IN RE: THE TESTATE ESTATE OF THE LATE FINEBOY LARZALEE of Monrovia, Liberia,

and

IN RE: THE APPLICATION OF MADAM KRUBOH LARZALEE, one of the purported widows of the late FINEBOY LARZALEE.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: April 9, 1979. Decided: June 15, 1979.

1. A judgment of the circuit court disposing of a contested Will referred to it by the probate court for a jury trial is final and binding unless an appeal is timely and properly taken and perfected by one aggrieved by that judgment.
2. A party aggrieved by the judgment of the circuit court on a contested Will, who does not take and perfect an appeal therefrom for review by the Supreme Court, cannot cause the probate court that referred the contested Will to the circuit court to reopen the case and dispose of it or refer it to the circuit court for the second time.
3. A probate court has no authority to review, set aside, modify or reverse the judgment of the circuit court disposing of the jury trial of a contested Will. The probate court is duty bound to enforce and give effect to that judgment once it was not appealed to the Supreme Court.
4. A judge has no power or authority to review, set aside, modify or reverse the ruling of a judge of concurrent jurisdiction. Accordingly, a judge who succeeds another judge in any court has no power and authority to tamper with any judgment or ruling of his predecessor, except to enforce and complete any unfinished business related to that judgment.
5. Every final judgment is appealable to the Supreme Court, and a judgment is final where it settles the rights of the parties and there is nothing left for the court to do or pronounce on.
6. Where a party, aggrieved by a judgment or final ruling, fails and neglects to announce an appeal in open court from a judgment or final ruling and to timely perfect his appeal, the judgment or final ruling is binding and enforceable, and the aggrieved party cannot cause

the court to reopen the case and dispose of it for the second time.

7. Appeal, not certiorari, is the proper remedy for the review of a final judgment or ruling; and when a judge of concurrent jurisdiction enters any judgment or makes a ruling purporting to overrule or set aside a previous final judgment or ruling of his predecessor, the remedy for review is appeal.

Fineboy Larzalee, the late Lorma Chief, left a Last Will & Testament, wherein he appointed three executors. Two of the executors subsequently resigned their appointment and qualifica-tion. After the Will was read, one of Chief Larzalee's widows, the appellee, objected to it. In keeping with law, the matter was then referred to the Sixth Judicial Circuit Court for a jury trial of the factual issues raised in the objections and returns. At the end of the jury trial, the jury found the Will to be valid and genuine. No exception was taken to the verdict. A judgment was entered on the verdict, and again no exception was taken nor appeal announced to the Supreme Court. The matter was therefore returned to the Monthly & Probate Court for Montserrado County for the Will to be probated and registered.

When the Will reached the Monthly & Probate Court for Montserrado County, Judge Stryker who was presiding when the Will was first read and referred to the Sixth Judicial Circuit Court had been succeeded by Judge Urey. On February 1, 1977, Judge Urey confirmed the judgment of the Sixth Judicial Circuit Court and ordered the Will probated and registered. However, on subsequent application of appellee, the same widow who objected to the Will, Judge Urey reopened the case and entered a ruling on July 15, 1977, referring the Will to the Sixth Judicial Circuit Court for the second time. From this ruling of July 15, 1977, appellant, then the sole executor, announced and perfected an appeal to the Supreme Court.

At the Supreme Court, appellee contended that the ruling of July 15, 1977, was an interlocutory ruling, reviewable by cer-tiorari and not regular appeal and therefore prayed the Supreme Court to dismiss the appeal. The Supreme Court rejected that submission and ruled that Judge Urey's ruling of July 15, 1977, which purported to set aside the ruling of his predecessor, Judge Stryker, his own ruling of February 1, 1977; and the judgment of the Sixth Judicial Circuit, was a final ruling and that appeal was the proper procedure for its review. The Supreme Court also ruled that a judge cannot review or reverse another judge of concurrent jurisdiction, which is what Judge Urey's ruling of July 15, 1977, attempted to do. That ruling of July 15, 1977, was therefore declared null and void, of no effect whatsoever,

and accordingly *reversed*. The Last Will and Testament of the late Lorma Chief Fineboy Larzalee was ordered admitted to probate and registration.

Joseph J. F. Chesson appeared for appellant. *James Berry* appeared for the appellee.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.

The late Lorma Chief Fineboy Larzalee of the City of Monrovia, Montserrado County, Republic of Liberia, died as a result of an automobile accident in 1975, leaving a Last Will and Testament, duly signed and witnessed on the 5th day of September, A. D. 1973, in which he named his nephew James Flomo Ballah, as his chief executor, and Messrs Johnson Baysah-Wala and William Kowo-Ballah, all of the City of Monrovia, Republic of Liberia, as co-executors.

Madam Larzalee, one of the widows of Chief Fineboy Larzalee filed objections to the probation of the Last Will and Testament mentioned above. The objections were taken up by the then Probate Court Judge Stryker, but transferred to the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia, for hearing of the issues of law and the trial of the facts by a jury. The issues of law and facts having been considered by the Sixth Judicial Circuit Court, a verdict was brought by the jury in accordance with the facts and the presiding judge rendered judgment thereon, upholding the verdict that the Last Will and Testament of the late Chief Fineboy Larzalee was genuine and valid. The presiding judge of the Sixth Judicial Circuit Court thereafter returned the matter to the Probate Court, ordering that the Will should be probated and registered.

It should be noted that after hearing of the evidence by the Sixth Judicial Circuit Court, counsel for Madam Kruboh Larzalee abandoned the trial, satisfied that the Will was genuine.

On the 9th day of June, 1976, Johnson Baysah-Wala and William Kowo-Ballah, the parties named as co-executors of the Will mentioned above, filed a petition to withdraw their names and requested the court not to have them qualified as co-executors of the aforesaid Last Will and Testament. This petition was granted, thus leaving James Flomo Ballah as the sole executor of the Last Will and Testament of the late Lorma Chief Fineboy Larzalee.

According to appellant, a new probate judge, Judge Urey, was appointed during the interim period in which he awaited the implementations of the circuit court's order to probate the will. Appellant further contends that although Madam Kruboh Larzalee never excepted to the ruling of the circuit court, nor announced an appeal therefrom, she

nevertheless took advantage of the coming on the probate court bench of a new judge and for the second time filed objections to the Will, which had already been adjudged genuine.

Appellant says that his counsel then filed resistance to the objections along with a motion to dismiss, but that on the 15th day of July, A. D. 1977, Judge Urey ruled on the merits of the objections without hearing arguments thereon and without passing on the issues of law raised. Counsel for appellant excepted to this ruling and appealed to the Supreme Court.

It is not amiss to say that the handling of this case is fraught with glaring irregularities, errors and improprieties. Firstly, appellee states in count one of his brief that the ruling from which appellant has brought this appeal before this Honourable Court is an interlocutory ruling, thereby premising the basis of the review of this case upon the wrong procedure; that is, by an appeal rather than by a writ of certiorari. Appellee therefore prayed for a dismissal of this appeal.

The brief of counsel for appellant, read in its entirety, is based upon the ruling of His Honour Judge R. D. Urey, made on July 15, 1977, ordering the objections filed by the appellees to the probation and registration of the Last Will and Testament of Chief Fineboy Larzalee to be forwarded to the Sixth Judicial Circuit Court for Montserrado County. It seems clear from the records in this case that said ruling was made in spite of a jury verdict on the validity and genuineness of the Will in favour of the appellant, a ruling rendered thereon by the circuit court, and a mandate of the Sixth Judicial Circuit Court sent to the Monthly and Probate Court to the effect that the Will in question, having been declared genuine and valid, should be admitted to probate and registration. There is also in the records of this case a ruling of Judge Urey, made on February 1, 1977, stating that a jury had found the Last Will and Testament of Chief Fineboy Larzalee to be valid and genuine, and ordering in a final judgment that said Will be probated and registered according to law. Yet this case was again taken up by Judge Urey and a ruling rendered by him on July 15, 1977, which was inconsistent and contrary to his earlier ruling of February 1. It is to this last ruling of Judge Urey that appellant has made this appeal.

Thus, though appellee and appellant's counsel are referring to one and the same ruling, mentioned *supra*, counsel for the parties view the ruling in different lights—one as interlocutory, the other as final.

An interlocutory ruling is defined as something that is done between the commencement and the end of a suit or action, which decides some point or matter but which, however, is not a final decision of the matter in issue. 1 BOUVIER'S LAW DICTIONARY 1631. On the other hand, a final judgment is one which puts an end to a suit (*Ibid.*, 171). A final

decree, for its part, is defined as a decree which leaves a case in such condition that, if on appeal there be affirmance, nothing remains for the court below but to execute it. It is a decree which disposes ulti-mately of the suit. After such decree has been pronounced, the cause is at an end and no further hearing can be had. *Ibid.,* 803.

Judged from the definitions given above, the ruling from which this appeal was taken cannot be regarded as interlocutory, especially in the light of the fact that a final disposition of the case had been made by Judge Urey's ruling of February 1, 1977, in which he ordered that said Will be probated and registered according to law. After this ruling, the cause was at an end and no further proceeding could be legally had thereon by the Monthly and Probate Court. Therefore, Judge Urey's subsequent assignment of the case for further proceedings, which led to his decision of July 15, 1977, was grossly irregular and therefore void and ineffectual.

In so holding, this Court is of the opinion that the procedure through which the appellant seeks review of the case, that is to say, by an appeal rather than by a writ of certiorari, is legally correct.

This Court deems it worthy to mention that while it is true, as appellee asserts, that our statutes makes it mandatorily incum-bent upon the probate court before which objections are filed to transfer a contested Will case to the court of quarter sessions and common pleas (now the circuit court) to be tried by a jury upon its merits and by that to either reject, set aside, quash or approve such Wills, this statutory mandate had already been carried out by Judge Urey's predecessor. The Sixth Judicial Circuit Court had already tried the case, ruled thereon and sent a mandate to the Monthly and Probate Court for execution, whereupon Judge Urey rendered a final ruling in pursuance thereof. Judge Urey's subsequent entry upon a hearing of the case *de novo* was grossly irregular and erroneous and constituted a complete departure from the established practice and procedure of the courts of Liberia for two reasons.

First, in re-forwarding the said objections to the Sixth Judicial Circuit Court, Judge Urey was attempting to undo what his predecessor Judge Stryker had already done. This Court, speaking on this point, has asserted that "[a] Commissioner of Probate cannot review a ruling of his colleague and predecessor, another Commissioner of Probate." *Jartu v. The Estate of Famble Konneh*, 10 LLR 318 (1950). Second, by sending this matter to the Sixth Judicial Circuit again, which most likely might not be presided over by Judge Smith who was the assigned judge at the Sixth Judicial Circuit Court when this case was tried by a jury and who rendered the judgment thereon, Judge Urey also effectively attempted to have another

circuit judge reverse the ruling of Judge Smith. In either case, the law is that judges of concurrent jurisdiction cannot review or reverse the ruling of each other.

If, as appellee claims, the ruling of the circuit court was erroneous because appellee had not been granted her day in court, appellee could appeal only to the Supreme Court for a review of the proceedings and not to the Probate Court for Montserrado County. Because the probate court exercises concurrent jurisdiction with the circuit court, the former is without legal authority to hear appeals emanating from decisions of the latter.

This Court deems the handling of the instant case as a complete departure from and in contravention of the rules of procedure of courts. We note with particularity the fact that although Judge Urey made a court's ruling on February 1, 1977, to which no exceptions were announced until February 3, 1977, Judge Urey still granted said appeal. The statute laws of the Republic is clear and unequivocal on this point and states as follows:

> "Announcement of taking of the appeal.
>
> "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 this purpose." Civil Procedure Law, Rev. Code 1:51.6.

Furthermore, when appellee herein failed to take any of the mandatory steps required for the perfection of her appeal within the statutory time, appellant filed a petition for the dismissal of same. Not only was the petition granted, but also a hearing was assigned for May 5, 1977. This Court wonders how Judge Urey could possibly have assigned a hearing of an appeal that he had already dismissed, which dismissal had thereby officially closed said case. It is also inconceivable how counsel for appellant, having witnessed this gross irregularity and prejudice to his interest, did not apply for the necessary remedial process to enjoin Judge Urey from further perpetrating this irregular and illegal conduct.

In view of the foregoing, this Court holds that, appellant having sought review of the case at bar through the right procedure, said appeal is hereby upheld. This Court further holds that the ruling of Judge Urey of July 15, 1977, having been declared void and of no effect, is hereby reversed and the Last Will and Testament of Chief Fineboy Larzalee should forthwith be submitted to probate and registered according to law.

The Clerk of this Court is hereby ordered to send a mandate to the Probate Court, Montserrado County, Republic of Liberia, ordering the probate judge presiding therein to forthwith admit to probate and registration the Last Will and Testament of the late Chief Fineboy Larzalee. And it is so ordered.

Ruling reversed.