

Tamba Maakundu and **Kumba Maakundu**, Administrators of the Intestate Estate of the late Saah Nkorkor Maakundu, all of the City of Monrovia, Republic of Liberia

APPELLANTS

VERSUS **Finda Maakundu**, **Saah Maakundu** and **Kumba Maakundu**, wife and daughters of the late Saah Nkorkor Maakundu, of the City of Monrovia, Republic of

Liberia APPELLEES

APPEAL

ARGUED: November 24, 2008 Decided: January 28., 2009

This matter was brought up on an appeal from the denial of a bill of information. The facts gathered is that one Saah Nyorkor Maakundu, while alive, leased a piece of property from one Nelly Gbegbeh also deceased, for twenty five (25) years, commencing from 1978 up to and including 2003. The late Saah Maakundu built a dwelling house, two apartments and a shop on this leased property and lived thereon up to the time of his death. Both Saah Maakundu and Nelly Gbegbeh died during the pendency of the lease agreement. Daniel and Wilmot Logan were appointed as the administrators of the intestate estate of the late Nelly Gbegbeh, while J. Fayai Lahai and Andrew Ndorley were appointed administrators of the intestate estate of Saah Nyorkor Maakundu.

In 2002, the letters of administration given to J. Fayai Lahai and Andrew Ndorley were revoked upon complaint to the Probate Court by family members of Saah Nyorkor Maakundu. Subsequent letters was given to Nyume Jangalley, Kumba Makundu, Tamba Makumdu and Musu Lahai to administer the intestate estate of the late Saah Nyorkor Maakundu. On October 26, 2005, the appellees, wife and daughters of the decedent, filed before the Monthly and Probate Court of Montserrado County a petition for revocation of the letters of administration against these subsequent administrators, alleging the administrators were the ones who were benefiting from the estate to the exclusion of the wife and children of the deceased. On the 5th day of November 2005, co-respondent in the petition of revocation, Nyumah Jangalay, filed his returns conceding to the petition while the other co-respondents appeared through their counsel and spread their returns on the records stating that they interpose no objection but called for the closure of the estate so that the beneficiaries could take custody of the estate.

The request for the closure not being contested by the appellees, the court granted the application and ordered the estate to be closed within three months. The

administrators of the estate were then asked to submit an inventory to the court to facilitate the closure. Upon the presentation of the inventory by the appellants herein, the appellees challenged the inventory, stating that the document for the half lot of land leased by the deceased for 25 years and which he had developed and lived up to the time of his death was not included in the inventory.

When asked by the court to produce the document in question, the appellants filed a four count bill of information, informing the court that the property is owned by them and that it is not part of the intestate's property. That they bought the property after it was offered for sale by the administrators of the decedent's lessor in 1996, subject to the expiration of the lease in 2003. That after 2003, it became their property in fee simple evidenced by a deed, and therefore it was a mistake for the court to circulate a notice to the tenants of this property treating them as tenants of the intestate estate of the late Saah Nyorkor Maakundu.

The appellees requested the court to ignore the bill of information as the property was leased by the late Saah Maakundu for 25 years and that before the expiration of the lease, while the previous administrators were administering the estate, the leased property was offered to the estate for sale and the administrators were advised by family of the estate to buy same; but instead of purchasing the property in the name of the estate, one of the previous administrators, who was the educated one, J. Fayah Lahia, connived with Kumba Maakundu, who though not an administrator at the time but the sister of the deceased and custodians of funds from the estate, to withdraw money from the estate's account, buy the property and put the deed in the her Kumba's name. The petitioners presented to the probate court records of a hearing held in the Gissi Governor court in which Kumba admitted going and withdrawing sixty thousand dollars or twenty seventy thousand dollars (she was not certain of the amount) of the estate's funds to buy the property which was offered by the beneficiaries of the property. After the investigation was concluded at the Gissi Governor's court, he ruled that the deed be reissued in the name of the deceased three children. Contrary to this, Kumba went and had the deed reissued, but added Tamba Maakundu one of the administrators and a brother of the decedent's name on the deed.

The appellants on the other hand contend that the deceased had a limited interest in the leased property; that appellants heard that the administrators of the late Nelly Gbegbeh, lessor, were offering to sell the property after the expiration of the lease. Not being administrators at the time, they approached the lessors/grantors to see reason to sell the property to them, given them preference since they were family

members of the late Saah Maakundu. An agreement was therefore reached and they bought the property in 1996, in fee simple, subject to the expiration of the leasehold of their late brother Saah Maakundu. However, subsequent to their purchase of the property, they were appointed in 1998 as co-administrators of the intestate estate of their late brother who owned several properties beside the property under contention. Appellants further contend that as administrators no one has accused them of using funds from the estate account to purchase the property which at the time was under lease.

After hearing arguments by the parties, the Judge of the Probate Court, Judge Vinton Holder ruled:

"In the mind of this Court, the act of the administrators/informants in using estate's funds to purchase property of the very estate even when the lease had not lapse is questionable. The house in question was leased by the deceased for twenty five (25) years, from 1978 to 2003. How then could the administrators/informants purchase the subject property in 1996 when it was entrusted to their care and supervision as administrators? This in the mind of this court is highly unlikely and a violation of the statute. This transaction was indeed done in bad faith and can not be allowed to stand to the detriment of the beneficiaries of the estate. WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, and in contemplation of the statute controlling Decedents Estates, it is the opinion of this court that the bill of information has not been fully established by law, as the subject property is separate and distinct from that of the intestate estate of the late Saah Maakundu, as the act of the administrators in purchasing the estate's property from funds of the estate is void. The bill of information is hereby denied and resistance thereto hereby sustained And it is the ruling of this Court that the entire estate be closed within thirty days and a complete inventory of the subject property be filed within thirty (30) days. AND IT IS HEREBY SO ORDERED. "

The appellants excepted to and announced an appeal before this Honourable Court of the judge's ruling denying appellants' bill of information and ordering that the said property be made a part of the estate's property for closing.

From the facts gathered and argued before the Probate Court, could the judge under the circumstances rule declaring that the half lot be part and parcel of the intestate estate to be included on the inventory listing without canceling the deed? If the court believed that a fiduciary responsibility and trust was breached under dubious circumstances, shouldn't the judge have forwarded this issue regarding the half lot to the civil law court for a hearing and cancellation of the deed?

A copy of the lease agreement by and between the decedent and his lessor, the late Nelly Gbegbeh, is not part of the records of this Court. There are numerous questions that need to be clarified. Questions such as: Was there a clause in the lease for the decedent to buy after the expiration of the lease? One of the witnesses testifying in the Gissi Court made the statement that there was a clause in the agreement that after the expiration of the lease, the lessor could offer to sell the property. Based on this alleged clause of the agreement, or since the decedent had developed the property and in the spirit of good will, did the lessor's administrators make an offer to the decedent's administrators to buy the property and the administrator(s) connived to have other names other than the estate's name put on the deed? Was the estate's funds used to purchase the property? As the appellants contend, did they before they became administrators, hear of the offer to sell and then took up the opportunity to independently buy the property subject to the expiration of the lease? Did they then purchase with their own money or the estate's money?

In face of these questions which can only be made clear by the hearing and gathering of evidence, how could the Judge of the Probate Judge, His Honour J. Vinton Holder, based on only arguments before him have ordered that the subject property be made a part of the inventory of the intestate estate for closure of the estate? Could the property have been made part of the inventory without cancellation of the deed by court, and the original owners re-issuing the deed in the name of the estate?

In order to constitute fraud, there must be proof of some artifacts, deception or cheat, and to determine this there should be a trial where the appellees can show a clear right to the property and have the deed cancelled in equity based on deception and fraud; See 29 LLR 332, 340, *Weeks vs. Weeks*, (1981); 28 LLR 263, 266, *Scaf vs. Ricketts*, 1979). It is only when this deed has been cancelled by court can it form part of the estate's inventory. The minutes filed by the appellees of the hearing held by the Gissi Governor are not legally acceptable in our courts to have established fraud and the cancellation of the deed. This Court, in line with previous opinions, says a deed duly probated and registered will be presumed valid until facts are presented in a proceeding for cancellation and sufficient evidence presented to constitute the alleged fraud.

WHEREFORE AND IN VIEW OF THE FOREGOING, the case is hereby remanded to the Probate Court with instructions to have the case forwarded to the Civil Law Court for determination of the issue of fraud raised in acquisition of the deed to the leased property by the appellants. AND IT IS HEREBY SO ORDERED.