

Mr. Matthew Mangolie, Amos Kpangbai, Francis Kpangbai all of the City of Gbarnga, Bong County, APPELLANT/PETITIONERS Versus His Honour **J. Boima Kontoe**, Resident Judge 9th Judicial Circuit, Bong County, the Sheriff of the 9th Judicial Circuit, Bong County, PAPPELLEE/RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI. RULING AFFIRMED AND CONFIRMED, CERTORIARI DENIED

HEARD: November 15, 2005 P DECIDED: January 5, 2006

CHIEF JUSTICE COOPER DELIVERED THE OPINION OF THE COURT

This case has come before the Supreme Court on an Appeal from the Ruling of the Justice in Chambers handed down on September 13 A.D. 2005, denying a Petition for Certiorari filed by Appellant Matthew Mangolie, et.al . The Petition for Certiorari grew out of the Ruling of the Co-Respondent Judge, His Honour J. Boima Kontoe, Resident Judge, 9th Judicial Circuit, Bong County, rendered on March 10, 2005, on a Motion for Receivership and on another Motion for Preliminary Injunction which was granted against Appellant. Appellant excepted to the Ruling of the Chambers Justice and announced an Appeal to the Supreme Court. While the matter was pending in the Supreme Court, Appellant, as Informant, filed a Bill of Information before the Supreme Court complaining against certain alleged acts of the Circuit Court Judge. Before the hearing of this matter, Appellee filed a Motion for Consolidation of the Bill of Information and the Petition for Writ of Certiorari, which Motion was granted. The parties duly tiled their respective Returns and Briefs.

The facts are summarized as follows: The late Paramount Chief Barsee Kpangbai died in October 1973, without making a Will, leaving to his family his Estate including a large Rubber Farm located in Behlah, Kokoyah, Bong County; that estate went before the Monthly and Probate Court, Bong County, which Court decreed in August 1975, in "Letters of Trusteeship," that Lasana Kpangbai, Bendu Kpangbai, Richard Kpangbai and Francis Kpangbai, all children of the late Barsee Kpangbai, had full power to administer the said Intestate Estate in keeping with law, and to report to the Court within twelve (12) months thereafter. We see from the records that the said Intestate Estate has not been closed to this date, after over thirty years.

The records further show that by notarized Letter dated July 14, 2000, written from Providence, Rhode Island, and Philadelphia, Pennsylvania, U.S.A., respectively, where they were then residing, Richard Kpangbai, Sr. and Bendu Kpaingbai,

Administrators/Trustees of the said Intestate Estate, informed Administration/Trustee Lasana Kpangbai, living in Liberia, that due to their ailing healths, age, etc., they wanted the management of their late father's estate (principally the Rubber farm) turned over to their brother, James Y. Kpangbai, who in managing the Estate "has been instructed to, inform and consult with you (Lasana Kpangbai) about matters relating to the smooth operation of the estate." It is not clear whether original Administrator/Trustee Francis Kpangbai was dead or alive or too old to continue to perform his duties.

A Letters of Administration were issued on March 12, 2004, to James Yanku Kpangbai and L. Stephen Kpangbai, children of the late Barsee Kpangbai, by the Circuit Court Judge of Bong County, acting in Probate Division of the Circuit Court, granting them full powers to administer the said Intestate Estate, file an Inventory of Properties as required by law, and report to the said court within twelve (12) months thereafter. (It is clear from the records that there was disagreement amongst Paramount Chief Kpangbai's children and family members over the operations and management of the Rubber Farm Estate).

In September 2004, the Intestate Estate of the late Barsee Kpangbai, represented by Messrs. James Yaku Kpangbai and James Yayah Kpangbai and James Yayah Kpangbai, filed a Petition for Proper Accounting in respect of the said Intestate Estate before the 9th Judicial Circuit Court for Bong County. Appellant/Respondent duly filed their Returns on October 21, 2004. Appellee also filed a Motion for issuance of a Writ of Preliminary Injunction and Appellant filed a counter Motion to vacate the Preliminary Injunction. Appellees subsequently, in December 2004, filed a Motion for Receivership. These actions and proceedings all were directed against Appellant Mathew Mangolie, et al, who were reported to be operating the Rubber Farm Property of the Intestate Estate of the late Barsee Kpangbai and the obvious purpose of these various filings was for Appellees to take over control of the said Intestate Estate's Rubber Farm from Apellant.

In the Motion to vacate the Preliminary Injunction, Appellants challenged the authority of James Yaku Kpangbai and James Yayah Kpangbai to file an action for the Intestate Estate, alleging that no Letters of Administration had been granted by court to these two. In Returns to the Motion for Receivership, Appellants raised the matter of the existence of a Lease Agreement, and an Assignment of Lease, under which Appellant was managing and operating the Rubber Farm. Apellant alleged that these Agreements were in force and that Appellant was not aware of any cancellation proceedings; further that a Receivership over the farm would be to the detriment of

Appellant Mangolie who had invested a lot of money to improve said farm. Appellant also contended that Appellees had all received consideration from Appellant Mangolie under the Lease and Assignment Agreements.

It is from the Rulings after Hearings of the Circuit Court Judge made on March 10, 2005, acting in Probate Division, that the Petition for Certiorari grew, as mentioned above. The Judge ruled, amongst other things, that no contract existed between the said Intestate Estate and Mr. Matthew Mangolie for the management and operation of the Rubber Farm in question; that the Rubber Farm was going to waste; that said Farm be placed in Receivership under the court appointed Administrators; and that the Estate be closed in the shortest possible time. On March 10, 2005, the Judge also heard the Motion for Preliminary Injunction and granted same.

We see from the records that the Justice in Chambers first had a conference with the parties; then he ordered issued the Alternative Writ of Certiorari; and after a full formal Hearing thereon, he ordered the said Alternative Writ quashed, denied issuance of the Preemptory Writ, dismissed the Petition and mandated the Circuit Judge to resume jurisdiction and continue with the case. In arriving at his decision, the Chambers Justice considered three issues, as follows:

"1. Whether or not Co-Respondent Judge erred when he granted the Motion for Receivership?"

"2. Whether or not Co-Petitioner Mongolie has a contract for the operation of the rubber farm for the late Barsee Kpangbai?"

"3. Whether or not Certiorari will lie?"

Since we are inclined to agree with the Ruling of our Colleague who was then in Chambers, we will adopt and discuss the same issues taken up in Chambers.

"1. Whether or not Co-Respondent Judge erred when he granted the Motion for Receivership?"

The Circuit Court found that the Estate property was going to waste under mismanagement and operation of Apellant Mangolie, whom the Circuit Court also found had no authority to be managing the Rubber Farm; and the Justice in Chambers arrived at the same conclusion. Appellant had argued before the Justice in Chambers and later again before this Court that the Circuit Court Judge erred in

granting the Motion for Receivership without first passing upon the issue raised in the pleadings to effect that appointment of a Receiver would undermine the interest of Appellant Mangolie who had invested money in the Farm under a Lease of the farm to one party from whom he had acquired an Assignment of Lease. The Justice in Chambers ruled that the Circuit Court Judge acted properly and in keeping with law under authority of the provision of Civil Procedure Law, 1 LCLR Section 7.81 .1 (at Page 99) relating to the Appointment and Powers of Temporary Receiver, wherein it is provided that, "Upon motion of a person having an apparent interest in property which is the subject of an action in a court of record a temporary receiver of the property may be appointed ... at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be... materially injured, or destroyed." We see from the provision of the Civil

Procedure Law just mentioned, that the law goes on to provide, as follows:

"2. Powers. The court appointing a receiver may authorize him to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such trusts and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized ordered of the court. Upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the same property."

"3. Duration of receivership. A temporary receivership shall not continue after final judgment unless otherwise directed by the court."

We therefore confirm and affirm the holding of the Justice in Chambers that the Circuit Court Judge did not commit any error when he granted the Motion for Receivership, in keeping with law.

"2. Whether or not Co-Petitioner Mongolie has a contract for the operation of the rubber farm for the late Barsee Kpangbai?"

The Chambers Justice decided to affirm the Ruling of the Circuit Judge to the effect that Appellant Mongolie was operating the Rubber Farm Estate under no Contract existing between the Intestate Estate and himself. The records show that an Agreement of Lease did before exist between the Appellee and one Minikon Weah but that that Agreement had expired in 2002, and had not been renewed; that Appellant was never a party to said Agreement; and that Appellant, being under

burden to prove otherwise, had not met the burden of proof. The Justice in Chambers relied on provision of law which states the burden of proof rests on the party who alleges a fact (See 1 LCLR Section 25.5(1)). It has not gone unnoticed by this Court that Appellant had made some payment due under the expired Lease Agreement to some of the children of late Chief Kpangbai and that the lower court and the Justice in Chambers had considered this aspect of the matter when it was ruled that no Agreement existed between the Kpangbai Estate and the Appellant. We therefore confirm and affirm the holding of the Justice in chambers which sustained the Ruling of the Circuit Court Judge on this issue.

"3. Whether or not Certiorari will lie?"

The Justice in Chambers noted that there were other aspects of the case in the Circuit Court below relating to the proper administration of the said Estate; that the Petition for Certiorari was based mainly on the Ruling of the Circuit Court Judge on the Motion for Receivership; and that Appellant would have a right to Appeal to this Court from a final determination in the matter below. He also noted that the Circuit Court Judge had correctly provided for the care of the property of the Rubber Farm Estate pending determination of all of the issues raised in the lower court. He concluded that Certiorari will not lie where the Ruling of a lower court during pendency of a cause is not manifestedly prejudicial to the rights of a party, as found. *Abi-Jaoudi & Azar Trading Corporation v. Judge Pearson and Richards*, 36 LLR 712 (1990). We also agree with the Ruling of the Justice in Chambers on this issue.

We think it is necessary to comment on the Information filed and a few points raised by Counsel for Appellant in his Brief and during the Hearing of this matter before this Court. As noted above that Counsel for Appellee filed before this Court a Bill of Information which was consolidated with the Appeal from the Ruling of the Chambers Justice during hearing of this matter by the Supreme Court. We think it is necessary to point out that although the Justice presiding in Chambers of the Supreme Court is a Member of the Supreme Court itself, he as such has no authority to exercise the powers of the Supreme Court of Liberia en bane. It is the Supreme Court itself which is the Constitutional Court that by Statute "should have jurisdiction of all Appeals from courts of record and from ruling of Justices of the Supreme Court..." (See Section 2.2 New Judiciary Law.) The Justice presiding in Chambers is appointed by the Chief Justice and has exclusive power to issue Remedial and Extraordinary Writs in exercise of aid of the appellate jurisdiction of the Supreme Court and to otherwise issue Writs of Mandamus, Prohibition, Quo Warranto and other Remedial or Extraordinary Writs and processes...", but not the

Writ of Habeas Corpus. Section. 2.9 New Judiciary Law. The Rules of this Court provides that a Bill of Information will lie to prevent a Judge or any Judicial

Officer who attempts to execute the Mandate of the Supreme Court in an improper manner from doing so; and that a Bill of Information will also lie to prevent anyone whomsoever from interfering with the Judgment and/or Mandate of the Supreme Court. The Bill of Information brought to the attention of this Court information that after denial by the Justice in Chambers of a Petition for issuance of a Writ of Certiorari and an announcement of an Appeal, the Circuit Court Judge, acting in Probate Division, instituted certain measures clearly geared towards halting further material injury to or destruction of an Intestate Estate. It appears to us further that clearly no Mandate of the Supreme Court was being executed in an improver manner nor was there any interference with any Judgment and/or Mandate of the Supreme Court. We therefore must remind members of the Supreme Court Bar that the Rules further provides that in case any Counsellor should file a Bill of Information before this Court assigning "reasons therefor other than the reasons expressly prescribed by these Rules... [such Counsellor] ... should be penalized by the imposition of a fine, suspension or disbarment." Members of the Supreme Court Bar are therefore warned not to bring before this court any Bill of Information not strictly in accordance with the Rules.

The next thing that we must comment on concerns the powers and jurisdiction of the Judge of the Probate Court or of the Circuit Court Judge acting in the Probate Division of the Circuit Court. (It should be noted that there does not now exist a separate Probate Court in Bong County and for this reason according to our law, the Judge of Circuit Court acting under law and in the Probate Division of the Circuit Court has general jurisdiction over all Intestate Estate and in all Probate matters.) Our Statute provides that the Judge of the Probate Court or the Circuit Judge acting in Probate "shall exercise full and complete general jurisdiction in law and in equity to administer justice in all maters relating to the affairs of descendents..." Descendents Estates Law, Section 102.1 General Jurisdiction of Courts, Vol. II Liberian Codes Revised. Other Sections of the Statutes also clarify the authority of the Probate Judge, as follows:

"Section 107.3..Letters evidence of authority; effect of appeal and subsequent court measures.

Letters granted to fiduciaries by the court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or

modified upon appeal or the letters are suspended, modified or revoked by the court granting them."

"Section 107.14 Effect and contents of decree suspending, modifying or revoking letters.

Upon the entry of a decree made as prescribed in this Code, suspending, modifying or revoking letters issued to a fiduciary, his powers are suspended, modified or cease, as the case may be. The decree may require him to account for all money and other property received by him and to pay over and deliver all money and their property in his hands, to the court or to his successor or to such other person as is authorized by law to receive it, or it may be made without prejudice to an action or special proceeding for that purpose then pending or thereafter to be brought. Except as provided in section 107.15, the suspension, modification or revocation does not affect the validity of any act within the powers of the fiduciary done by him before the suspension, modification, or revocation of his letters or the service of process, where the other party acted in good faith or done after the service of process and before entry of the decree where his powers with respect thereto were not suspended or modified by service of process or where the court in a case prescribed by law, permitted him to do the same, notwithstanding the pendency of the special proceeding against him and he is not liable for such an act done by him in good faith."

"Section 109.5.PContinuation of decedent's business.

Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the decedent for the benefit of the estate; however, if the decedent died testate and his estate is solvent, the order of the court shall be subject to the provisions of the will, if any, with reference thereto. The order may be made with or without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given to those persons not previously notified by publication or otherwise within five days after the entry of the order and any such persons may show cause why the order should be revoked or modified. The order may provide as follows:

- (a) For the conduct of the business solely by the fiduciary or subject to the provisions of any partnership agreement, jointly
- (b) The extent of the liability of the estate or any part thereof, or of the fiduciary, for

obligations incurred in the continuation of the business:

(c) As to whether liabilities incurred to the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole;

(d) As to the period of time for which the business may be conducted, and such other conditions, restrictions, regulations and requirements as the court may order. (Underling added for emphasis)

"Section 111.8..Vacancy in office; administration de bonis non.

1. *Procedure when vacancy occurs.* When the office of administrator becomes vacant for any reason the court may grant letters of administration de bonis non to one or more eligible persons in the order of priority provided in section 111.1 and the proceedings to procure such letters shall be the same as upon an application for original letters of administration."

Counsel for Appellants during arguments and in his Brief raised some interesting issues concerning procedures in the court below. He stated that since it appeared that the 1975 Letters of Trusteeship was still in force, it having not been revoked or suspended, the persons who initiated this matter before for the Estate before the Circuit Judge acting in Probate had no standing to so act for the Estate. It appears from the records that Counsel for Appellants is not questioning the jurisdiction of the lower court over this probate matter, nor the fact that a new Letters of Administration had been issued after Hearing and does in law and fact exist, but merely relying on procedural grounds relating to notice to his client who is clearly not a member of the Kpangbai family or had any link thereto sufficient to require that notice be issued to him before conduct of any Hearing concerning the issuance of the new Letters of Administration. Counsel for Appellant cited Section 11.2(2) of the Civil Procedure Law to support his argument for a required hearing and determination by court on issues relating to capacity of persons who purported to be representing the Estate, before the lower court could deal with the Motions for Receivership and Preliminary Injunction. We note that Section 11.2 of the Civil Procedure Law deal with "Motion to Dismiss" and that Section 11.2(2) thereof, under the sub heading "Deferred hearing permitted" states that a Motion to dismiss "shall be heard and determined before trial..., unless the court for good cause orders that the hearing and determination thereof be deferred until the trial." But we do not see that any "Motion to Dismiss" was in this case being heard by the lower court in this

matter so that this citation would have relevance to a determination of the point raised by Counsel for Appellants! We do however note that information brought to our attention by Appellee, and not denied by Appellant, is clear that this is a probate matter and we also see from the facts and law before this Court that the Judge took actions in the premises which are contemplated in our law and under our practice. After all, all of our courts are required under provisions of the Civil Procedure Law to construe the Procedures so as "to promote the just, speedy, and inexpensive determination of every action" (Section 1.4, Civil Procedure Law), and to ignore "harmless error" unless refusal to do so will result in injustice (Section 1.5, Civil Procedure Law). Further, as mentioned above, the Judge of the Probate Court is bound to "administer justice in all matters relating to the affairs of decedents and others over whose affairs the court has jurisdiction." Section 102.1 Decedents Estates Law.

Long ago in the case of King-Howard et al, v. Kparpeh and Davies 16 LLR 11 (1964), which is relevant although a Will was involved in that case, the Supreme Court said (at page 18) that "we have to make it positively clear that the law makes the probate commissioner guardian of all estates, whether testate or intestate; and his exercise of discretion is not subject to review except for error of law or departure from standards of good conscience" and that Court went on to say (at page 19) that "....the law gives the probate commissioner jurisdiction over all estates. Within the scope of that jurisdiction, the law gives him the right to exercise his discretion in the handling of estates to prevent waste and illegal control...." Moreover, in Railey, et at v. Clarke 10 LLR 330 (1950), this Court pointed out (at page 333) that civil procedure rules governing the commencement of actions, etc., are not necessarily applicable to matters in Probate Court, since probate proceedings are not civil actions per se.

Appellant raised an argument based on Article 20 of the Constitution on which we do not think it necessary to comment in view of our holdings above.

Based on the facts and circumstances of this case, especially taking into consideration the absence of the Bong County Probate Court, the necessary continuation of probate matters in the Probate Division of the Circuit Court, and on the relevant and applicable laws, we do not disagree with actions taken in the lower court to have the Intestate Estate of the late Barsee Kpangbai more properly administered and closed, as the law and practice provide.

Wherefore, and in view of the foregoing, we affirm and confirm the Ruling of the Justice in Chambers to quash the Alternative Writ, deny the Preemptory Writ and

dismiss the Petition for Certiorari; and the Clerk of Court is hereby ordered to send a Mandate to the court below to resume jurisdiction and proceed to enforce its judgments. AND IT IS SO ORDERED.

COUNSELLOR BEYAND D. HAWARD OF THE LEGAL CONSULTANTS, INC. APPEARED FOR APPELLANT. COUNSELLOR FLAAWGAA R. McFARLAND OF THE FLAAWGAA R. McFARLAND LEGAL SERVICES APPEARED FOR APPELLEE.