Messrs **Sackor Mendehdou**, **Edward Mendehdou**, **Cole Toe**, **James G. Yarwhere**, **James D. Gbay** and **Henry Greenfield** of the Township of Barnesville, Montserrado County, Republic of Liberia PLAINTIFFS-IN-ERROR Versus His Honor, **Yousuf D. Kaba**, Assigned Judge and **Amos Goah**, Alias Amos Geandoe and Rev. **Davis G. Kai** of ELWA road and **King Gray** Paynesville City, Montserrado County Republic of Liberia DEFENDANTS-IN-ERROR

PETITION FOR ERROR. JUDGMENT REVERSED CASE REMANDED

HEARD: April 10, 2007 DECIDED: August 9, 2007

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

This is a Petition for the Writ-of-Error growing out of a Probate Court Ruling in which the Judge awarded the estate of one Ketekpu Geandoe to the Respondent herein and his alleged mother. In a prior case, the Respondent Amos Geandoe had filed for and received letters of administration to administer the said estate and had also obtained a decree of sale for 260 acres of the estate. The Petitioners challenged the legal capacity of Amos Geandoe on the ground that he bears no blood relation to the deceased. The Judge presiding revoked the letters of administration and the decree of sale. On appeal to the Supreme Court, the judgment was reversed.

In a mandate to the Court below, the Supreme Court ordered the Judge to resume jurisdiction with specific instruction to close the estate within 90 days and to include all of the heirs in the distribution. To carry out that mandate of including all of the heirs in the distribution, especially since the heirs had not been determined in a judicial proceeding for that purpose only, the Probate Court instituted a proceeding for the sole purpose of establishing the heirs that were to be included in the distribution as mandated in the Opinion of the Supreme Court in December of 1999.

In the Probate Court's effort to execute the Supreme Court's mandate, the parties were served with notice of assignment and the hearing commenced. It is stated in the records that both parties participated in the hearing that lasted for about four months. When the parties ended the production of evidence and rested, the Judge announced May 27, 2004, as the date for oral argument. On the day and dated allotted for the argument, Counsel for the Petitioners herein did not appear. There was however in the Court files a letter of excuse due to illness of the Counsel of the Petitioner to which letter two medical certificates were attached. There was also an excuse for the

absence of the main counsel in the case who had traveled to the United States. The Probate Court Judge acknowledged the excuses for the absence of Counsel for the Appellants and stated that said letters of excuse were sound in law and sufficient to warrant continuance of the case.

Nevertheless, the said Judge decided to wave the argument aspect of the case and proceeded to render final judgment. He reasoned that he was cognizant of the facts and could render an informed decision without entertaining arguments.

In his Ruling delivered on May 28, 2004, the Trial Judge awarded half of the estate to the Defendant-In-Error, Amos Geandoe, and the other half to his alleged mother, Tetee Geandoe. There was no written notice of assignment issued for the Ruling, but minutes of the court for the May 27, 2004 session of court was allegedly served by a Court-appointed Counsel who noted exceptions and announced an appeal on behalf of the Counsels for the Plaintiffs-In-Error. The Trial Judge stated his reasons for proceeding even though he had acknowledged the legal soundness of Plaintiffs-In--Error's request for continuance. Those reasons were the following:

1. That he would run out of term time if he granted the request for continuance thereby rendering all the efforts exerted to hear the case futile because the case would then have to be heard de novo by another Judge.

2. That under the law, arguments are for the Court; the facts were available to the court to enable it to make a sound determination of this matter without entertaining oral argument.

After the Judge proceeded and rendered judgment against the Plaintiff's-In-Error on the next day which was May 28, 2004, the Court-appointed Counsel presumably informed the Counsel for Plaintiff's-In-Error because from the records herein certified to this Court, one of the Counsels for Plaintiffs-In-Error filed a Bill of Exceptions which was approved within statutory time. The appeal was however abandoned in favor of a Writ-of-Error. Why the appeal process was abandoned is not clear from the records. Counsel for Plaintiffs-In-Error, however, stated as ground for the Writ-of-Error that the Trial Judge denied them their day in court by proceeding with the case even though the said Judge did in fact concede the legal ground to support the granting of a request for continuance. *Sheet two of the minutes of May 27, 2007 in said case.* He contended also that the Judge should have issued a new notice of assignment for the Ruling to be handed down and failure to do so constituted proceeding without the parties being brought under the jurisdiction of the Court. Under the circumstance, he argued, the Plaintiffs-In-Error who were absent could

not be bound by the judgment thus rendered. Hence, this Petition for a Writ-of-Error.

Counsel for the Defendant-In-Error argued on the other hand that error would not lie in the instant case that Plaintiffs-In-Error should have pursued their appeal, they having fully participated in the hearing to the end.

The issues that present themselves for a just and equitable resolution of this matter are the following:

1. Whether the Writ of Error would lie under the circumstances of this case.

2. Whether the Trial Judge had the authority to use his discretion in granting or denying the Motion for continuance.

3. Whether the Monthly and Probate Court has term time limitation that must be adhered to.

4. Whether the Trial Judge committed a reversible error by waving arguments and rendering judgment.

5. Whether the Trial Judge carried out the mandate of the Supreme Court as was spelt out in its December 17, 1999 opinion ordering that the Probate Court should include all of the heirs in the distribution.

We shall dispose of these issues in the descending order, the first question being whether the Writ-of-Error would lie in this case. In a long line of Supreme Court cases the Writ of Error has been employed as a remedy available to a party litigant who is denied an opportunity to be present in Court when a judgment is pronounced against him or her by the failure of the Court to issue notice of assignment and have same served and returned served by the ministerial officer designate thereby denying the litigant the opportunity to note an exception to the ruling and announce an appeal. The statutory provision made and provided allows the litigant six months within which to proceed by the Writ-of-Error. *1 LCLR. Section 16.24 (1).*

In the case at bar, the parties were cited to Court to present arguments in support of their factual and legal contentions. Counsels for Plaintiffs-In-Error were absent due to the illness of one Counsel and the absence from the bailiwick of Liberia of the main Counsel who handled the case throughout. Even though the Trial Judge evaluated the excuses submitted by the Counsels for the Plaintiffs-In-Error as legally

valid, he nevertheless proceeded with the case, waved the procedure for which the notice was issued and handed down his final judgment on the following day. The question that arises is whether to proceed in the face of a valid reason for continuance is authorized, and also the other question is whether the Judge denied the request for continuance even though valid as stated by himself or whether he granted the request but for one day only, that is for May 27, 2004 and proceeded into the matter the fact that the medical certificate attached to Counsel's letter called for more days (one week) than the one day he was allowed by the Judge.

In the opinion of this Court the Trial Judge, by proceeding did in fact deny the request for continuance. The next question that is ancillary to the issue is whether the Trial Judge exceeded his authority when he *sua sponte* denied a valid request for continuance and in fact decided that he would no longer entertain arguments but would proceed to render judgment and that the minutes of that day's sitting should be served on the absent counsels, without issuing a notice of assignment for the Ruling. Again in the opinion of this Court, the Judge should have granted the continuance and ordered issued a notice of assignment for another day subsequent to the date stated on the medical certificate. It is our further opinion that when an excuse, buttressed by a medical certificate is acknowledged by a Judge to be legally valid to support the granting of a request for continuance, such as was the circumstance in this case, a Judge ought not and should not dismiss the excuse and proceed to render final judgment; for it is not sufficient that the Trial Judge appoints a lawyer in Court to note exception and announce an appeal from the Ruling. Consideration must be given to the fact that the losing party has only ten days within which to file a Bill of Exceptions and 60 days within which to complete the appeal process. So if the ailing or absent Counsel is still incapacitated, the Court-appointed Counsel who announces the appeal can not proceed any further on behalf of the incapacitated Counsel. It is therefore just, fair and prudent that a judge should proceed only after the period the lawyer or his doctor had requested for and was granted and not any time *sooner. In the* case at bar, the Trial Judge having declared that the request warranted a continuance and also stated that the medical doctor had advised that the lawyer should take a bed rest for one week, should have re-assigned the case, regardless of the stage of the proceeding, whether for argument or Ruling, on a date following the one week bed rest period stated in the medical certificate. Failure to do so was a denial of the Plaintiffs-In-Error's right to proper notice. It is our further opinion that a notice to an incapacitated Counsel to appear during the period of his or her illness or excused absence does not constitute legal and proper notice. We therefore assign error for which the writ is hereby issued. We are aware that this opinion has offered a very narrow path to enter into the records of this case

by way of the Writ-of-Error. However, we have squeezed our way in so that this estate matter can be justly and fairly determined thereby serving the only purpose for which parties come to Court, which is the search for justice.

We now come to issue number two, which is whether the Monthly and Probate Court has term limitation. The Trial Judge stated that he waved oral arguments in this case and rendered judgment because the term available to the Court to dispose of the matter would have concluded on May 29, 2004. This Court, the "Monthly and Probate Court" was thus designated or named to reflect what it is, a Court of Monthly terms. Unlike other Courts of record that operate within quarter terms, this special Court operates from month to month, 12 Monthly terms in a year.

In this case however the Trial Judge was an assigned judge under a mandate of the Supreme Court to have the estate property distributed and the estate closed in 90 days. Nevertheless that mandate, the Trial Judge did not have to deny an excused party his day in Court. The proper step the Judge should have taken was to request for a few days extension from the Chief Justice. In fact, the mandate emanating from the earlier decision of the Supreme Court in this case, the December 17, 1999 Opinion, ordered the presiding Judge to have the estate closed within 90 days and to include all of the distributees. The records show that the 90 days had run out already. The assigned Judge had expanded 4 months hearing the case without any query or contempt for failure to meet the deadline. So the Chief Justice at the time, been fully aware of the nature of probate matters and proceedings would have understood and granted the extra time needed to entertain oral arguments which he, the Judge, had earlier considered necessary, or for the said Judge to carefully review the testimonies and the circumstances of this case in order to arrive at an informed decision, with all parties present. Sometime later in this opinion we shall expand on the issue of the Judge's failure to arrive at an informed decision.

The third issue is whether the Probate Judge committed a reversible error by waving oral arguments, thereby denying the Plaintiffs-In-Error the opportunity to present their case in a forensic manner. The rule has been settled by this Court that a Judge may wave oral argument of a case after the parties have rested evidence. In order words the entertainment of oral arguments after the parties have rested the presentation of evidence is not a matter of right. The Judge may entertain or wave oral arguments and render judgment. *InterCon Security System V. Miah, 38 LLR 633.* The Trial Judge herein, was therefore within the pale of the law when he waved oral arguments in this case, procedure-wise. However, we are of opinion that after waving arguments, which we believe would have put the facts and circumstances into proper

prospective for the Judge's easy reference, especially considering the time span (4 months) of the trial, a hasty browse into the records overnight can not be considered sufficient for a diligent perusal of the records as to make an informed decision.

The fourth and final issue is whether the Trial Judge carried out that portion of the mandate which required inclusion of all the heirs in the distribution. In our opinion the assigned Probate Judge did not. The Monthly and Probate Court is a special Court that sits without a jury. It means that the Probate Judge serves in a dual capacity, one as a fact finder (jury) and the other as a decision maker (Judge). As such the Probate Judge has a wider scope of investigatory power and latitude than does a Circuit Court Judge. In order to do an effective job in his or her dual capacity, the Probate Judge is allowed to ask questions and solicit answers from witnesses on points of fact for clarification or for veracity. The Judge sitting in Probate Court may allow questions to be answered, especially questions the answers to which are necessary or essential to establish the facts in a case. The Judge in the Court below did not avail himself of the opportunity to obtain the facts he needed as a fact finder in order to render an informed decision. He sustained objections to questions that could have shared light on some of the allegations, denied requests for subpoenas for witnesses to appear and testify; denied request for subpoenas duces tecum and failed miserably to pursue or probe into answers that raised serious doubts about some of the testimonies. As a result when the trial ended, there were more questions than answers emerging from the four-month long probe.

We shall mention a few of the instances of derelict or perhaps a deliberate railroading Of justice in this case:

(1). The Plaintiffs-In-Error alleged, and put witnesses on the stand who testified that the Defendant-In-Error, Amos Geandoe, was not the biological child of Ketekpu Geandoe ; that his mother was called Nepah and his father was Amos Goah and that they live in Twea Town. They requested for subpoenas for their testimony. Counsel for Defendant-In-Error objected and the Judge sustained the objection.

(2). Plaintiffs-In-Error requested for subpoena to be served on a certain shipping line on which Ketekpu Geandoe served as a seafarer to substantiate their allegation that at the time Amos Geandoe claimed he was born, Ketekpu Geandoe was no where in Liberia and again Counsel for Defendant-In-Error objected and the Judge sustained the objection. Plaintiffs-In-Error also requested for subpoena to be issued and served on the director of Vital Statistics to ascertain some facts surrounding issuances of the birth certificate of Defendant-In-Error, but the Judge sustained the objection thereto also. These are just a few of the instances in which the fact finding Judge

obstructed the probe he was assigned to conduct in order to determine the rightful distributees of the estate of the deceased.

As we perused the records further, we were intrigued by other circumstances of this case which we consider to be worthy of mention. We noticed that two letters of administration were issued in which Amos Geandoe, Defendant-In-Error, served as one of the administrators. The first letter of administration was issued in 1984 in Marshall Territory to Ketekpu Geandoe, Kai GeahDoe and Amos Geandoe all of the City of Monrovia to administer the intestate estate of Garegar Yanee and Geandoe being at the time of their death residents of the City of Monrovia. Why did the Petitioners apply in Marshall, Margibi County to administer properties in Montserrado? The Judge did not investigate. Then in less than three months subsequently, that is in March of 1985, the threesome, that is Ketekpu now surnamed Blahmo, Can (not Kai) also Blamoh, and Amos W. G. Blahmo (not Geandoe) applied for and received letters of Administration to administer the intestate estate of *Blahmo Jubeh,* situated in the town ship of Gardnersville. We did not fail to notice a pattern, employed by Amos Geandoe et al, which was that for each time they decided to administer some intestate estate they assumed the surname of that deceased property owner. In November of 1984 they became surnamed *Blahmo* and two months later they became *Geandoe.* Of course some one did place a hand writing notification on their Petition for letters of administration that Ketekpu had assumed his step father's surname *Blahmo* and had also given the same surname to his son Amos. Question is, did he also give his step father's surname to his brother Carr who was not Jubeh Blahmo's son, since in deed Ketekpu claimed to have been the only child of Jubeh Blahmo? And why was Can Geandoe who was not Blamo Jubeh's son appointed administrator of her estate? What was his interest in said estate? There was no investigation conducted before the Petition was granted. We could not help but notice from the files.

There is also the other unanswered question which did not seem to claim the Judge's attention but which is of concern to us and that is, did the three administrators distribute the assets of Garegar Yanee and Geandoe, parents of Ketekpu Geandoe? If they did, who were the distributees, Ketekpu and his brothers or their surviving children, if any or was the estate still being administered up to the death of Ketekpu and that said estate was commingled with Ketekpu's and has now formed the intestate state of Ketekpu to the exclusion of his brothers which estate the Judge in this case decided to share 50-50 between Amos Geandoe and Tetee Geandoe?

The Judge failed to probe into the relationship of the Plaintiffs-In-Error to the

deceased Ketekpu Geandoe. The Judge simply said in his Ruling and we quote, "The Court also found that Edward Mendehdou, James and Sackor Mendehdou are also relatives of the late Ketekpu Geandoe as per the testimony of James Gbaye and Edward Mendehdou." How were they related? Did that relationship entitle any or all of them to shares in the estate especially if the said estate includes the intestate estates of Garegar Yanee and Geandoe for which Ketekpu Geandoe, Kai Blahmo Geandoe and Amos Geandoe were appointed by the same court to administer? According to the law of ascendancy and distribution of intestate estates, Ketekpu and his sibling(s) were to share and share alike the estate of their father and mother and if any brother or sister died then the children of his deceased sibling ought to inherit their parents' share in the grandparents' estate. *2 LCLR. Section 3.2(b), 3.4*. The probe in this case did not provide any answers to these concerns. How then did the Judge arrive at his , conclusions that the sole distributees were Amos Geandoe and Tetee (eandoe and that the Petitioners were merely relatives without classifying the relationship?

We note also with grave concern the facts u n which the judge based his conclusion that Amos Geandoe was indeed son of Ketekpue and that Tetee was the mother, thereby awarding the entife estate to them. We quote excerpts from the judge's ruling:

"The Respondent took the stand and/ paraded three (3) witnesses. Of these three (3) witnesses, the testimony of the principle witness Amos Geandoe is the most significant. In his testimony, Amos informed this Court that he is the son of Ketekpu Geandoe and that he along with Ketekpu and his uncle Kai Geandoe administered the Intestate Estate of his late grandfather Garegar Yanee Geandoe and he narrated series of information related to instruments in his possession which demonstrate according to him that he is a son of the late Ketekpu Geandoe. He showed copy of a Letter of Administration issued in favor of him, his father and his uncle in 1984 in which he was referred to as Amos Geandoe. He showed copies of deeds issued to him by Ketekpu Geandoe in which he was named as Amos Geandoe ; he showed copies of deeds issued by him, his late father and uncle to third parties in which he was named Amos Geandoe. He showed rosters prepared by one of the petitioners, Edward Marledou in which he was named Amos Geandoe, Tetee named therein, Tetee. Geandoe and Amos' wife carried the last name of Geandoe. He presented minutes of this Court in which Tetee testified to how she met Ketekpu Giandoe, how she had Amos and how Ketekpu Geandoe paid her dowry. He presented Court's minutes in which a surveyor, he alleged to be the family surveyor testified to the fact that Amos was the son of Ketekpu Geandoe and that as such and based on Ketekpu's instruction, he performed lots of survey on behalf of Amos...."From

reading this portion of the Ruling we observe that the evidence relied upon by the judge related only to land matters; deeds that were issued in Amos's name in which he was referred to as Geandoe, letters of administration granted to him, his uncle and his father Ketekpu and how he was called Geandoe. There was no other evidence produced to prove his paternity or maternity which had been challenged by the petitioners. We hold that there are better and more convincing ways of establishing or proving one's relationship to another person other than material things or gifts of land and realty and same last names. There is usually the proof of place of birth, names of grandparents, siblings, childhood friends in town or neighborhood where one grew up, wards of the parents' household, aunties, uncles, schools attended and school records, baptismal records, employment records, testimonies of close relatives on both sides, people from the place of birth as witnesses and an authentic birth certificate, etc. In the case at bar, there weve no such information given by Amos Geandoe, and no inquiry was made of him by the judge who was to make the final decision. The judge only said that from the instruments the Respondent had in his possession, e.g. deeds bearing his name and letters of administration, he was convinced that the Respondent was truly the son of Ketekpu, the intestator, and that therefore he was entitled to fifty (50V0) percent of the intestate estate. There is no evidence on the records that places Amos Geandoe, in the life of Ketekpu before 1984. Amos's only memory is tied in with land and estate transactions. What became of 41' years of his life before the events of 1984 when he and his father and uncles got engaged in administering estates since he alleged to have been born in 1943?

The judge in said Ruling went on to say, in the case of Tetee Geandoe, that evidence was produced by the Respondent herein to the effect that some time earlier, in another case, Tetee Geandoe had testified and said how she met Ketekpu, how she had Amos, and how Ketekpu paid her dowry. The judge continued by saying that "He, meaning the Respondent, presented Court's minutes in which a surveyor, he alleged to be the family surveyor testified to the fact that Amos was the son of Ketekpu Geandoe and that as such and based on Ketekpu's instruction, he performed lots of survey on behalf of Amos. He presented communications from the office of the County Attorney in which he was referred to as Amos Geandoe. The fact that the judge admitted and even relied on this kind of evidence is another proof of the wrong manner in which he handling of this case. Why would the learned judge allow testimony taken from Court's file in a prior hearing to be introduced as testimony in a subsequent case that was now before him? In this jurisdiction, such testimony could be allowed if the witness was deceased. In this case, Tetee Geandoe was alive, the family surveyor was also alive. We made that presumption because there was no indication to the contrary on the records. If these witnesses were sick or too old to

move about, the procedure usually is to have their depositions taken, a procedure which would have afforded the other party the opportunity for examination and cross-examination of the disabled witnesses. 1 LCLR Section 13.8 (2). In the instant circumstance, there was no opportunity to cross-examine Tetee Geandoe on her dowry allegation or that Amos was her son begotten onto the union of Ketekpu and herself because she was no where in sight when her testimony, read from the minutes of Court in a prior case, was introduced into evidence. The learned judge committed an unwarranted error.

We must re-emphasize the important role Probate Courts in this Jurisdiction are called to play in the administration of descendent estates. The Probate Court alone is empowered by law to appoint administrators/administratrixes in the case of intestate estates to serve as fiduciaries for the proper management of the estate to prevent waste, pay estate debts, distribute the assets of the deceased among the heirs/distributees and have the estate closed. All of these are to be done under the direct supervision of the Probate Court in the county where the estate is located. In other that the Probate Court can perform effectively, the Judge sitting before whom a Petition to administer an estate is heard, must be responsible enough as to ascertain and verify all allegations contained in a Petition for the purpose of granting to the rightful Petitioner(s) as prescribed by provisions of the Probate Code, the authority to administer the estate. It is irresponsible and in fact a dereliction of duty for a Probate Judge to hurriedly grant letters of administration on the basis of a perfunctory and shallow interview; such careless behavior on part of a Judge in granting letters of administration usually leads to Petitions for revocation and other unnecessary long drawn out litigations that keep estates open for years. This bench will not look with favor on any Probate Judge who grants letters of administration without first instituting a proper and thorough investigation as to the right or standing of the Petitioner to be appointed administrator/administratrix.

There is also the need at this time to warn Judges sitting in Probate to be wary of administrators/administratrixes who apply for Decree of Sale. The Judge, before granting the authority to sell estate property, must see convincing proof of the estates indebtedness: who the creditors are, and the amount owed. The Judge then must supervise the computation of how much land is required to be sold in other to settle the estate debt. The Judge should require proof of payment of the debt after the sale has been conducted. If any balance remains from the payments made, it should form part of the estate personalty and not to be pocketed by the administrators(s) and others who are not entitled to it. In the case at bar, we noticed that a decree of sale for 260 acres of the estate property was granted. How many

acres of land comprise the entire estate, we wonder. But did the Judge investigate prior to granting the decree of sale? We wonder how much of the estate would remain to be distributed among the heirs/distributees after selling so much. Did the Judge even bother to verify the amount of the indebtedness, or how much a lot of land is sold for in the area where the 260 acres are located so as to establish proof of the Petitioner's allegation that 260 acres of land were required to be sold in other to settle the debts of the estate? The records do not so indicate. Again this bench is sending a warning to Judges sitting in Probate that the role of administrators is not to squander, pillage or deplete estate property to the detriment of the heirs and distributees. It is even more worrisome to this bench when in some cases there appears to be an acquiescence or a collaboration between the administrator and the Court to engage in acts that undermine the proper administration of an estate.

It is the desire of this bench that Judges sitting in Probate will supervise and monitor' the operations of those they appoint as administrators and that said Judges perform their duty without any hope of reward from the estate; for it is those Judges' responsibility as custodians of all descendent estates, testate as well as intestate, to have the estates so administered so that at the end of the administration the distributees or heirs will be the beneficiaries and not the administrators/administratixes, their lawyers, and the Officers of the Court.

In view of these many unanswered questions and the Trial Judge's failure to allow answers to question, to have witnesses subpoenaed, and the several points of concern herein enumerated, we are of the opinion that the said Judge failed to execute the mandate of the Supreme Court dated December 17, 1999. The judgment is therefore reversed, and the case remanded. The Clerk of this Court is ordered to send a mandate to the Judge below to resume jurisdiction and institute a hearing consistent with this decision. IT IS HEREBY SO ORDERED.
JUDGMENT REVERSED, CASE REMANDED

The Plaintiff-In-Error was represented by Counsellor Marcus R. Jones. The Defendant-In-Error was represented by Counsellor Isaac E. Wonasue