

CHARLIE JOHNSON, et al., Petitioners, v. GLADYS JOHNSON, Former Probate Commissioner,
Montserrado County, et al., Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS
DENYING ISSUANCE OF WRIT OF MANDAMUS.

Argued November 9, 1978. Decided December 15, 1978.

1 The court will not grant mandamus where appeal offers an adequate remedy to the aggrieved
party.

2 Mandamus will not, as a general rule, issue to review an exercise of judicial discretion, even
though the court may have erred in its conclusion.

3 It is irregular for a Commissioner of Probate to probate a document which is subject to a caveat
filed in the court.

This was a petition for a writ of mandamus to compel the respondent, Probate Commissioner of
Montserrado County, to admit to probate certain warranty deeds that had been offered by petitioners.
Probate was refused because a caveat had been issued against the land in question. An appeal to the
Supreme Court was announced, but not perfected. Petitioners then applied for mandamus to the
Justice in chambers, who denied the writ. This was an appeal from that ruling.

The Supreme Court held that mandamus will not issue where an appeal is an available remedy, or to
review an exercise of judicial discretion, and that in this case, in any event, the refusal of the
Commissioner to admit the deeds to probate was well justified. The *ruling* of the Justice in chambers
denying the writ was *affirmed*.

D. W. B. Morris for respondents. *John A. Dennis* for petitioners.

MR. JUSTICE BARNES delivered the opinion of the Court.

351

The certified record in this case reveals that at the August 1978 Term of the Monthly and Probate
Court, Montserrado County, presided over by Her Honor Gladys K. Johnson, petitioners offered for
probate several warranty deeds in their favor from co-petitioner Charlie Johnson to the other co-
petitioners and from co-respondent Geneva Johnson-Duff to Charlie Johnson for realty located in
Montserrado County.

The Probate Judge refused to have the proffered warranty deeds admitted to probate because the
land in question had been covered by caveat. Objections to the probate of these warranty deeds had
been filed since 1975 and 1976. Resistance to objections to probate of the warranty deeds is a matter of
record of the Monthly and Probate Court, Montserrado County.

It would appear from the certified record in this case that counsel on both sides, after having been
informed of the caveat and several objections to admitting the deeds in question to probate, requested
the court to look into the matter, and then to consolidate all the pleadings and dispose of them once
and for all.

Accordingly, the court took into consideration all the objections made to admitting to probate the
deeds offered by petitioners' counsel and entered a final ruling refusing to admit the deeds to probate.

From this ruling petitioners noted their exceptions and announced an appeal to the Supreme Court.

A three-count bill of exceptions was tendered by petitioners. The Judge of the Monthly and Probate Court made observations on all of the counts of the bill of exceptions. No other jurisdictional steps to perfecting the appeal were taken by petitioners. More will be said about this later in this opinion.

Subsequently, the petitioners applied to the Justice in chambers for the issuance of the alternative writ of mandamus to compel the Probate Judge to forthwith admit the deeds to probate and order them registered, based upon the provisions of the law.

The recital of the petition for mandamus may be succinctly stated as follows: that after the expiration of the three days' notice of the existence of a caveat given by the caveators and the expiration of the ten days in which to file objections, the Probate Judge should have admitted the deeds offered by petitioners' counsel to probate and ordered them registered; and that her refusal to so do constituted an abuse of judicial discretion. In their return, respondents stated in essence that the deeds offered by petitioners for probate involved the same co-petitioner Charlie Johnson who had been arrested and indicted on charges of forgery; in addition, cancellation proceedings had been instituted for the deeds in question and also objections had been filed to the probate of eight warranty deeds involving the same parties.

The Justice in chambers heard arguments on both sides and denied the writ and ruled the petitioners to costs. We view this case as presenting strange and peculiar issues, for both counsel agreed for the Probate Judge to consolidate the pleadings and give a ruling on all objections filed against the probate of petitioners' deeds. As we stated earlier when the ruling was entered, petitioners noted exceptions and announced the taking of an appeal. A bill of exceptions was presented and approved by the judge, who noted her observations. No further jurisdictional steps were taken.

In *Bryant v. The African Produce Company, U.S.A.*, 7 LLR **22!** (undated), this court held that the statutes on appeal prescribed the steps to be taken in effecting an appeal and each step is jurisdictional. Hence, should a party desire to come to this Court by any of the remedial writs, the burden of proof is upon such party to show that his failure to take a regular appeal was not due to his own laches. It is the opinion of this Court that petitioners should have pursued their appeal from the ruling of the Probate Judge and should not have substituted for it proceedings in mandamus. *King v. Randall*, 10 LLR, 225 (1949).

Petitioners argued in count 5 of their petition that the refusal of the Probate Judge to admit for probate the deeds in question, constituted an abuse of judicial discretion. It is our opinion that mandamus will not, as a general rule, issue to review an exercise of judicial discretion, and that is of course so, although the court may have erred in its conclusion. Mandamus is not like a writ of error or appeal nor may it take their place where they offer an adequate remedy to the aggrieved party. *King v. Randall, supra; Harmon v. Horace*, 10 LLR 29 (1948).

In this case one of co-petitioners has been arrested and indicted for an alleged forgery of certain instruments allegedly bearing on the deed offered for probate. In addition, there are other extenuating circumstances standing in the way causing the Probate Judge to refuse to admit the deeds in question for probate, such as the objections filed against probate of deeds, relating to land mentioned in the plaintiffs' objections. It was the holding of this Court in *Caranda v. Fiske*, 13 LLR 154 (1958); that it is irregular for the Commissioner of Probate to: (1) probate a document of title to land in an area where all of the property involved is under dispute in an appeal pending before the Supreme Court; (2)

probate a document while a caveat imposing a stay remained filed in court.

We hold that it would be irregular, unlawful, and unjust to compel the Probate Judge under such circumstances to probate the warranty deeds offered by petitioners' counsel. The ruling of the Justice in chambers is therefore affirmed with costs against petitioners. And it is hereby so ordered.

Ruling affirmed.