

The **Intestate Estate of the late David Z. Dean**, represented by its Administrators, Thomas Travis, Edward Travis, Joseph Travis, and including Thomas Popei, and the late Samuel G. Dean, Sr., represented by its administrator, Samuel G. Dean, Jr. of the City of Kakata, Margibi County RESPONDENTS / APPELLANTS VERSUS **Morris G. Dean, Jr.** and **Martha Dean** of the City of Kakata, Margibi County, and the United States of America respectively PETITIONERS / APPELLEES

LRSC 6

APPEAL

Heard: December 9, 2009 Decided: January 21, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE
COURT

This matter comes up on appeal from a ruling rendered by Judge Emmanuel M. Kollie presiding over the August 2004 Term of the 13th Judicial Circuit, Margibi County.

Unraveling the family relationship and individuals' relationship to each other in this matter has been most difficult for this Court particularly when the counsels of the parties before us are also uncertain of the facts as it relates to the parties involved. However, after much probing of the records and the counselors these facts emerged.

Edward Dean and Yunah Dean, husband and wife of Haleyville, Grand Bassa, had three children, Samuel Dean, Sr., Kneepo Dean, and David Dean. We gathered from the argument before us that Edward Dean had a child outside of wedlock, named Morris Dean.

Samuel Dean, Sr., the oldest child was married to Beatrice Dean. This union was blessed with two (2) children, Samuel Dean, Jr. and Martha Dean. It is alleged that Martha Dean was taken to the United States by a Missionary in the 1950's and she has not return since. Kneepo Dean, the second child, had two (2) children, Gbedee Dean and Anna Dean. David Z. Dean, the youngest, had no child and it is alleged that he adopted his sister's daughter, Gbedee Dean as his own. Gbedee Dean was married to Mr. John Travis and bore several children, Thomas Popei, Thomas Travis, etc.

In their lifetime, the two brothers, David Z. Dean and Samuel dean Sr. acquired properties in Kakata, Margibi County. David Z. Dean acquired 10 acres of land from T.W. Duipigy Leigh in 1937. The record before us shows a deed for the 10 acres of land probated on the 19th day of February, A.D. 1937 and recorded in Volume 49,

pages 32-33 and re-registered in Volume NN, 99A on pages 158-159 because the original volume, Volume 49 of 1937 was mutilated.

In 1974, David Z. Dean died intestate and his property was administered by his older brother, Samuel Dean, Sr. Subsequently, Samuel G. Dean, Sr. died and his wife Beatrice Dean, selected her son, Samuel Dean, Jr. and one Ernest Palmer, whose relationship to the family is not clear, to administer the intestate estate of her husband with her. These administrators and Administratrix co-mingled the intestate estate of the late Samuel Dean, Sr. and David Z. Dean to the exclusion of other members of the family, particularly Gbedee, the alleged adopted daughter of David Z. Dean whom it is said, David had preferred administer his intestate estate.

Left out of the administration of the intestate estate of the late David Z. Dean, Gbedee Dean and her children petitioned the court for letters of administration to administer the intestate estate of David Z. Dean. Having obtained the Letters, she, along with her children, instituted an Action of Ejectment against the administrators of the intestate estate of the late Samuel Dean, Sr. in an attempt to oust them from David's property and to stop the administrators of Samuel Dean, Sr. intestate estate from administering the intestate estate of the late David Z. Dean.

After exchange of pleadings in the Ejectment Action, Samuel Dean, Jr., now head of the Dean family, called a family meeting in which the plaintiffs were convinced, and the family resolved that there was no need to continue the action; that the best thing to do was to close the estate of the late David Z. Dean and have same divided between the heirs of David's two siblings, Samuel Dean, Jr. representing the late Samuel Dean, Sr., and Gbedee Dean, representing Kneepo Dean. With this understanding, the counsel for the intestate estate of the late David Z. Dean, in November 2003, filed a petition in court for the closure of David Z. Dean's intestate estate and to which petition counsel for Samuel Dean, Sr. intestate estate interposed no objection. A survey was carried out, demarcating the 10 acres of David Z. Dean and an inventory made and filed with the court.

On November 8, 2003, under the gavel of Judge James D. Mooney, the court ruled ordered the intestate estate of the late David Z. Dean closed and deeds were accordingly issued in favor of Samuel Dean, Jr. and Gbedee Dean. Samuel Dean, Jr. was deeded 5.12 acres located on the right side of the road and Gbedee Dean was deeded 7.49 acres on the left side of the road.

What we find puzzling is, on December 2, 2003, the intestate estate of the late Samuel

Dean, Sr. filed a motion to rescind the judgment ordering the estate closed on grounds of newly discovered evidence. The movant alleged that Gbedee Dean was not an adopted daughter of David Z. Dean. This pleading signed by Counsellor Joseph H. Constance was resisted by Gbedee Dean's counsel who argued that CIIr. Joseph H. Constance was not counsel of records. The motion was subsequently withdrawn and substituted with a Motion for Relief from Judgment. The motion for relief from judgment was heard by Judge Emmanuel M. Kollie and he ruled thereon on August 26, 2004, denying the motion for Relief from Judgment; thereby, upholding the ruling of Judge Mooney, declaring the intestate estate of the late David Z. Dean closed.

Again, on August 26, 2004, Morris G. Dean, Jr., the son of the alleged half brother of the late David Z. Dean, and Martha Dean, the daughter of Samuel Dean, Sr., who allegedly left Liberia in the 1950's and resides in the United States of America, filed a Motion to re-open the intestate estate of the late David Z. Dean and the estate of Samuel Dean, Sr. They alleged in their petition that they were out of the country at the time of the closure of the estates and that they were left out of the distribution.

In response to the petition to re-open the estate, the counsel for the intestate estate of the late David Z. Dean, filed two (2) separate precepts, a returns to the petition and a Motion to Dismiss, stating that the intestate estate that was closed and distributed was not the estate of Samuel Dean, Sr. but that of David Z. Dean; that the estate was closed by Judge Mooney and any attempt by Judge Kollie to re-open it would amount to a review of the ruling made by another Judge of concurrent jurisdiction which would run contrary to our law.

Following arguments on the law issues, Judge Emmanuel Kollie on October 9, 2004, ruled ordering the estate of the David Z. Dean re-opened with the proviso that the children of Gbedee Dean, the Travis, should remain party to the case while the petitioners, Morris G. Dean, Jr. and Martha Dean appear before the Court to prove their allegations. We include herein the Judge's ruling:

"A petition to re-open intestate estate was filed by petitioners thru their legal counsels, Counsellor Richard K Flomo, praying this court to re-open the said estate for cause, and the said petition was filed before this court on the 26th day of August, A. D. 2004. Upon and after receiving the said petition, the Clerk of court was ordered to issue the necessary writ of summons against the respondents of the pending petition before us and against them; and that they, the respondents should file their returns. In obedience to the orders of the court and after the writ of summons was served on the respondents, returns were filed by the said respondents and filed before this court on September 4, 2004 A.D. According to our records, petitioners' petition contained five counts; respondents' returns contained ten

counts; petitioners reply contained twelve counts. The court wants to clarify that the respondents' returns were in two parts. One was filed on behalf and in favor of respondents by the Gbeintor and Associates and the other returns was filed by Legal Aid Inc.

According to the petitioners' petition, this court is prayed to re-open the intestate estate in question so as to allow and accommodate petitioners to become part and parcel, especially so to gain share in the properties already distributed. Petitioners further went on to say that they, one Mr. Morris G. Dean, Jr. and one Madam Martha Dean are legal heirs and issues of the body of one Mr. Samuel G. Dean, Sr., and Mr. Morris Dean, Sr, respectively. The petitioners further claim that due to the civil crisis in Liberia, they left their home and fled into exile to avoid and prevent being victimized by the war. Accordingly, while they were in exile, the intestate estate of Mr. Samuel Dean, Sr. and Morris Dean, Sr., were distributed by court to the respondents without the prior knowledge and consent of petitioners. They emphasized that their late father had died in the intestate thus leaving the property in question which should have been inherited by petitioners, but due to the circumstances afore-stated including the civil war in Liberia, they were left out, and their property(ies) were distributed to respondents by the court.

The function of the court is to establish transparency, justice and fair play for all through due process of law. Without due process of law, transparent justice cannot prevail and that is tantamount to justice being denied. In the instant case, considering the synopsis of the facts just narrated, our concern principally relates to the relationship of the late Bledde Dean to this family, including David Z Dean; and also the relationship between Morris Dean, Jr, and Martha Dean to the family; and how can the court be convinced as to who is who which may extend even to the relationship of the Travis to the Deans. The two returns by respondents' counsels have created a legal vacuum and doubt to the heart and conscience of the court; for, one of the returns says Bledde Dean was a biological daughter of the late David E. Dean and the other returns says that Bledde Dean was a niece and foster child of the Late David Z Dean. Which is the truth? The court needs to know and be convinced for proper legal justification in the matter. On the same note, the court needs to know certainly whether petitioners are indeed and in truth related to Morris Dean, Sr., and Samuel G. Dean, Sr.

May we clearly indicate that our law certainly has it that a judge may not, shall not, and must not review the act of his predecessor where they both have concurrent jurisdiction. For reference, Volume 39 of the Supreme Court's Opinion rendered and decided January 21, 1999. In the same legal vein, the same Supreme Court in March Term, A.D. 2001, unequivocally authorized the court to reopen an intestate estate on grounds of some irregularities. For reference, pages 8 and 9.

Considering the aforesaid legal citations, this court sees reason to believe under the circumstance that it IS not reviewing the act of its predecessor, but predicated upon the disclosure of evidence by way of information to this court, it is incumbent upon us to hear and know the legal standing of Bledde Dean

to the family in question and the petitioners to the said family. This aspect of dispute was not brought to the attention of our predecessor and it is in no way in our records to show that it was passed upon, for if it was so, we could see no reason and justification for the reopening of the case. Hence, we take it that we are not violating the laws of this country neither are we disobeying the Supreme Court through its opinion.

Since, predicated upon the pleadings, especially one from the respondents' counsels, contradictions have been noted with the question of the relationship of Bledde Dean as to whether or not she is related to the Deans through consanguinity or through affinity. For reference, see 3 LLR, page 436, on the question of contradiction.

Wherefore, and in view of the foregoing, this estate is hereby ordered reopened to the extent that the Travis, main respondents, still remain part and parcel as party to the intestate estate and petitioners also come in to prove their side of the case to convince the court as to their relationship to the estate owners in these proceedings. This ruling is made in good faith for transparent justice. AND IT IS HEREBY SO ORDERED."

Given under my hands and seal of this Honourable Court this 9th day of October A. D. 2004.

Emmanuel M. Kollie

ASSIGNED CIRCUIT JUDGE

It is from this ruling of Judge Emmanuel Kollie, ordering the re-opening of the David Z. Dean intestate estate, that the appellants in these proceedings, Thomas Travis, Edward Travis, Joseph Travis et al have appeared before this Court for an appellate review on a Six (6) Count Bill of Exception approved by the Court below. And the exception approved by the Judge is as follows:

Appellant's Bill of Exceptions

Respondents/Appellants in the above entitle cause of action, being dissatisfied with your Honor's Ruling on the law issues which granted the petitioners' petition hereby filed this Bill of Exception as follows, to wit:

1. That appellant says and avers that your Honor's ruling on the law issues, which granted the petitioners' petition thereby reopening the Intestate Estate of the late David Z Dean which was closed and Deeds issued, probated and registered by your Honor's predecessor, His Honour James G. Mooney, is gross error; for reason that your Honor's ruling on the law issues reverses, vacates, and set aside the final ruling of your predecessor, His Honour James G. Mooney. Hence, your Honor committed a reversible error; in that a judge can not review the act of another judge of concurrent jurisdiction.

2 That appellant says that in respondents' legal memorandum, it was vividly pointed out in the short history of the case that Samuel G. Dean, Sr. and Morris Dean, Sr. did not have an estate, rather it is the intestate estate of David Z Dean that was closed by your Honor's predecessor, His Honor James G. Mooney, yet, your Honor gave credence to petitioners' petition to the effect that Samue G. Dean, Sr. and Morris Dean, Sr. left intestate estate for which their alleged respective heirs are deprived. This is in gross error; for reason that the records in the case reveal that it was the David Z Dean intestate estate that was closed and not Samuel G. Dean, Sr. nor Morris Dean, Sr. Hence, your Honor committed a reversible error.

3. That appellant says and avers that your Honor was in error when you granted the petitioners' petition and declared the said estate reopened and at the same time calling on the petitioners to come in and prove their side of the case. This is a gross error and therefore reversible.

4. That your Honor erred; in that in the absence of evidence to have ruled that Morris Dean, Sr. or Samuel G. Dean, Sr. left an estate or estates for which the petitioners are claiming its reopening. Hence, you committed a reversible error.

5. Appellant says and avers that in your Honor's ruling as found on sheet three (3), paragraph two (2) you said, "In the same legal vein, the same Supreme Court in it March Term, A. D. 2001 unequivocally authorized the court to reopen an intestate estate on grounds of some irregularities." Appellant submits that this statement is correct for reason that the Supreme Court has the authority to mandate a judge to undo what his predecessor has done. But in the instant case, your Honor has not been mandated to undo what your predecessor did. Hence, your Honor misapplied the law. This is a gross error and therefore reversible.

6. Appellant submits that after respondents/ appellants excepted to your Honor's ruling and exception was noted and the appeal granted, your Honor was in error when you, again, gave a second ruling ordering the petitioners to be part of the administrators for the intestate estate of David Z. Dean, Sr. This is a gross error and therefore reversible.

Wherefore, and in view of the foregoing, respondent/ appellant excepts to your Honor's ruling on the disposition of law issues granting petitioners' petition and hereby submits this Bill of Exception for your Honor's approval so as to facilitate the review of this case by the Honorable Supreme Court of Liberia during its March Term, A. D. 2005.

The facts and circumstances present the following issue which we believe are determinative of this matter:

Whether or not, the ruling by Judge Kollie ordering the re-opening of the intestate estate of the late David Z. Dean without the court taking evidence to ascertain whether the appellees allegations are true, is in keeping with our law, practice and procedure?

This Court says "no". We do agree with Judge Kollie that with all these allegations made in this matter, there are lots of questions that need to be answered: Firstly, who was Gbedee to the deceased David Z. Dean? Did she have interest in the property as representative of the heir of David Z. Dean's sister, Kneepo, or as an adopted daughter of David, in which case, shouldn't she be the sole beneficiary of the estate of David Z. Dean? What is the legal standing of Morris Dean, Jr. to the estate, and is he an interested party in the petition filed? Was his father's property part of the distribution as is alleged? Did Martha Dean instituted this action, since it is said that she has never come back to this country since she left at an early age, and there is no Power of Attorney on file from her authorizing anyone to institute this action on her behalf?

We say the court could not re-open the estate without first establishing these facts. Re-opening the estate based on the argument on law issues was premature. Re-opening of the estate and then holding a hearing to determine the merit of the petition was tantamount to rendering judgment before hearing. What if after taking evidence, the court found out that the petition to reopen the estate had no merit? Wouldn't the court then have affected the property rights of the appellants/respondents?

As we stated before, the estate of David Z. Dean sought to be re-opened was divided per capita among the heirs of David Z. Dean two siblings, Samuel Dean, Sr. and Kneepo Dean. Appellants alleged in their argument before us that Martha Dean, daughter of Samuel Dean, Sr. has never come to Liberia since a Missionary took her away to America in the 50s. It is Samuel Dean, Jr.'s wife who dissatisfied with the allocation of 5.12 acres to Samuel Dean, Jr., and 7.49 acres to Gbedee Dean, contending the re-open of the estate.

Assuming that Martha did come and is contesting the distribution of the David Z. Dean's intestate estate, shouldn't she be claiming her share from her brother, Samuel Dean, Jr. since the property was distributed per capita and her brother, Samuel Dean Jr., represents the heirs of their father Samuel Dean, Sr.?

This then leaves us wondering over the relationship of Morris G. Dean, Jr., the alleged son of Morris Dean, Sr. Appellant argued before us that Morris Dean Jr. is not a part of this feud and has never been interested in the estate since in fact he has never forged a relationship with the family. His father Morris Dean, Jr. broke ties with the family

based on the tragedy of their father which is attributed to him. In fact, in several meetings held in an attempt to settle this matter, he has never shown up or shown interest.

In the case *Woodson vs. Heuston and Solomon*, 12 LLR, 133, 134, (1954), this Court found the evidence presented on appeal conflicting and confusing, and so ruled, "The law controlling the inheritance of real property is rather intricate, so that, in a case of this nature, great care and pains should be taken to avoid miscarriage of justice. Whilst it is true that probate courts are vested with the jurisdiction to handle cases involving estates, and also to supervise their administration, yet in so doing, great care and diligence should be employed in following prescribed modes of procedure. "

In the case *Harmon vs. Topo*, 15 LLR, 272, 277, (1963), the Probate Court, on petition to it, revoked letters of administrations already given the appellant based on arguments of the law issues. This Court said the Probate Court arbitrarily proceeding to rule on mere allegations of the appellees. It remanded the case on the grounds that there was no showing that the Court attempted to satisfy itself by preponderance of evidence as to relationship, before giving its orders. A mandate was send to the court below to hear evidence on both sides and determine the next of kin to the deceased entitled to be authorized to administer the estate.

Besides, this court has said that a judge has no authority to review or set aside a decision of his predecessor. *Knowlden vs. Johnson* 39 LLR, 345, 353 (1999); *Intestate Estate of Larzaleea*, 28 LLR, 99 , 104 (1979).

However, in the case where the court has been misled or misrepresentation made to it in order for one to administer or acquire property of an intestate estate, the Probate Court may hear evidence to establish said allegation and make a decision thereon. *Page vs. Ward*, 31 LLR, 637, 642, (1983). The rationale being that the misrepresentation, if known by the court, it might not have ruled the way he did. A reversal of a judge's ruling would be where a subsequent judge reviews and overturns his predecessor's decision based on issues already considered and ruled on by him.

In this case, where the appellees allege that they were out of the bailiwick of the country, and their father's property distributed without their involvement or resort to their interest, it is only but logical to say that Judge Kollie should have taken evidence to have the party alleging their right to distribution in the intestate estate prove their allegation before making a decision to re-open the estate.

Because of the reasoning and laws cited above, this Court remands this case with instructions that the ruling by the Judge to re-open the intestate estate be reversed; the court is instructed to proceed with a hearing to ascertain the allegation of misrepresentation or fraud made by the petitioners, and to proceed according to law. AND IT IS HEREBY SO ORDERED.

The appellants are represented by Counsellors William A.N. Gbaintor and Cooper Kruah of the Gbaintor and Associates and Henries Law Firms respectively and, the appellees are represented by Counsellor Richard K. Flomo.