

Dah Dukuly-Sherman, Bendu Dukuly and Osman Dukuly all of the City
Monrovia, Liberia APPELLANTS Versus **Neh Dukuly-Tolbert**, also of the City
Monrovia APPELLEE

OBJECTION TO PROBATION OF THE WILL OF AMBULAI M DUKULY

Heard: April 15, 2008 Decided: May 2, 2008

MOTION DENIED AND DISMISSED

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

This probate matter involves the estate of one Ambulai Dukuly who died in the year 1998 in the City of Monrovia, Liberia, survived by four siblings but no issues of his body. The siblings are his sisters Mrs. Neh Dukuly-Tolbert, Mrs. Dah Dukuly-Sherman, Bendu Dukuly and a brother named Osman Dukuly.

On May 10, 1999, the probate Court of Montserrado County, sitting in its May term, granted Letters of Administration to one of the siblings of the decedent, Mrs. Neh Dukuly-Tolbert. The administratrix administered the estate without closing same as required by law. Five years subsequent to her brother's demise, the said administratrix on August 23, 2004, filed a Petition in the Probate Court for the reading of a document purporting to be the last will and testament of their late brother, Ambulai Dukuly. The will was subsequently read in open court and ordered published as required by law.

On October 15, 2004 Movants/Objectors Dah Dukuly-Sherman, Bendu Dukuly and Osman Dukuly filed objections to the probate and registration of the purported will on both legal as well as factual grounds for their objections. The factual ground for the objection was that the will was fraudulent. The respondent filed her resistance to the Motion. Thereafter the Probate Judge, upon submission made by counsel for Movant, forwarded the issue of fraud to the 6th Judicial Circuit Court to be tried by jury. After the trial by jury under the supervision of the Judge, the jury brought a unanimous verdict of not liable, meaning that there was no fraud in the execution of the will. Counsel for objectors noted exception to the verdict and gave notice that they shall take advantage of the statute made and provided in such cases. The Court then "reserved final judgment to be rendered on the 7th day of April, 2007 at 11:00 A.M."

On April 28, 2007 the Judge of the Circuit Court made a ruling, but we shall quote only this pertinent portion of the ruling.

Ruling/pertinent portion

"The verdict of the Empanelled Jury being consistent with the facts of this case, the circumstances of the case and the laws in control, this Court says the unanimous verdict must be and same is hereby confirmed by this Honorable Court. In consequence thereof, the Defendant is not liable to the commission of any fraud.

The Clerk of this Court is hereby ordered to send this Ruling to the Monthly & Probate Court in order to proceed with the probate and registration of the will at issue. Least I forget, the Objectors contended in their objection that the property where CEMENCO is located is a joint property and as such, the late Ambulai Dukuly would not have willed his interest to his Nephew, the son of the Respondent herein. This identical aspect of the case is left to be determined by the Monthly and Probate Court. AND IT IS HEREBY SO ORDERED."

To this ruling, a court appointed counsel there and then noted exception and announced an appeal which was granted. The case remained thereafter dormant until Appellee herein obtained a Clerk's Certificate on May 16, 2007 from the Clerk of the Circuit Court certifying that up to that date the objectors had not filed their Bill of Objections. As a consequence the said counsel filed a Motion for the enforcement of the Court's final judgment.

Movant's Motion

1. "Movant says that it is party Respondent in an Objection to the probate of the Last Will and Testament of the late Ambulia Dukuly in which a final judgment was rendered on April 28, 2007 finding Respondent not liable of any commission of fraud, and ordering the Clerk of Court to send a copy of the said Ruling down to the Monthly and Probate in order to proceed with the probate and registration of the said will.
2. That the Respondents/Objectors excepted to the said Ruling and announced an appeal to the Honorable Supreme Court of Liberia, but failed to file Bill of Exceptions within ten (10) days as required by law, as is evident by a copy of the Clerk's Certificate hereto attached and marked as M/1 to form an integral part of this Pleading."

To this Motion counsel for objectors filed a 6 count resistance. We have quoted all 6 counts of the Resistance because we consider some of the issues therein germane to the adjudication of the **Motion to Dismiss Appeal.**

Respondent's Resistance

1."That as to count one of Movant Motion, Respondent says that Your Honour ruling of April 28, 2007, is not and cannot . be the final judgment growing out of the Objection to the purported last Will and Testament of Amobila M. Dukuly, Sr., which is currently pending before the Monthly & Probate Court for Montserrado County, undetermined. Further, Respondent submits that, said ruling of April 28, 2007, is not a final judgment in that the 6 th Judicial Circuit Court for Montserrado County is without jurisdiction over the subject matter to enter final judgment which Movant now seeks to be enforced by this Honourable Court.

2. Further to count one of Movant's Motion, Respondents submit that the Monthly and Probate Court exercises full general jurisdiction in law and ethic in all matters relating to the affairs of decedent including the probation of a will and, it is only the Monthly & Probate Court that can enter the final decree or judgment with respect to the probation and registration of a Will and the enforcement of authority to order a Probate Court to probate and register .a Will. Hence, count one should be over-rued and the entire Motion deny.

3. Also, as to count one of Movant's Motion, Respondents submit that because the Probate Court do not try issue of fraud raise in matter before it, and also because jurisdiction forwarded to this Court the issue to be determined by the jury and .all necessary papers and records to be tried by the jury.

4. Further to count three above, Respondents submit that where an issue refers to this Court by the Probate to be tried by jury, the law requires that the verdict return by the jury, if not set aside by the Court shall be entered into the minutes, shall be certified to the Probate Court by the Clerk of this Court, whereupon the Probate court shall enter a final decree or judgment. Respondent submits that the ruling entered on April 28, 2007, was not a final judgment but consistent with the laws extant in this jurisdiction was simply to enter the verdict of the jury on the minutes of court to be certified to the Probate Court by the Clerk of this Honourable Court, where upon the Probate Court shall then enter final decree. Hence, count one of Movant's Motion should be over-ruled and the entire Motion denied.

5. That as to count two of Movant's Motion,. Respondents says that because this Court is without jurisdiction over the subject matter and by operation of law should

not have entered final judgment and as stated supra, was limited to the entry of the verdict on the court was not appealable and therefore the announcement of the appeal by the court's appointed counsel was of no legal effect, and that the Respondent pursuant to law was not required to file a bill of exceptions until after final judgment or decree by the Monthly and Probate Court which up to date has not been done by said court; hence, count two should be over-ruled and the entire Motion be denied.

6. That as to the entire Motion Respondent says that this Court being without jurisdiction to enter final judgment in these proceedings cannot enforce any judgment as being requested by the Movant; hence, Movant's Motion should be denied."

The Circuit Court entertained arguments pro and con and made the following ruling on May 31, 2007.

Court's Ruling

"On April 28, 2007 this court rendered its Ruling in these proceedings and the objectors excepted to the Ruling and appealed to the Honourable Supreme Court. It appears that the objectors either failed, neglected and/or refused to have perfected the appeal. Thereupon the Movant in these proceedings had filed a Motion before this Court to enforce its final judgment. "It is well known to this court as to the manner in which same should be carried out. By the failure of the objectors to have perfected the appeal to the Honourable Supreme Court, this Court hereby resume jurisdiction over this matter to proceed with the enforcement of its final judgment.

Under the circumstance, the Clerk of this Court is hereby ordered to transcribe all records to include the Jury Verdict and have same forwarded to the Probate Court in order to proceed with the determination of the case since indeed the issues of fraud for which the matter was forwarded to this Court has been laid to rest. AND IT IS HEREBY SO ORDERED."

By that Ruling the Circuit Court did what it considered an enforcement of its ruling which was to order the Clerk to forward the jury verdict to the Probate Court.

On June 1, 2007 the Clerk of the Circuit Court forwarded the records including the verdict of not liable which was read in the Probate Court on a notice of assignment. The Probate Court resumed jurisdiction, issued Letters Testamentary to the beneficiary of the will, Momolu Dukuly Tolbert, but revoked same upon proper objections and issued notice of assignment for final ruling in the case.

On October 10, 2007, His Honor J. Vinton Holder, Judge of the Probate Court, handed down an exhaustive 6 page final ruling admitting into probate the last Will and Testament of Ambulai Dukuly, the decedent. To this final judgment counsel for the objectors noted exception and announced an appeal. The exception was noted and the appeal granted. The Appellants/Objectors completed their appeal process within statutory time. When the case was docketed for this term of the Supreme Court, counsel for Appellee/Movant filed a Motion to Dismiss on the sole ground that the Appellants/Objectors had processed their appeal from the wrong forum. The said counsel argued that the proper forum should have been the Circuit Court where the case was adjudicated and that the probate court's role in the case was merely clerical; that the acts complained of as laid down in the Bill of Exceptions were done in the Circuit Court and not in the Probate Court. He relied on section 105 (2) and 113.14(b) of the Decedent Estate's Law. Section 105 (2) states:

"In every case the trial court shall direct the jury to return a special verdict in accordance with the procedure set forth in connection with special verdicts unless in his opinion the law and the facts adduced in evidence justify the return of a general verdict. The verdict, if not set aside by the court before which the issue are tried, shall be conclusive except upon appeal and after being entered in the minutes shall be certified to the probate court by the clerk of the court in which the trial took place, whereupon the probate court shall enter a final decree accordingly; 2LCLR Section 105(2) page 614-615 (1998)."

Counsel's construction of section 105(2) seems to be that if a verdict is brought by a special jury in a contested will matter, the losing party should announce an appeal and complete same from the Circuit Court and after the Supreme Court shall have handed down an opinion, then the said Circuit Court shall forward the result to the Probate Court and then the Probate Court shall admit the will into probation and registration. We disagree, and hold that section 105 (2) above quoted does not admit of the view expressed by counsel. Instead, the meaning of the said section as we interpret it is that if the special verdict is not set aside by the Trial Court, it is **conclusive** and should be entered in the minutes and forwarded to the Probate Court. But the verdict is not conclusive if there is an appeal, and that the verdict should therefore not be considered as such until the appeal is heard and decided. This section of the statute instructs how a special verdict becomes conclusive (a) if it is not set aside by the trial Court (b) if there is no appeal against the final decree. Now, in view of the fact that the handing down of a final decree in a contested will case is the function of the Probate Judge, how difficult would it be to figure out that in such a

.case an appeal would be announced only after final judgment is entered and not when a verdict is announced. Section 113.14(b) on which counsel for Movant also relied states: (Emphasis ours).

"Where a judgment has been rendered in an action In a Court of Competent jurisdiction establishing a Will, the Probate Court Judge having jurisdiction of the decedents' estate must record the Will and issue letters as directed by the judgment.

This section of the statute being clear and cogent needs no construction. It says that when all necessary procedures have been followed and the validity of a will has been finally established, the Probate Court Judge having jurisdiction, shall record the will as the last will and testament of the testator. He or she can thereafter proceed to issue letters testamentary. The validity of the will is finally established after an appeal has been heard and decided.

We hold as did this Court in **Outland and Weaver V. Pearson and Outland, 31LLR 97, 105 (1983)** that' in a contested will case, the Circuit Court's function is to try the issue(s) of fact and forward the verdict to the Probate Court. The Circuit Court Judge has no authority to enter final judgment; for to do so will be a usurpation of the office of the Probation Court Judge. If that be the case, which we hold it is, it follows then that no announcement of an appeal would be useful or of any legal effect from the Circuit Court where no final judgment in probate matters is authorized by law.

The Trial Court Judge been cognizant of his jurisdictional limitation in this contested will case went on to state in his ruling when transmitting the verdict to the Probate Court, that the issue about CEMCO being a joint property and as such, the late Ambulia Dukuly would not have willed his interest to his nephew, would be left to be determined by the Monthly and Probate Court and that the Probate Judge would have to decide whether the decedent could legally will CEMCO same having been devised to all of them by their late father." In view of that acknowledgement by the Trial Judge can counsel still maintain that the judgment of the Trial Court was final and that the appeal should have been processed from that forum? We say no. In a contested will case, all law issues are decided by the Probate Court. It is only the factual, in this case the issue of fraud that is sent to the Circuit Court for trial by jury. In the case at bar the expected role of the Circuit Court was to find a verdict either upholding or discarding the issue of fraud. That verdict, plus all the other legal issues passed upon in the Probate Court, formed the basis for a final judgment from the

Probate Court which alone has the authority to make a final determination of any controversial probate matter, reviewable only by the Supreme Court.

It would be procedurally cumbersome for a party litigant to appeal from two courts of concurrent jurisdiction in the same case-the Circuit Court on the verdict and then from the Probate Court on the law issues. Section 105(2) was not intended to lend support to such exercise. We therefore hold that the appeal from the Probate Court being properly derived, the Motion that seeks to defeat it is hereby denied and dismissed. IT IS HEREBY SO ORDERED.