Beatrice Malaweh Goffa et. al of the City of Monrovia, Liberia APPELLANT VS. **Dr. John Scott-Goffa**, Administrator of the Intestate Estate of the late Nancy & Isaac Goffa of the City of Monrovia, Liberia APPELLEE

LRSC 15 (2011)

HEARD: May 18, 2011 DECIDED: July 21, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This Court having made a decision to clear the numerous motions pending on its docket, called up all its motion files among which was this long outstanding matter.

A review of the facts in this matter reveals that appellee, who was the petitioner before the Probate Court of Montserrado County is alleging that he is one of three children. He was the only one educated among the three. He matriculated to Germany for further studies and while in Germany met a lady and got married. Having settled in Germany, the appellee communicated with his other two siblings in Liberia, Isaac Goffa and Nancy Goffa, expressing his desire of acquiring real property in Liberia. It was agreed that he would send money and they would purchase and develop real property for him. It was also agreed that property bought would be put in the name of their sister Nancy Goffa. The appellee said he continuously sent money for the purpose and properties were bought and put in Nancy's name as agreed. Proceeds from developed properties were used to buy and develop other properties in Sinkor and Bassa Community. Isaac Goffa predeceased the appellee and later Nancy died leaving the appellee as the only surviving sibling. Isaac and Nancy died leaving no children of their body. Upon Nancy's death, the appellee returned home and under our law regarding intestacy succession applied at the Probate Court of Montserrado County and obtained Letters of Administration to administer the intestate estates of both his siblings, Isaac and Nancy Goffa.

Apellee as administrator was normally out of the country, in Germany, for extended

periods. One Beatrice Malaweh Goffa, alleging that she is the niece of Nancy Goffa, presented herself to the Probate Court and petitioned for Letters to co-administer the intestate estate of her aunt, Nancy Goffa, informing the court that appellee who had been granted Letters of Administration was away in Germany and the deceased property was going to waste. The court granted the said application and the appellant and others said to be nieces and nephews of the deceased began exerting control over said intestate estate.

The appellee, Dr. John Goffa, returned to Liberia in 2000, and in 2004, filed a petition praying for closure of the intestate estate of his sibling, and being the sole surviving heir as he alleged, he prayed to be granted a curator deed for the properties as the proper and legal beneficiary of the intestate estate. The presiding judge after a hearing, ruled on March 22, 2004, that the opening of the estate had far exceeded the time prescribed by law for no justifiable reason. He ordered that the estate be closed within six months from the date of the ruling; that the appellant and appellee, administrators of Nancy Goffa'a estate work with the curator of the Probate Court to file in three months an inventory of the estate with the court.

Both parties filed their petitions for closure of the estate and having satisfied the order of court, the Probate Judge, Vinton Holder, made a final ruling on November 25, 2005, closing both the estate, naming the appellee, Dr. John Scott Goffa, as the sole beneficiary of John and Nancy's estates. In the case of Nancy Goffa, where the inventory showed real properties listed in her name, the court ordered the curator to conduct a survey of the properties and thereafter issue out a curator's deed in favor of the appellee.

Prior to the final ruling of the Judge on November 25, 2005, a notice of assignment for hearing was duly issued and served on the parties to the petition, and returns made. However, neither the appellant nor her counsel showed up; consequently, the court asked Attorney Daku J. Mulbah to deputize and receive the ruling on behalf of the appellant. After the ruling was read, Attorney Mulbah announced in open court as follows: "To which ruling of your Honor, counsel for respondent except and announce that he will take advantage of the law controlling, and submit." The court noted the

exception and the matter was suspended.

A week after the rendition of this final Judgment of November 25, 2005, Appellant/respondents' counsel presented his bill of exceptions and appeal bond to the Judge Holder for his approval. Judge Holder approved the bill of exceptions and appeal bond, but when these papers were served on counsel for the appellee, he fled to the Justice in Chambers praying for the alternative writ of prohibition. In his petition, counsel for appellee contended that in spite of the fact that the counsel deputized to take the ruling on behalf of the respondent did not announce an appeal in open court as the statue requires, the judge should not have signed the bill of exceptions and approve the appellant/respondent's appeal bond. The counsel for the respondent on the contrary responded that the fact that the court had elected to appoint a counsel to deputize and take the ruling on behalf of the respondents, a duty was imposed upon the court to ensure that an appeal was announced in fulfillment of the Constitution and statutory laws of Liberia. A conference was held and the Justice in Chambers ordered the writ issued after the conference.

Probate Judge, Vinton Holder, was the only party named as respondent in the petition for a writ of prohibition. He filed returns to the petition. In his returns, he conceded the soundness of the petition, stating that he made an error when he signed the appeal documents. We must say here, though judges are often named as co-respondents in remedial proceedings, they often do not file returns, referring to themselves as nominal parties.

The appellant objected to the returns filed by the Judge; however, the Justice in Chamber ruled that considering that a judge is the main party against whoma petition for prohibition is filed against, and considering that the petition named Judge Holder as the sole respondent, it was only proper that the judge as respondent address himself to the issue raised against him in the petition.

Counts 3 and 5 of the Judge Holder's returns read:

3. That as to count seven of the Petitioner's Petition, co-respondent says that the

approval of the bill of exceptions and the subsequent approval of the appeal bond were done inadvertently as admitted during the conference before Your Honor.

5. Further to counts three (3) and four (4) above, co-respondent says that prohibition will certainly lie to correct the inadvertent error that was committed by the co-respondent.

The issue, whether the exception and announcement made by the counsel designated to take the ruling on behalf of the appellant/respondent was adequate for taking of an appeal as required by our statute, the Chambers Justice said no. He ruled that Judge Holder erred to have approved the bill of exceptions and appeal bond. In support of his ruling on the issue, the Justice quoted Section 51.6 of our CPLR, as follows:

"An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for that purpose." (emphasis ours]

He also made reference to a long line of cases in which the Supreme Court had ruled that the dismissal of appeal is limited to the following four causes:

a. Announcement of the taking of the appeal;

b. Filing of the bill of exceptions;

c. Filing of an appeal bond;

d. Service and filing notice of completion of the appeal,

and a party having failed to comply with any of these requirements within the time allowed by statute, it shall be a ground for dismissal of his appeal. In reliance the Justice quoted Firestone Plantations Company vs. John Bravv, 36LLR, 893,902(1990); Pelham vs. Witherspoon & Green, Sr 8LLR, 296, 303-309 (1944), among other cases.

On the issue argued by the counsel for appellant that a duty is imposed upon the court who elects to appoint a counsel to ensure that an appeal is announced, the Justice said the court has no duty to deputize a lawyer to take a ruling on behalf of an unexcused party who had prior and due notice to appear but fails to appear; that appellee's counsel's argument was not in harmony with this Court's ruling in the case, Korpo Konah vs. Barclay, Reeves & Gobewole, et.al, 36LLR 733, 737 (1990.), besides, Judge Holder himself had conceded to the petition. The Justice therefore ruled ordering the peremptory writ issued, granting the writ of prohibition, and prohibited Judge Holder and the appellant from taking further actions in perfecting the appeal in the main case. A writ of prohibition, he said, could undo what was not legally done.

This ruling was made on May 26, 2006, and the counsel for appellant, Counselor Nyanti Tuan excepted and announced an appeal to the Full Bench. However, we do not find evidence of this appeal from the Justice in Chambers having been followed up until more than a year later, on September 21, 2007, when one of appellee's counsel, Counselor Roland Dahn filed a motion to dismiss the appeal, stating reasons in his motion as follows:

1. "That on the 22nd day of May A.D. 2006, His Honor Justice J. Emmanuel Wureh, then presiding in Chambers during the March Term A.D. 2006 of this Honorable Court, heard the above entitled Petition and ruled as follows: "The petition for the writ of prohibition is hereby granted and the peremptory writ is hereby ordered issued prohibiting the respondent Judge Holder and the respondents in the main case from perfecting the appeal, which is the subject of this proceeding." And thereafter, the counsel for the respondent excepted to the said ruling and announced an appeal to the Full Bench during its March Term A.D. 2006.

2. However, up to and including the date of this motion, the respondent has neither filed a bill of exception and a notice of completion of appeal nor have they done anything to remove the case on the [trial] docket of this court.

3. Movant says the act of the respondent is a mere ploy to delay and baffle this case as

they have always done even at the court below, while they are at the same time collecting the proceeds of rents from the Estate and misusing same quite against the interest of the beneficiary.

4. Movant says failure of the respondents to take the procedural steps to place the case on [trial docket] constitutes an abandonment of the cause, and therefore the Motion to Dismiss the Appeal is proper and must and should be granted.

5. Wherefore and in view of the foregoing, movant respectfully prays and moves this court to grant this motion and dismiss the appeal of respondent, and order the respondent Probate Court Judge in the case below to resume jurisdiction in this matter and enforce his ruling made on the 25 th day of November, A.D. 2005, and grant unto movant such order and relief this court may deem just and equitable as the law requires."

In the interest of speedy disposition of this long outstanding matter, we made a decision to consolidate the motion to dismiss and the appeal from the ruling of the Justice in Chambers; therefore raising the following two issues:

1. Whether the motion to dismiss the appeal from the ruling of the Justice in Chambers on the writ of prohibition should be granted for cause stated in the said motion?

2. Whether this Court affirms the ruling of the Justice in Chambers granting the writ of prohibition?

Despite this motion to dismiss the appeal from the ruling on the writ of prohibition filed by counselor Roland Dahn during the March Term 2007, of this Court, we see no record of either counsel for the parties following up with the Clerk of this Court to have the matter assigned for hearing. No wonder Dr. John Scott Goffa, frustrated with the delay in hearing and settlement of this matter before this Court, had gone to the press accusing the Judiciary of being dilatory in the handling of his matter and granting him the justice he deserves. The appellee's counsels themselves, answering question of why the delay in pursuing this matter before this Bench, answered that it was due to

the irrational behavior of the appellee towards them.

The appellee/movant counsel states in his petition to dismiss, that the appellant/respondent has failed to file a bill of exceptions and a notice of completion of appeal and has done nothing to move this case on the [trial] docket of this Court. We are confused about which bill of exceptions and notice of completion of appeal that the counsel is referring to, since in Count 1 of counsel's own motion to dismiss the appeal, he himself states that the ruling of the Justice in Chambers granting the writ of prohibition, ordered that the Probate Court Judge and the appellant/respondent be prohibited from perfecting the appeal in the main case. Is counsel stating that the appellant should have filed a bill of exceptions and a notice of completion of appeal to enable us review the ruling of the Justice in Chambers? All counselors know clearly well that it is not required under our statute.

In regard to the accusation that the respondent failed to ensure that the appeal be assigned or placed on this Court's docket for hearing, We say that we are not aware of any rule which requires only the appellant to request for hearing of a matter before this Court. The counsels of the appellee/movant knows that speedy resolution of this matter hinged on the review of the ruling of the Justice in Chambers by the Full Bench and judgment made thereof. Attributing the delay of hearing of this matter to only counsel of the respondent, we say, is untenable since said delay can be attributed to appellee's counsels as well as they did admit before us.

We find no legal justification in appellant's motion to dismiss the hearing of the appeal from the Justice in Chambers, we therefore deny the appellee/ movant motion to dismiss.

After a review of the ruling made by the Justice in Chambers, we also find it difficult to uphold his ruling granting the writ of prohibition and ordering the Judge below and the appellant from further proceeding in perfecting an appeal from the Probate Judge's final ruling.

Indeed, this Court has held in a long line of cases that one of the steps for taking of

an appeal is the announcement of the appeal in open court by the party appealing the final judgment; however, the salient issue before us on review is, where neither a party nor his counsel is present in court for a court's final judgment, and the court, appoints a lawyer to take the ruling on behalf of the absent counsel, what would be the purpose for said appointment?

Article 20 (b) of our Constitution has guaranteed the right to appeal and hold it as being inviolable. It is in this spirit that this Court in Kerpai et al. vs.Kpene, 25LLR 422, 430 (1977) said, "To all intents and purposes it is obvious that the intention of the legislature in passing the act [grounds for dismissal of appeal] was to discourage the dismissal of appeal on technical legal grounds and to give to appellant an opportunity to have their cases heard by this Court on the merit in order that substantial justice be done to all concern"

In order to guarantee this right of appeal, the caption of Section 51.6 of our CPLR reads: "ANOUNCEMENT OF TAKING OF AN APPEAL". This section quoted supra clearly reads that if an attorney of a party or a party representing himself is absent at the time of rendition of judgment, a person appointed by court is deputized for this purpose [emphasis ours]. In determining the purpose of a statute, ..., recourse may be had to recitals thereof in the title or preamble" 73 AM JUR §74 page 289. Blacks Laws Dictionary, 8 th Edition also defines purpose as the objective, goal or end. If the objective, goal or end result of a court for appointing a counsel is to announce an appeal, the court then must ensure that this obligation is carried out as the purpose would not have been served. With reference to the construction of statute, this Court has stated: "every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended." Pelham vs. Witherspoon & Green, Sr, 8LLR, 296, 305 (1944).

The Justice in Chambers held that a court is under no obligation to appoint a counsel to deputize on behalf of an absent counsel who has been duly notified and had due

notice to appear. There are several decisions of this court ruling otherwise but since this issue is not before us, it will not be dealt with in this case. What is in issue is, where a court in obedience to our CPLR, Section 51.6, appoints a counsel to deputize on behalf of the counsel for appellant, is the court under an obligation to ensure that the announcement of an appeal is made in accordance with the statue? We say "yes". In the case, Cooper vs. Swope and Cooper, 39LLR 220,(1998) a writ of error was filed by the plaintiffs in error alleging that a lawyer was designated to take a ruling on their behalf denying them the right to intervene. The lawyer excepted but did not announce an appeal from the ruling. Justice Wright speaking on behalf of the Court said the court's appointment was inadequate in that the designated counsel did not fulfill the purpose for the appointment; A judge's ruling denying a party the right to intervene is a final judgment and the purpose of this provision of the statute is to preserve the right of the absent counsel or party to appeal and have an adverse judgment reviewed. Because of the negligence of the appointed counsel, the Justice said, there exist good reasons why the intervenor should seek error. This Court then granted the writ of error. We note however that the Court's ruling went further and said that a court's own duty ends when a counsel who is present is designated to take a ruling for an absent counsel. And therefore chastise lawyers designated to be more careful and mindful of the cost their carelessness cause to parties.

We disagree with the ruling in this respect. If the court's duty ended with just the appointment of a counsellor to take a ruling on behalf of an absent counsel, the Court should not have ruled as it did given the negligence of the designated counsel as one of the grounds for granting the writ. But realizing that the sole purpose of the statute is to enforce one's constitutional right to appeal, the writ of error was upheld by the Court. We hold therefore, where a lawyer is designated to take ruling by a court on behalf of an absent party, it is the obligation of the court to ensure that an announcement of an appeal is made on record and granted. By this, the court ensures the constitutional right of appeal, and the legislative intent of Section 51.6 of our CPLR to allow absent party the opportunity to appeal if he so desire to have his matter reviewed. To disallow the appellant her appeal based on this legal technicality, we say, would work as injustice to the appellant and violate the intent of our Constitution and Statute.

Though poised to dispose of this matter in its entirety, we sincerely regret that we cannot do so as a writ of prohibition is an interlocutory appeal and cannot be substituted for the main appeal. The purpose of the petition for the writ of prohibition filed in this matter was to have the Justice in Chamber review an action of the judge on a particular matter alleged to be illegal and to order him to desist from carrying out such illegal act. The Justice in Chambers having granted the writ and we having overturned his ruling, we must now have appellant take the legal steps necessary to bring the main appeal under the jurisdiction of this Court for our review of the Judge's final ruling/judgment on the question of appellant relationship to the deceased which would warrant her a distributees under the estate. This Court can only reverse, amend or affirm the judge's ruling when the notice of completion is filed and the lower court loses jurisdiction. Upon assuming jurisdiction, this Court can then review the testimonies and records of the court below which we regret is not before us.

It is the holding of this Bench therefore that the ruling of the Justice in Chambers granting the alternative writ of prohibition is reversed, the motion to dismiss denied and the matter remanded with orders that the appellant's bill of exceptions and bond having already been approved by the Judge and served on the appellee, same be, with orders that the appellant file her notice of completion of the appeal nunc pro tunc and the records of the matter be transcribed, and sent up for our hearing during the October 2011 Term of this Court.

Where this matter is brought up for review, the Clerk of this Court is ordered to immediately place this matter on the docket of the October 2011 Term of this Court and to have it assigned for hearing and the speedy determination thereof. AND IT IS HEREBY SO ORDERED.

THE APPELLANT WAS REPRESENTED BY COUNSELLOR NYENATI TUAN OF THE TUAN WREH LAW FIRM, WHILST THE APPELLEE WAS REPRESENTED BY COUNSELLOR COOPER KRUAH OF THE HENRIES LAW FIRM.