

IN RE: THE PETITION OF ESTHER E. MASSAQUOI AND JOHN C. A. GIBSON,
Petitioners/Appellants, v. GEORGE WILLIAM WEH DENNIS, Objector.

APPEAL FROM THE JUDGMENT OF THE MONTHLY AND PROBATE COURT
FOR MONTSERRADO COUNTY.

Heard: November 28, 2001. Decided: December 20, 2001.

1. The judge of the Monthly and Probate Court for Montserrado County has concurrent jurisdiction with the judge of the Provisional Monthly and Probate Court for the District of Careysburg, and therefore the judge for the Monthly and Probate Court for Montserrado County cannot review the decision of the judge of the Provisional Monthly and Probate Court for the District of Careysburg admitting into probate the last will and testament of a decedent and issuing letters testamentary to the executors thereunder.
2. All admissions made by a party himself or by his agent acting within the scope of his authority are admissible.
3. Every agent for the conduct of a cause has the authority to make admissions in that cause. and the admissions of every agent in a matter under his control as agent shall be admissible.
4. When several parties have a joint interest and such interest has been proved, the admission of one shall be deemed to be the admission of all; provided, however, that the joint interest may not be proved by the admission of one or more against those not joining in such admission.
5. All evidence must be relevant to the issue, that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages.
6. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment shall be taken as true unless disproved by the party.
7. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.
8. The best evidence which a case admits of must always be produced; that is, no evidence is sufficient which presupposes the existence of better evidence.

9. A copy of a writing is not admissible as evidence unless the original is proved to be lost or destroyed or to be in the possession of the opposite party who has received notice to produce it or unless it is a copy of some public record or document which was proved as provided by law.

10. Photocopies of documents attached to pleadings are designated as exhibits and remain so until they are testified to and the witnesses testifying thereto are examined and cross-examined, and the documents receive the court's mark of identification and are subsequently admitted into evidence.

11. The issues of relevant evidence and their admissibility are determined during trial, with or without a jury, and not during the disposition of the law issues or before the commencement of trial; and the weight of evidence in a proceeding or trial is determined only when the evidence is admitted.

12. The striking of a reply by a trial judge while disposing of the law issues has no affect whatsoever on the trial of a petition or the objections or answer thereto.

13. The Probate Procedure Code provides for the filing of only a petition and returns thereto and no other pleadings unless directed by the court. Hence, the striking of a reply filed without an order of the court causes no disability to a petitioner in cross-examining, impeaching, or discrediting an objector or his witnesses.

14. Under the practice and procedure in the Liberian jurisdiction the adverse parties are under a duty to prove by a preponderance of the evidence their side of a case if their positions are to be adjudged favourably by the court in a final judgment or decree.

The petitioners/appellants appealed from a ruling of the Monthly and Probate Court for Montserrado County made during the disposition of the law issues striking the petition-ers' reply and holding that the failure of the petitioners to respond to the appellee's claim that the decedent had during her lifetime conveyed certain property to the objector/ appellee excluded said property from the estate of the decedent and vested ownership thereto in the objector. Because the executor and executrixes of the decedent's estate had been away from the bailiwick of the Republic of Liberia for an extended period, the appellants had petitioned the court for letters of administration to administer the said estate. Objections were filed to the petition, the objector/appellee contending that the decedent had conveyed a certain parcel of his land to him, which should be excluded from the estate. A reply was filed in response to the objections but was stricken by the probate court.

The probate court ruled that it shared concurrent jurisdiction with the Provisional Monthly and Probate Court for Careysburg District which had probated the Last Will and Testament of the decedent, and therefore could not review the acts of that court. The court therefore granted the petition. However, it also ruled that as the petitioners had not denied the objector's claim to ownership of the certain parcel of land, the same was tantamount to an admission, and hence, that the subject land claimed by the objector should be excluded from the estate.

On appeal, the Supreme Court reversed the ruling of the probate judge which excluded the claimed parcel of land from the decedent estate, holding that the claim of the objector was an allegation of fact that was subject to proof at a trial and that it could not be accepted as true by the trial judge in the disposition of the law issues. The Court noted that although the trial judge had stricken the petitioners reply from the records, the Probate Procedure Code did not provide for the filing of such reply, and that therefore the petitioners suffered no disability as a result of such ruling and retained the right to examine and cross-examine the objector's witnesses as well as the documents on which the objector relied. The Court further observed that the trial court could not admit copies of the documents into evidence and rule thereon in the course of disposing of the law issues without the whereabouts of the original being accounted for, noting that such copies were mere exhibits and remained so until the procedure prescribed by law had been complied with regarding the admission of documents into evidence. The admission into evidence of such documents, the Court added, could only be done after the documents had been testified to by witnesses who were examined and cross-examined thereon, the documents marked by the court and, upon request, admitted into evidence. The acceptance of such documents, without the same go through the prescribed process and without the objector having met the burden of a preponderance of the evidence, but which formed the basis of the trial court ruling while disposing of the law issues was a reversible error, the Court said. The trial court's ruling was therefore reversed in part and the case remanded for further appropriate hearing by the lower court.

Paul Berry and Cooper W. Kruah appeared for the petitioners. Snonsio Nigba appeared for the objector.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The certified records forwarded to this Court reveal that Frances P. North-Dennis died testate in May 1988. In January, 1989, the last Will and Testament of Frances P. North-Dennis was offered and subsequently duly admitted into probate by the Provisional Monthly and Probate Court for Careysburg District, Montserrado County, Republic of Liberia. The named executrixes and executor in the Will, namely, Julia F. Gibson (now deceased), Sarah J. Gibson and Bernard A. Gibson, were sworn and issued letters testamentary. The executrixes and executor performed their duties until 1990, but due to the civil conflict which had intensified in Liberia they fled the country. Thereafter, the petitioners/appellants filed a petition before the Monthly and Probate Court for Montserrado County for letters of administration to administer the aforementioned estate of the late Frances P. North-Dennis, stating as the reason therefor that the executor and executrixes were without the Republic of Liberia. To this petition, the objector/appellee filed objections, contending that the said last Will and Testament was invalid, in that title to a parcel of land which had been conveyed under the said Will was transferred by a sale to objector during the lifetime of the testator. The objector also contended that during the testator's lifetime, she had initiated and concluded adoption proceedings in his favor and had thereby adopted him as her son.

The judge of the Monthly and Probate Court for Mont-serrado County called the case for hearing on the law issues, but instead of entertaining arguments as was contemplated he handed down a ruling. In the ruling the judge granted the letters of administration on the ground that the Monthly and Probate Court for Montserrado County had concurrent jurisdiction with that of the Provisional Monthly and Probate Court for Careysburg District, and that therefore he could not review the decision to determine the validity of the said Will and the granting of the letters testamentary. The judge also proceeded to exclude from the estate of the decedent the parcel of land which was alleged to have been conveyed to the objector during the lifetime of the decedent. From this ruling of the judge both the petitioners and the objector announced an appeal. However, while the petitioners filed a bill of exceptions and completed the appeal process, the objector did not file a bill of exceptions or pursue any of the other appeal steps.

The sole issue which this Court must decide is whether or not the admissibility of evidence is determinable by a trial court whilst ruling on the law issues?

To enable us to answer this question, we again take recourse to the records and to the applicable statutes.

This Court confirms from the onset that portion of the ruling of the judge which says that the judge of the Monthly and Probate Court for Montserrado County has concurrent jurisdiction with the judge of the Provisional Monthly and Probate Court for Careysburg District and, hence, the Probate Judge for Montserrado County could not review the

decision of the Probate Judge for Careysburg District admitting into probate the last Will and Testament of the late Frances P. North-Dennis and to subsequently issue letters testamentary in favor of Julia F. Gibson, Sarah Gibson, and Bernard A. Gibson as executrixes and executor of the testate estate of the late Frances P. North-Dennis.

Reverting to the issue at hand, we observe that the objector submitted to the trial court two species of documents attached to his pleadings to substantiate the averments stated therein. The documents were:

- 1) Photocopy of a true and certified copy of a warranty deed from Frances P. Dennis to George William Weh Dennis, as recorded in volume 392-82, pages 43-45, of the records of Montserrado County, filed in the archives of the Ministry of Foreign Affairs, and issued by the Ministry of Foreign Affairs on the 22nd day of July, A. D. 1987, under the hand and seal of J. Bernard Blamo, Minister of Foreign Affairs.
- 2) Photocopy of a true and correct copy of a court's decree of adoption in favor of George William Weh Dennis, as recorded in volume 63, page 618, of the records of Montserrado County, filed in the archives of the Department of State, and issued by J. Rudolph Grimes. Secretary of State.

In reply to the objector's objections, to which photocopies of the abovementioned documents were attached, the petition-ers contested and questioned the genuineness, authenticity and validity of the photocopies of the said documents. The judge of the Monthly and Probate Court for Montserrado County, in ruling on the law issues, determined that the following issues were amongst the several issues before the court for resolution:

"...(2) What effect does the warranty deed, attached to objector's objections and marked RO/5, have on the overall matter of this estate?

(3) Does the objector have the legal capacity to bring any suit against said estate?"

The trial judge, in ruling on the law issues, ordered that the reply of the petitioners, which had challenged the validity, genuineness and legality of the documents mentioned above be stricken from the records. The judge stated as the ground for his action that the said pleading was filed on the 76th day after the objector had filed his objections to the petitioners' petition instead of the statutory period of ten days. The judge's ruling continued:

"...This court notes that the said warranty deed is a certified copy from the Ministry of Foreign Affairs, which shows that on the 21st day of June, A. D. 1982, Decedent Frances North-Dennis, while alive, sold said parcel of land to objector for one hundred dollars (\$100.00). The court says it shall treat this as an information to this court that this piece of property is not a part of the testate estate of the late Frances North-Dennis. The failure of

the petitioners to respond to this vital point raised by objector/respondent is tantamount to their admission that this piece of property is not a part of the testate estate of the late Frances P. North-Dennis. (See Civil Procedure Law, Rev. Code 1:25.8(1) and (2), 1 LCLR 200 (1973).”

In order to adequately address the conclusions stated by the probate judge in his ruling, we revert to the law citation cited *supra* in the said ruling. The law states:

“Section 25.8. Admissions.

1) Admissibility in general. All admissions made by a party himself or by his agent acting within the scope of his authority are admissible. Every agent for the conduct of a cause shall have authority to make admissions in that cause. The admissions of every other agent in any matter under his control as agent shall be admissible.

2) Joint interest. When several parties have a joint interest and such interest has been proved, the admission of one is the admission of all; but the joint interest may not be proved by the admission of one or more against those not joining in such admission.” Civil Procedure Law, Rev. Code 1:25.8

This Court’s inspection of the foregoing law revealed that chapter 25 of the Civil Procedure Law is captioned “Evidence”. It is the view of this Court therefore that chapter 25 contains the procedural rules and guidelines of evidence and its admissibility. Paragraphs (1) and (2) of section 25.8, quoted herein, refer to the admissibility of admissions into evidence. But the question which confronts us is, at what stage of the process of a cause of action does the court determine evidence and its admissibility?

The rules of evidence, as also contained in chapter 25 of the Civil Procedure Law, require that all evidence must be relevant to the issue, that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages. For reliance, see the Civil Procedure Law, Rev. Code 1:25.4.

Chapter 25 of the Civil Procedure Law further provides in various other sections, as follows:

Section 25.5. Burden of Proof

1. Party having burden. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by the party.”

2. Quantum of evidence. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.”

“Section 25.6. Best Evidence.

1. In general. The best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence.”

2. Copies of writings. A copy of a writing is not admissible as evidence unless the original is proved to be lost or destroyed or to be in the possession of the opposite party who has received notice to produce it or unless it is a copy of some public record or document proved as provided in section 25.10 of this chapter.” Civil Procedure Law, Rev. Code 1:25.5 and 25.6.

Photocopies of documents attached to pleadings are designated as exhibits and remain so until during trial when they are testified to by witnesses who may be cross-examined thereon, they receive court’s mark of identification, and are subsequently admitted into evidence. It is only after this process that the court or the jury can determine the weight of the evidence so admitted. It is common legal practice hoary with age that the weight of evidence in a proceeding or trial is determined only when the evidence is admitted.

A ruling on law issues is a pre-trial determination by the court on points of law. As such, the ruling on law issue is inadequate and lacks the evidentiary legal capacity to determine the weight to be accorded to unproven photocopies of the documents in controversy, attached to a pleading in an action. It is common legal knowledge, procedure and practice that the issues of relevant evidence and their admissibility are determined during trial, with or without a jury, and not during the disposition of the law issues. We are therefore convinced that the determination made by the probate court judge in his ruling on the law issues that the photocopy of the true and certified copy of the warranty deed from Frances P. North-Dennis attached to the objector’s objection, dated the 21st day of June, A. D. 1982, for one hundred dollars (\$100.00), and allegedly executed before the death of the testator was admissible into evidence was premature and erroneous, and hence, is reversible. The determination of admissibility of evidence is made during trial and not before the commencement of the trial.

When the judge ordered the reply of the petitioners/ appellants stricken from the records, the order did not prevent, bar, or deny the petitioners/appellants of the right to cross-examine the objector, his witnesses, or oral testimonies relating to the documentary evidence of the objector? We believe and are convinced that the action of the trial judge was contrary to the principle enunciated herein. The objector and the petitioners remained equally under a legal duty to prove their case. The striking of the reply by the judge had no affect whatsoever on the hearing or trial of the petition and the objections thereto. The filing of a reply to the

objection or re-returns without the orders of the probate court judge was a legal surplusage. The Decedents Estates Law provides at section 103.2, under the caption pleadings and process, as follows:

1. Kinds of pleading. Unless otherwise provided in this Code, pleadings shall consist of a petition, an account in an accounting proceeding and a return consisting of an answer or objections. There shall be no other pleading unless directed by the court.
2. Time of servings, answer or objection. Except as provided in sections 113.11 and 116.8(d), answers or objections shall be served on all parties who have appeared at least one day before the date fixed for the return of process and shall be filed with the clerk of court on or before such date.
3. Form of averments. Statements in a pleading shall be sufficiently particular to give the court and parties notice of the claim, objection or defense and shall contain a demand for the relief sought.
4. Upon whom service of copies are to be made. In addition to the requirements set forth in section 103.7, copies of all pleadings shall be served on any party who has appeared in the proceeding and demanded that a copy of all papers be served upon him, and upon all parties upon whom the court by written order or oral direction entered in the minutes directs that service be made. A party who fails to comply with this requirement may be treated as a party in default.” For reliance, see Decedents Estates Law, Rev. Code 8: 103.2.

Clearly the foregoing provisions of law state the kinds of pleadings - a petition for accounting, on the one hand, and returns consisting of either an answer or objections, on the other hand - which are permissible in probate proceedings. The provisions mandate that there shall be no other pleading except upon orders of the court. The records before this Court for review reveal no such order of the probate judge to file other pleadings in addition to those provided for by the provisions of the Probate Procedure Code. Hence, the petitioners suffered no legal disability which would have prevented them from cross-examining and seeking to impeach and discredit the objector's witnesses and the exhibits attached to the objections.

Under the practice and procedure in this jurisdiction, the adverse parties are under a duty to prove by a preponderance of the evidence their side of the case if their positions are to be adjudged favorably by the probate court in a final judgment or decree granting either the petition or the objections. This stage of the probate proceedings shall obtain only after the probate judge has ruled the petition and the returns/objections thereto to trial, following the disposition of the law issues and not before. This Court therefore finds that the probate judge's ruling on the law issues should have passed on the points of law in controversy and

not on the admissibility of evidence. In passing on the evidence the trial judge made a final determination of the validity, legality, relevance and weight of evidence without a regular trial. This, we believe, was an error.

Wherefore, and in view of the foregoing law and circumstances, the ruling on the law issues, which determined the admissibility of evidence and the final outcome of the petition and the objections thereto, is hereby declared premature, erroneous, illegal, and reversible. This appeal is therefore hereby ordered granted and the action is hereby remanded to the Probate Court for Montserrado County. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case and to give effect to this judgment. Costs are ruled against the objector. And it is hereby so ordered.

Judgment reversed.