

Borbor Freeman, Jr., Lawrence Miller and Anna Monyus of the City of Monrovia, Liberia RESPONDENTS/APPELLANTS Versus The **Intestate Estate of the late Patience R. S. Trinity-Fahnbulleh**, represented by its Administrator Frederick W. Davis, Sr. of the City of Monrovia, Liberia OBJECTOR/APPELLEE

OBJECTION TO PROBATION OF ADMINISTRATOR' S DEEDS ISSUED BY
BORBOR FREEMAN TO LAWRENCE MILLER AND ANNA MONYUS

Heard: May 10, 2005 Decided: September 14, 2005

MR. JUSTICE CAMPBELL DELIVERED THE OPINION OF THE COURT

This appeal is before us from the ruling of His Honour John L. Greaves, then Judge of the Monthly and, probate Court for Montserrado County, Liberia, in a caveat and subsequent objection filed with the Monthly *and* Probate Court by the Intestate Estate of the late Patience R. S. Trinity-Fahnbulleh by and thru its Administrator, Mr. Frederick W. Davis, Sr., against the Intestate Estate of the late Borbor Freeman, Sr., by and thru its Administrator, Borbor Freeman, Jr.

The records in the case file reveal that Mr. Frederick W. Davies, Sr., Administrator of the Intestate Estate of the late Patience R. S Trinity-Fahnbulleh, filed a caveat in the Monthly and Probate Court for Montserrado County on May 19, 2000, requesting said Court not to probate any deed presented to it by the Intestate Estaie of the late Borbor Freeman, Sr. by and thru its Administrator, Borbor Freeman, Jr., for land located in Paynesville, Montserrado County, Liberia.

The records further show that Mr. Borbor Freeman, Jr. did. present a deed for probation in January, A. D. 2001, for land located in Paynesville that he had sold to Lawrence T. H. Miller and Anna Monyus Karagar-Miller in his capacity as Administrator.

Upon presentation of the Deed, the Court informed Mr. Borbor Freeman, jr. about the caveat filed and on the basis of this, refused to have the deed probated. The Court thereafter informed the caveator about the presentation of a deed for probation by Mr. Borbor Freeman, Jr. for land located in Paynesville, Montserrado County, Liberia, and ordered him to file his objections to said deed within ten(1 0) days in keeping with the law.

On March 27, 2001, the caveator filed a five count objection with the Probate Court

against the probation of the deed presented by the Administrator of the Intestate Estate of the late. Borbor Freernan,

In the objection, the objector alleged among other things that the late Frederick H. T. Trinity was the owner in fee of one hundred (100) acres of land situated and lying on the Schiefflin Highway, Paynesville, Montserrado County, which was acquired from the Republic of Liberia; that in keeping with Frederick H. Trinity's Last Will, title to said one hundred (100) acres of land was passed unto his daughter, Patience R. S. Trinity Fahnbulleh; that Mr. Frederick W. Davies, Sr. was duly appointed by the Monthly and Probate Court for Montserrado County to administer the Intestate Estate of the late Patience R. S. Trinity-Fahnbulleh.

The objector further alleged that despite the investigation and findings by the Ministry of Lands, Mines and Energy that the Intestate Estate of the late Borbor Freeman, Sr. does not own any land where the one hundred acres of land for the Estate of the late Patience R. S. Trinity-Fahnbulleh is located in Paynesville, Montserrado County, Liberia on the Schiefflin Highway, Mr. Borbor Freeman, Jr., Administrator of the Intestate Estate of the late Borbor Freeman, Sr. has engaged in the unlawful selling of land belonging to the Estate of the late Patience R. S. Trinity-Fahnbulleh, without any authority. The Administrator, Mr. Frederick W. Davies, Sr. therefore requested the Court not to probate the deed submitted by Mr. Borbor Freeman, Jr. issued to Lawrence Miller and Anna Monyus

To this objection, Respondents filed a thirteen count Resistance. The Resistance alleged, among other things, that Frederick W. Davies, Sr. lacks the capacity to object to the probation of the Administrator Deed issued to Lawrence Miller and Anna Monyus by Co-Respondent Borbor Freeman, Jr., on ground that the objector has not shown to the Monthly and probate Court, Montserrado County that he is the Administrator of the Intestate Estate of the late Patience R. S. Trinity-Fahnbulleh by Letters of Administration, which is the only legal document to give him the authority to administer an estate and because of said legal blunder, the objection is a tit subject for dismissal; that there is no showing that the late Frederick H. Trinity ever made a Will and Testament wherein he willed one hundred (100) acres of land located in Paynesville, Schefflin Highway , Monrovia, Liberia, to the late Patience R. S. Trinity-Fahnbulleh; that a copy of each of the letters of Administration and the Will should have been attached to the objection, as a matter of legal notice to the Respondents.

The Respondents further alleged in their Resistance that objector's exhibit 0-3 (land

dispute investigation report) should not be given any credence because it constitutes no legal ground for the objection to the probate of the Administrator Deed issued to Lawrence Miller and Anna Monyus, in that the . Ministry of Lands, Mines and Energy is a department within the Executive Branch of Government and under the law is not legally clothed with the authority to determine title to real property.

The Respondents also alleged in their Resistance that the Deed granted to the late Borbor Freeman, Sr. by the Republic of Liberia and signed by the late President Arthur Barclay in 1909 is superior to the Deed issued to the late Frederick Trinity by the Government of Liberia and signed by the late President Daniel E. Howard in 1916, and that President Howard was under legal duty to defend the act of President Barclay. Respondents therefore prayed Court for the dismissal of the objector's objection.

After final argument in these proceedings, the Monthly and Probate Court for Montserrado County rendered final judgment on November 28, 2001, in favor of the objector, thereby denying the probate of the Administrator Deed presented by the Respondents and further ordered the Co-Respondent, Borbor Freeman, Jr. to refrain/desist from selling and bringing any Deed (s) deriving from the said one hundred (100) acres of land belonging to the Estate of the late Patience R. S. Fahnbulleh Trinity for probate. From this Ruling, the Respondents excepted and appealed to this Honourable Court for review.

On December 6, 2001, Respondents filed a 9 count approved Bill of Exceptions with the Clerk of the Monthly and Probate Court for Montserrado County. For the benefit of this Opinion we deem it necessary to quote the said Bill of Exceptions:

"1. That Your Honor erred in sustaining the Objector's objection and overruling all the legal and factual issues squarely raised in the Resistance without squarely passing upon them as required by law. To which Respondents excepted.

That Your Honor erred when you misconstrued and misapplied as well as outrightly overlooking the laws controlling the case; with particular reference to those of (a) notice to one's adversary; (b) capacity of objector to institute the objection; (c) the separation of powers of the Government; (d) priority in title as material element; (e) failing to give judicial credence to the act of your colleague of concurrent jurisdiction, etc. to which Respondents excepted.

"3. That Your Honor erred when you misconstrued and misapplied the Opinion of

the Supreme Court as found in 10 LLR at page 330, Syl. 1. To which Respondents excepted.

"4. That Your Honor erred when you overlooked the issues raised in count nine (9) of Respondents' Resistance wherein they proferted their Deed issued them by the Republic of Liberia; their Letter of Administration and Decree of sale -issued unto them by a Judge of this Monthly and probate Court with whom Your Honor holds concurrent jurisdiction, etc. to which Respondents excepted.

"5. That Your Honor erred when you gave credence to the report of Ministry of Lands, Mines and Energy in deciding title to real property and declaring that Borbor Freeman does not have real property in the area thereby ignoring the constitutional provision of the separation of powers which Respondents excepted.

"6. That Your Honor erred when you erroneously ruled that the issue of priority of title does not hold in the instant case. To which Respondent excepted.

"7. That Your Honor erred when you equated the determination of title to real property by a court of competent jurisdiction to that of the Ministry of Lands, Mines and Energy assisting a court in demarcating real property. To which Respondent excepted.

"8. That the Probate Court is without jurisdiction to determine title to real property whether or not assisted by the `Ministry of Lands, Mines and Energy and therefore Your Honor erred by not dismissing and over-ruling the objection without prejudice since both the objector and Respondents have titles. To which Respondent excepted.

"9. That while a court is duty bound to take cognizance of its own records, yet when an issue of law is squarely raised by an opposing party of the violation of a law, the Court should not be seeing as doing for such violator that which they should have done for themselves. Consequently, Your Honor erred when you did for objector that which he should have done for himself with regards to giving due notice to Respondents. To which Respondent excepted.

From the above Bill of Exceptions, facts and circumstances in this case, the issue for our determination is whether or not the Ruling of the Judge was erroneous.

Before we determine whether or not the Ruling was erroneously made, there is a need to revert to the Ruling made in the case by the Court below. The records revealed that

the Court below decided the case on three issues, as follows:

Whether or not the failure of objector, Frederick Davies, to make proper Letters of Administration granted to him by the Probate Court of Montserrado (County administer the Intestate Estate of the late Patience Trinity-Fahnbulleh along with the last Will and Testament of the late Frederick Trinity to the objection filed is a violation of the legal principle of notice and therefore the objection should be dismissed that whether or not the survey report from the Ministry of Lands, Mines and Energy relative to land dispute between the Intestate Estate of the late Patience Trinity-Fahnbulleh and the Intestate Estate of the late Borbor Freeman, Sr. should be disregarded because said survey report does not constitute any legal ground for objecting to the probate Respondents' deed in that the Ministry of Lands, Mines and Energy is a department within the Executive Branch of Government which is not legally clothed with the authority to determine title to Real Property; that whether the principle of the Oldest Deed hold in the instant case.

The Court below in its Ruling on the above issues said, among other things, that Letters of Administration were issued to Frederick Davies on January 21, 1999 to administer the Intestate Estate of the late Patience Trinity-Fahnbulleh by the Monthly and Probate Court for Montserrado County and that the strict rules in civil matters/actions are relaxed and not strictly followed in probate proceedings; that under the relevant statute, the Court may take judicial notice of its own records; that even though the Ministry of Lands, Mines and Energy is within the Executive Branch of Government, yet, the Ministry is clothed by statute with the authority to survey and superintend all surveying matters (land matters) within the Republic of Liberia, where there is land dispute before the court; that Borbor Freeman, Jr. having submitted to the Ministry of Lands, Mines and Energy for the land dispute between the Intestate Estate of the late Patience Trinity-Fahnbulleh and the Intestate Estate of the late Borbor Freeman, Sr., he cannot there after challenge the Report /findings of the Ministry of Lands, Mines and Energy; that the Intestate Estate of the late Borbor Freeman, Sr. has no land in Paynesville between Barnes' Beach and Gbenbar's Town, and therefore Borbor Freeman, Jr. has no land in that area to sell; that the issue of oldest deed will not be considered because the survey report from the Ministry of Lands, Mines and Energy revealed that the Intestate Estate of the late Borbor Freeman, Sr. does not own land in the area of contention, even though the late Borbor Freeman, Sr. deed may be older than the deed of the late Patience Trinity Fahnbulleh. The Court below therefore granted the objector's objections and refused to probate the Administrator Deed presented by Borbor Freeman, Jr. for probate.

This Court deems it necessary to state that the records in the case file show that Letters of Administration were issued to Mr. Frederick W. Davis, Sr. to administer the Intestate Estate of the late Patience Trinity-Fahnbulleh by the Monthly and Probate Court for Montserrado County. Our law provides that "the Judge shall of his own motion take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute". See 1 LLR, Section 25.2, page 196.

More besides, in our jurisdiction couple with the practice and procedure, our statute provides that "the provision of our statutes giving the commencement of actions are not intended to be applied to proceedings for the probate and/or contest of wills, since proceedings of the nature are not civil actions as such, but are judicial inquires to ascertain whether the instrument before the Court is genuine". See the case, A. R. Railey and L. A. Montgomery, purported executors the Estate of the late C. A. Smith Appellant Vs. John W. Clarke,, adopted son of the late C. A. Smith, Appellee. 10 LLR. Syl. 1, text at page 333 and 334. Hence, the Judge was therefore right to take judicial notice of the records in the case file.

This Court says the records further show that both parties submitted to the Ministry of Lands, Mines and Energy for an investigation for land dispute between them in Paynesville, between Barnes' Beach and Gbenbar's Town, and that the report/findings of the Ministry of Lands, Mines and Energy indicated that the late Borbor Freeman, Sr, has no land in said area, although the deed issued in favor of the late Borbor Freeman, Sr. may be the older, yet, the land covered by the deed issued to the late Borbor Freeman, Sr. is not located in the area of contention.

This Court deems it necessary to say that the parties have submitted themselves to the Ministry of Lands, Mines and Energy based on the request by the parties for an investigation to be conducted as to the land dispute between them and the report/findings of the said Ministry having revealed that the late Borbor Freeman, Sr. owns no land in the contested area, he (Borbor Freeman, Jr.) is estopped from raising issue that the Ministry of Lands, Mines and Energy has no legal authority to handle land matter; although said Ministry is an agency within the Executive Branch, it is authorized by law to survey land for land owners and has from time to time been requested by Court to help resolve land dispute between parties. An estopped is " A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true". See: Black's Law Dictionary Abridged Seventh Edition, page 452.

This Court says that the principle of law relating' to older deeds was never raised

before the Court below. The matter in the court below concerns the caveat and subsequent objection filed against the probation of a deed presented by Borbor Freeman, Jr. The Court below refused to have said deed probated because of the dispute between the parties and based on the Report/findings of the Ministry of Lands, Mines and Energy. More besides, the Court below in its Ruling concluded that "wherefore, and in view of the foregoing, the objections to the probation of the Administrator Deed as presented by Borbor Freeman, Jr. et al, Respondents, is hereby granted and probation denied and the Respondents are hereby ordered to desist from selling and bringing any deed(s) deriving from said One Hundred (100) Acres of land belonging to the Trinity Estate to this Court for probation".

The conclusion in the Ruling of the Court below in no way determined title, in that there is no part of the Ruling that puts the objector in possession of the said disputed property but the Court only refused to have the deed presented probated. We hold that the Appellants have remedy at law to proceed to the Sixth Judicial Circuit Court to institute an action of ejectment against the Appellee since there is a dispute as to the owner of the land in question despite the Ministry of Land, Mines and Energy's investigation which shows that Appellants own no land in the area in dispute. "When an administrator finds out that trespassers are encroaching upon the decedent's estate entrusted to him, his proper course is to bring an action of ejectment in law to obtain possession thereof. Where the Administrators of an Estate believe that the property of the estate which they are charged to administer is in question, they should use their letters of administration to sue out an ejectment as required by law". See the case: Isaac Samuel et al., informants Vs. Stephen Logan and Wilmot Logan, Heirs and Administrators of the Intestate Estate of the Late Josiah P. Logan, and Her Honour Martha K. Massoud, Resident Circuit Judge, Grand Bassa County, and Robert Hodges, Sheriff, Grand Bassa County, Respondent, 32 LLR, Syla 2 and 5 respectively, 433, Text at page 437.

Borbor Freeman, Jr. being an Administrator for the Intestate Estate of the late Borbor Freeman, -Sr. has legal standing to protect the Estate under the Decedents Estate Law of Liberia which provides that "letters granted to fiduciaries by the Court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the Court granting them". LIBERIAN CODES OF LAW REVISED, VOLUME 11, TITLE 8 DECEDENTS ESTATES LAW, SECTION 107.3, PAGE 620. This Court says that Borbor Freeman, Jr. should proceed to the Sixth Judicial Circuit Court to institute an action of ejectment if he is convinced that the land in dispute is owned by the Intestate Estate of the late Borbor

Freeman, Sr.

We further hold that since there is a land dispute between Borbor Freeman, Jr. and Fredrick W. Davies, Sr., and in view of the findings of the Ministry of Lands, Mines and Energy which indicated that Borbor Freeman has no land in the contested area, the Ruling of the Court below was proper and in line with law in this jurisdiction and therefore said Ruling cannot be set aside or reversed.

Wherefore and in view of the forgoing, it is the holding of this Court that the Ruling of the Court below is hereby confirmed and affirmed. The Clerk of this Court is hereby ordered to send a mandate to the Court below ordering the Judge presiding therein to resume jurisdiction and enforce its Judgment. Cost against the Appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR EMMANUEL S. KOROMA OF THE SHERMAN AND SHERMAN LAW FIRM REPRESENTED THE APPELLANTS WHILE COUNSELLOR J. JEROMA VERDIER OF STUBBLEFIELD & ASSOCIATE REPRESENTED THE APPELLEES.