit a husband to directly transfer property to his spouse. Instead, such transfer had to be made through a third party. Further, respondents averred that the deceased had every right to divest himself of such property which he owned without reference to his children.

Therefore, respondents concluded that the averments contained in petitioners' complaint do not constitute fraud neither did petitioners show in their complaint by whom, and upon whom the alleged fraud was committed.

The simple question which this matter presents is whether or not the deeds which were allegedly executed by the late A. Dash Wilson, Sr. and his wife Frances C. Wilson in favour of Emma Salome Ivy, and the one executed by Emma Salome Ivy in favour of Frances C. Wilson for the same property were fraudulent or fraudulently executed?

Two other questions emerged from the above questions: (1) whether it was the late A. Dash Wilson, Sr. himself who executed the warranty deeds for the subject property to Emma Salome Ivy? And (2) was the transfer by Emma Salome Ivy to Frances C. Wilson so made with the knowledge and consent of the late A. Dash Wilson, Sr.? The answers to these questions will unfold as we proceed to review the records before us.

From the evidence adduced at the trial, petitioners attempted to show fraud by the fact that the execution of the deed by the late A. Dash Wilson, Sr. and his wife Frances C. Wilson to Emma Salome Ivy, and the deed executed by Emma Salome Ivy in favor of Frances C. Wilson were done simultaneously, that is to say, on the same day and date; that the probate and registration of both deeds were done on the following day, and done without complying with the three-day publication as provided for by the probate court rules; that the consideration stated in each of the deeds in the sum of \$1,000.00 is considerably inadequate for a high yielding rubber farm which produces a monthly income in excess of \$1,000.00; that Mrs. Frances C. Wilson did not inform the Firestone Plantations Rubber Company of her title to the subject property until the court ordered sequestration of the proceeds from the rubber farm; and lastly, that the petitioners had no knowledge that their late father A. Dash Wilson, Sr. had transferred said property to his wife.

These are the acts which petitioners considered to be fraudulent. We have not been able to gather from the records in this case any averment or testimony to the effect that the deeds were not in fact executed by the persons whose signatures appeared on these deeds. Neither is there any evidence that the late A. Dash Wilson, Sr. was not the owner of the subject property at the time these transfers were made.

A fraudulent conveyance generally may be defined as a transaction by means of which the owner of real property makes such conveyance which operates to the

prejudice of the legal or equitable rights of other persons. 37 AM. JUR 2d., *Fraudulent Conveyance*, § 1, page 691.

There is no denial that the property in question was the property of the late A. Dash Wilson, Sr. at the time of the transfer. Also, the method chosen by the late A. Dash Wilson, Sr. to vest title of said property in his wife, Frances C. Wilson, was in accordance with the law at the time which mandated such conveyance of real property by a husband to his wife must be made through a third party, otherwise the same would be considered void. *Wolo v. Wolo*, 8 LLR 453 (1944).

The fact that the late A. Dash Wilson, Sr. and Frances C. Wilson were husband and wife does not warrant a conclusion that the transaction of relinquishing his property to his wife was fraudulent in the absence of any act or circumstances which could support an inference of fraud or bad faith. Petitioners have shown no fact or circumstances which could support an inference of fraud. The property which was transferred to Frances C. Wilson by A. Dash Wilson, Sr. was owned by him and he had every right to dispose of the subject property during his lifetime to any person whomsoever. In point of fact, we may infer from the facts of this case that the late A. Dash Wilson, Sr. intended to make a gift to his wife, Frances C. Wilson.

Regarding the probate and registration of the documents, the well known legal requirements is that a deed conveying realty should be probated and registered within a period of four months from the date of execution and delivery to the grantee. Even in the absence of such probate a conveyance is not *ipso facto* void, but may become void under the statute where a third party who has for valuable consideration, received a deed executed in his favor for the same property and from the same grantor probates and registers his title within the four-month period prescribed by the statute, and the prior grantee had failed to register his title within said four months period. This statute is sometimes referred to as the "race" statute. The first grantee to register his title within the prescribed period prevails.

We agree with the interpretation of the Probate Court Rule regarding the three-day publication of deeds prior to probate and registration made by the late Judge John A. Dennis, who passed upon the issues of law in this matter. Judge Dennis correctly observed that the three-day publication rule before probating a title deed for real property is merely intended to prevent fraud, and that failure to comply with such rule cannot invalidate one's title to said property. Rules of court are for the purpose of aiding the speedy and orderly determination of causes. However, courts must always bear in mind that the supreme objective of judicial proceedings is the proper

equitable administration of justice. Therefore, whenever the strict enforcement of a rule of procedure would tend to hamper or prevent this supreme purpose of the fair administration of justice, the rule should be abandoned.

It is interesting to note that during the trial of this case in the court below, respondents Frances C. Wilson and Emma Salome Ivy waived production of evidence on the grounds that the petitioners had failed to make a *prima facie* case of fraud against them. It is also interesting that even though petitioners gave notice that at the trial of this matter, they would apply to the court to compel the respondents to produce the two deeds in question, no such application was made to the court during said trial for the production of these deeds. We are led to believe that petitioners, perhaps being aware that none of their allegations of fraud referred to the genuineness of the signatures of these deeds, but were restricted to only those acts which they alleged to be fraudulent and which were not denied by the respondents, saw no purpose which the production of the deeds could serve.

Notwithstanding the above, the law specifically defines what constitutes fraud, which must be particularly alleged by the petitioners, and the burden to prove such allegation rests entirely with the petitioners. None of the allegations made in the petitioners' complaint and testified to at the trial fits the legal definition of fraud in respect of the execution of deeds.

Under the law, all facts, circumstances, and conditions which make up the fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial. Civil Procedure Law, Rev. Code 1: 9.5(2); *Multinational Gas and Petrochemical Company v. Crystal Steamship Corporation*, 27 LLR 198 (1978); *Monrovia Construction Corporation v. Wazami*, 23 LLR 58 (1974).

The acts, which petitioners have alleged in their petition and testified to at the trial as the acts committed by the respondents, did not constitute fraud under the law. This being so, we agree with the trial judge that no fraud was committed in the execution of these two deeds. We hold that the two deeds, the one executed by the late A. Dash Wilson, Sr. and his wife to Emma Salome Ivy, and the one executed by Emma Salome Ivy to Frances C. Wilson, are genuine instruments. We also are in full agreement with the trial judge that from all of the facts and circumstances surrounding the execution of the two deeds, there is no doubt that the late A. Dash Wilson, SR. merely intended to make a gift to his wife Frances C. Wilson because of his love and affection for her, and that no inference of fraud or bad faith can be gathered from any of these transactions.

Wherefore, and in view of the facts and circumstances narrated above and the laws cited and relied on in this opinion, as well as for the foregoing reasons, the judgment of the Fourth Judicial Circuit Court, Maryland County, is affirmed. Costs of these proceedings are assessed against appellants. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over the case and give effect to this opinion. And it is hereby so ordered.

Judgment affirmed.