

SHEIK KAFUMBA KONNEH, agent of MOHAMMED SYLLA, First Appellant, K & K TRADING COMPANY, represented by its Manager, CHAWKI H. KADOUH and other Authorized Officials, Second Appellant, and JOHN MARSHALL, sole surviving heir of the late JOHN W. MARSHALL, Third Appellant, v. THE INTESTATE ESTATE OF THE LATE JOHN MARSHALL, represented by its Administratrix, CECELIA MAYSON, Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 21, 2001. Decided: December 21, 2001.

1. Ejectment is a legal action by which a person wrongfully ejected from property seeks to recover possession and damages.
2. The essential allegations in an action of ejectment are: (1) that the plaintiff has title to the land; (2) that the plaintiff has been wrongfully dispossessed or ousted; and (3) that the plaintiff has suffered damages.
3. The act of submitting fraudulent documents to a court as a basis for obtaining a favorable judgment is unprofessional, unethical, and a violation of a lawyer's duty of truth, honesty, and integrity.
4. The question of the authority to administer an intestate estate is not determinable by an action of ejectment in the circuit court, but rather in probate proceedings in a probate court or the probate division of a circuit court.
5. The probate court or a circuit court, sitting in its probate division, has the power to exercise full and complete general jurisdiction in law and equity to administer justice in all matters relating to the affairs of decedents and over whose affairs the court has jurisdiction.
6. The probate court has jurisdiction in its territorial locale over the granting of letters testamentary and administration, the sale and distribution of the real property of deceased persons, general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them.
7. An action of ejectment is incorrectly brought in the Civil Law Court for the Sixth Judicial Circuit, to determine, not title to real property, but the authority to administer intestate estate and thereby convey leasehold rights.

An action of ejectment was commenced in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by the Intestate Estate of the late John W. Marshall, appellee, against the appellants, Sheik Kafumba Konneh, purporting to be sub-lessor of property claimed by the Intestate Estate, K & K Trading Company, lessee of the said property, and John A. Marshall, Jr., lessor, who claimed ownership of the said property by virtue of inheritance as the grandchild of the deceased. The appellee asserted that it had title to the land, that it had been wrongfully dispossessed of it, and that as a result it had suffered damages. It sought to eject the appellants as well as recover damages.

The appellants alleged that the claimed administratrix of the estate had secured letters of administration fraudulently and clandestinely and was not entitled to such letters of administration, that she had the said letters under the misrepresentation that it was to protect John A. Marshall, Jr. interest as he was a minor, and that John A. Marshall, Jr., as the surviving heir of John W. Marshall, was legally clothed with the legal authority to administer the estate as he had legally obtained letters of administration.

Following a trial, the jury returned a verdict of liable against the appellant, which was confirmed in a judgment by the trial court. On appeal, the Supreme Court reversed the judgment of the trial court, holding that while the letters of administration made proffer of by the appellants was fraudulent, an action of ejectment, commenced in the Civil Law Court for the Sixth Judicial Circuit, was not the proper action to bring in a matter concerning the issuance of letters of administration to administer an estate. Such matter, the Court said, was cognizable before the Monthly and Probate court or the probate division of a circuit court. The Court therefore remanded the case to the Monthly and Probate Court for Montserrado County for trial in probate.

H. Varney G. Sherman and Momodu T. W. Jawandoh, II, of Sherman and Sherman, Inc. appeared for the appellants. Stephen B. Dunbar, Jr. of Dunbar and Dunbar Law Offices appeared for the appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The records in this case revealed that J. W. Marshall, who died intestate in the mid sixties, seized of both real and personal properties, was survived by his widow, Annette, who had no children of her body. There is a controversy as to the number of children J. W. Marshall had

out of his body during his lifetime. The appellants contended, on the one hand, that J. W. Marshall had one child, John Marshall, who predeceased his father in 1991, leaving one minor child, John Marshall, Jr. The appellee, on the other hand, contended that the decedent, during his lifetime, had four sons out of his body, namely, Robert, Majesus, and D. P. Marshall, all of one mother, and John Marshall, who was of another mother.

After the passing of the decedent, his widow, Annette Marshall, entered into a lease agreement with Amer H. Eid. for the lease of lot no. 72, located at Halfway Farm, at the corner of Newport Street and U.N. Drive in Monrovia, for a period of twenty years, commencing from March 31, 1968, up to and including March 31, 1988. The lease agreement was amended when Mrs. Annette Marshall, the widow, and Cecilia Mayson, entered into an amendatory lease agreement with Amer Eid, with the terms and conditions being identical to the original lease, except that the rentals were increased and an optional period of ten years was granted to the lessee.

Subsequently, the lessee, Amer Eid, assigned the leasehold to Mohammed Sylla, who in turn appointed Sheik Kafumba Konneh as his attorney-in-fact. After the expiration of the lease agreement, Co-appellant Sheik Kafumba Konneh, agent of Mohammed Sylla, continued to occupy the said demised premises. Upon request and demand of the appellee, counsel for the 1st and 2nd appellants informed appellee that they were occupying the premises upon a lease agreement entered into between the 1st appellant and John A. Marshall, Jr., and a sublease agreement subsequently entered into between the 1st appellant and the 2nd appellant for the lease of the said premises. Whereupon, the appellee instituted an action of ejectment against the appellants in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. A trial was had and a jury verdict of liable was brought against the appellants. The trial court thereafter affirmed the verdict in its final judgment. The appellants excepted to the said verdict and judgment and announced an appeal there from to the Honorable Supreme Court.

In fulfillment of the requirements of the appeal statute, the appellants duly filed a bill of exceptions which basically raised two issues. We regard these issues to be determinative of the instant controversy. The issues are:

- (1) Whether or not Cecelia Mayson, the alleged administra-trix of the appellee intestate estate failed to prove and/or establish legal title and ownership to the intestate estate of the late J. W. Marshall? and,
- (2) Whether or not the judge committed reversible error when he ruled that legitimization documents evidencing the legitimization of John Marshall, Sr., which were testified to as being fraudulent, were inadmissible by the judge?

Based upon the foregoing issues, this Court must ultimately decide whether or not an action of ejectment will lie? The determination of the controversy dictates that we apply the facts to the applicable law.

“Ejectment” is defined as “...a legal action by which a person wrongfully ejected from property seeks to recover possession and damages. The essential allegations in an action for ejectment are:

(1) The plaintiff has title to the land; (2) the plaintiff has been wrongfully dispossessed or ousted; and (3) the plaintiff has suffered damages“ See BLACK’S LAW DICTIONARY 534 (7th ed).

A close scrutiny of the complaint in this action revealed the following allegations:

“Count (8) That a meeting between the parties herein and their counsel was held in the office of plaintiff’s counsel, and that during the said meeting the plaintiff was informed through its counsel that the property, subject of these proceedings, is leased by John A. Marshall, Jr. to Sheik Kafumba Konneh, who in turn had subleased the same to Chawki H. Kadouh and/or K.& K. Trading Company by and thru its manager, Chawki H. Kadouh, each of whom is made a party co-defendant herein.

Count (9) Plaintiff says further that the said John A. Marshall, Jr. had no authority to lease the property, subject of these proceedings. Hence, any lease agreement or sublease agreement executed by him is void ab initio”.

The co-defendants, appellants herein, filed an answer setting forth the following contentions:

Count (4) 3rd defendant further says that as sole lineal heir to the late J. W. Marshall, he holds legal rights to his estate above any collateral heirs by virtue of the Decedents Estates Law of Liberia.

Count (5) 2nd defendant, K & K Trading Company, says that it is in no way illegally withholding the property, subject of these proceedings, for reason that the said 2nd defendant, K & K Trading Company, leased the said property from the 1st defendant, Sheik Kafumba Konneh, whose lease agreement was executed by and between him and the said 3rd defendant, in the person of John A. Marshall, Jr., lineal heir of the late J. W. Marshall, Sr. Therefore, the leasehold rights of the 2nd defendant, K & K Trading Company, cannot be considered illegal but rather considered genuine and proper as per the Decedents Estates Law of Liberia.

Count (8) Defendants say that as to the entire com-plaint of plaintiff, same should be denied and dismissed for being false and misleading, for reason that Cecelia Mayson enjoys no legal authority from the intestate estate of the late J. W. Marshall to claim

administration of the intestate estate based on collateral heirs, whereas the 3rd defendant is administering and given credence above collateral heirs, as supported by the New Decedents Estates Law of Liberia.

Count (9) That as to count one (1) of plaintiff's complaint, defendants say that the letters of administration obtained by Cecelia Mayson on December 8, 1995 were secured fraudulently and are not supported by the New Decedents Estates Law of Liberia to administer the decedent intestate estate, as it was within her certain knowledge that there existed a lineal heir to the said estate, John A. Marshall, Jr., who had already obtained letters of administration to administer the said estate. Hence, the said count and the entire action should be denied and dismissed.

Count (10) Further, as to count one (1) of plaintiff's complaint, defendants say that Cecelia Mayson could not and can never be legally clothed with authority to administer the intestate estate of J. W. Marshall without the consent of the 3rd defendant, John A. Marshall, Jr., the only surviving lineal heir of the late J. W. Marshall, Sr., and that the purported letters of administration and administratrix's oath relied upon by Plaintiff Cecelia Mayson to administer the intestate estate of the late J. W. Marshall, were acquired under clandestine means and therefore were acquired in bad faith with the sole intent to deprive the 3rd defendant, John A. Marshall of his legitimate inheritance. For this reason defendants, especially the 3rd defendant, pray this Honorable Court to deny and dismiss plaintiff's complaint.

Count (14) That as to count five (5) of the plaintiff's complaint, defendants say the that same should be dismissed for reason that upon the death of the late J. W. Marshall, Sr., he was survived by his widow, Annette J. Marshall, and the 3rd defendant, John A. Marshall, Joseph W. Bailey had prayed for and were issued letters of administration to administer the said intestate estate of the late J. W. Marshall, Sr. After the issuance of the said instrument, they connived to close the estate fraudulently to the detriment of the 3rd defendant, John H. Marshall, Jr., who was still a minor. This is how Cecelia Mayson came into the picture of the J. W. Marshall Intestate Estate. According to Cecelia Mayson, she became overwhelmed with the attitude of Annette Marshall and Joseph W. Bailey, and in her quest to protect and defend the interest of the minor child, John A. Marshall, Jr., she protested that the widow was entitled to only one-third (1/3) of her deceased husband's real property as her dower's right for life. She further stated that she, the said Cecelia Mayson, could not allow the late Annette J. Marshall, who did not have an issue of her body for her late husband, J. W. Marshall, Sr., to transfer title of the said estate, thereby depriving the only legitimate heir, John A. Marshall, Jr., from benefitting from his inheritance. For the same Cecelia Mayson to

now speak of ‘collateral heirs’ without mentioning the interest of the 3rd defendant, John A. Marshall, Jr., at this time, is an act to deprive the said John A. Marshall, Jr. of his inheritance.

Count (17) That as to count eight (8) of plaintiff’s complaint, the 2nd defendant, K & K Trading Co., says that the same should be denied and dismissed for reason that John A. Marshall, Jr. is the legal owner of the subject property, and that he in turn had leased the same to Sheik Kafumba Konneh, and Sheik Kafumba Konneh had in turn subleased the same to the 2nd defendant, K & K Trading Company, thereby making the leasehold right of the 2nd defendant, K & K Trading Company, genuine and legal, in keeping with the laws of Liberia. Hence, the said count eight (8) should be denied and dismissed.

Count (18) That as to counts nine (9) and ten (10) of plaintiff’s complaint, defendants say that the same should be denied and dismissed for reason that John A. Marshall, Jr., being the only surviving heir of the late J. W. Marshall, Sr. and having obtained genuine letters of administration to administer the said estate, is legally clothed with the authority, under the law of this juris-diction, to enter into lease with any person or persons whomsoever; and that the said lease agreements are legal and are not to be disturbed by any person or persons.”

We think it befitting to note that during the trial, witnesses from the Monthly and Probate Court for Montserrado County and the National Archives and Documentation Center testified that the probate court did not issue letters of administration to John Marshall Jr... and that the true and certified copy of the purported letters of administration were fraudulent. Also, in the arguments before this Court, the counsel for the appellants conceded that Co-appellant John Marshall had filed a petition for letters of administration for the intestate estate of the late J. W. Marshall but that no letters of administration had been issued to him by the Monthly and Probate Court for Montserrado County. This Court finds it appalling and dishonorable that a lawyer and counsellor of the Honourable Supreme Court would file pleadings and thereto attach fraudulent documents. We believe a lawyer is under a duty of truth, integrity and honesty to the court and to his client. The act of submitting fraudulent documents to a court as a basis for obtaining a favorable judgment is unprofessional, unethical, and a violation of a lawyer’s duty of truth, honesty and integrity. This Court therefore finds the Jones and Jones Law Firm guilty of unethical behavior for submitting fraudulent documents to the court and orders that said law firm pays a fine of Five Thousand Liberian dollars (L\$5,000.00) into the government treasury and exhibit a receipt to the Marshal of this Court within 72 hours, as of the rendition of this Opinion. Should there be a failure to comply with this order, the Marshal is ordered to place the proprietor(s) of said law firm in the common jail until the said fine is paid.

Now back to the issue of whether an action of ejectment will lie under the given facts and circumstances of this case and the governing law.

The appellee's basic complaint is that Co-appellant John A. Marshall, Jr. did not have any authority from the Monthly and Probate Court for Montserrado County to administer the intestate estate of the late J. W. Marshall, and that therefore the lease agreement signed by John Marshall, Jr. is void ab initio. Hence, the co-appellants were illegally occupying the said premises. The appellants, on the other hand, contended that John A. Marshall, Jr. is the lineal heir of J. W. Marshall, and therefore has the right to enter into a lease agreement for the intestate estate of his grandfather, J. W. Marshall. Hence, they say, the lease agreement is legal and their occupancy of the premises is legal.

Both parties agreed that the premises in controversy are part and parcel of the intestate estate of J. W. Marshall. The only point of disagreement is whether the appellee, who was appointed to administer the said intestate estate, should have the authority to administer the said intestate estate, instead of Co-appellant John Marshall, Jr., who was not appointed by the Monthly and Probate Court to administer the said estate, but claims to be the only lineal heir?

The question which we must first address is, can the issue of authority to administer the intestate estate be determined by an action of ejectment in a circuit court? Clearly, the answer is no. The appropriate and legal jurisdiction to determine who shall administer an intestate estate is in probate proceedings in a probate court or in the probate division of a circuit court. The Decedents Estates Law, at chapter 102, section 102.1, under jurisdiction and powers, provides that the court, meaning the probate court or a circuit court sitting in its probate division "...shall exercise full and complete general jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents and others over whose affairs the court has jurisdiction." Decedents Estates Law, Rev. Code 8:102.1.

Also, the New Judiciary Law, Rev. Code 17, provides at section 5.2, under the caption Original Jurisdiction (exclusive) of the Monthly and Probate Court, the Provisional Courts and the probate divisions of the Circuit Court, that "The Monthly and Probate Court for Montserrado County, the Provisional Monthly and Probate Courts, and the probate divisions of the circuit courts, shall have exclusive original jurisdiction of the following matters arising within their respective territorial jurisdictions.

- (b) to grant letters testamentary and of administration;
- (e) to order the sale and distribution of the real property of deceased persons;

(g) to have general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them. Judiciary Law, Rev. Code 5.2(b), (e) and (g).

Therefore, it is the opinion of this Court that the action of ejectment was incorrectly brought in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to determine, not title to real property, but the authority to administer intestate estate and thereby convey leasehold rights. The proper jurisdiction to determine who has the legal authority to administer intestate estates is the monthly and probate court.

Wherefore, and in view of the foregoing, it is hereby ordered that the final judgment of the trial court in this cause of action is reversed and the case remanded to the Monthly and Probate Court for Montserrado County for trial in probate. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge therein to give effect to this judgment. Costs are ruled against the appellee. And it is hereby so ordered.

Judgment reversed.