A. W. MORGAN, represented by his Agent, MASSA MORGAN RICHARDS, Appellant,
v. **ISAAC BARCLAY**, Executor of the Testate Estate of the Late AUGUSTA BARCLAY, and PRINCE BARCLAY, Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 16, 2004. Decided: August 17, 2004.

1. Legal capacity to sue is the right to come into court.
2. It is not necessary in pleadings to aver the capacity of a party to sue or be sued.
3. Capacity is the legal qualification, such as legal age, competence, power or fitness.; iIt is the legal ability of a particular individual or entity to use, or to be brought into, courts of a forum.
4. Standing to sue means the party has the sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.
5. Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court.
6. The requirement of standing is satisfied if it can be said that the plaintiff has a legally protectble and tangible interest at stake in the litigation.
7. It is the duty of an executor or administrator to defend all suits that may be brought against the estate and to protect the estate against all invalid and doubtful claims and obligations that industry and care can furnish.
8. A trial court is not required to specifically rule on all issues raised in the pleadings if the failure to rule on those issues does not materially affect the substantive rights of the parties, especially where the issues cannot be determined without reference to a factual matter.
9. According to the practice in this jurisdiction, issues raised which are issues of fact and mixed issues of law and facts must go to the jury.
10. Mere allegations are not proof, and factual allegations pleaded must be proved at the trial.
11. It is evidence alone which enables the court to decide with certainty the matter in dispute.
12. Where affirmative defense is set in an answer to plaintiff's claim, upon which issues is joined, the burden of proof is upon the defendant as to the affirmative defense.
13. The jury is the exclusive judge of the evidence and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence.
14. Where the jury has reached a conclusion, after having given consideration to the evidence which is sufficient to support the verdict, the same should not be disturbed by the court.

15. It is illegal to sell and distribute the property of a testate estate which has not been closed and the assets distributed according to the will without having petitioned the court for closing of said estate and same being granted.
16. The sale of property of an estate is void where not sanctioned by the probate court in keeping with law.

Appellees, Isaac Barclay and Prince Barclay, executor and devisee respectively, under the last will and testament of the late Augusta Barclay, filed an action of ejectment to evict and oust the appellant from property which they asserted belonged to the Testate Estate of the testator. The appellant denied that the property belonged to the Testate Estate of the late Augusta Barclay,. Moreover, the appellant alleged that while the property in question originally belonged to the estate of the late Augusta Barclay, the co-appellee, Isaac Barclay, as executor of the estate, had executed a warranty deed to co-appellee Prince Barclay, grandson of the late Augusta Barclay and to whom the property had been willed, transferring the said property, as per the will of the testator., and that Co-appellee Prince Barclay had in turn, for due financial consideration, conveyed the property to the appellant.

After a trial before a jury, a verdict of liable was returned against the appellant. A motion for new trial having been filed, heard and denied, and the verdict affirmed and confirmed, the appellant appealed the matter to the Supreme Court, asserting: (a) that the trial judge erred in denying the motion to dismiss which challenged the capacity of the appellees to sue out the action of ejectment; (b) that the judge had erred in placing the appellees in possession of the property since the property was still under lease granted by the testator prior to her death; and (c) that the judge had erred in confirming the verdict since the jury had ignored the evidence adduced at the trial, especially with regard to the lease still being in force.

The Supreme Court rejected all of the contentions of the appellant., It held holding firstly that the appellees did have the legal capacity to sue, contrary to the assertion of the appellant. The Court opined that while the Civil Procedure Law does provide for dismissal of an action where the plaintiff lacks the capacity to sue, this was not applicable to the instant case since the property, still being a part of the estate, the appellees had a legally protectible interest at stake, the one being the executor of the estate and the other being the person to whom the property had been devised by the testator in her last will and testament. The Court noted that under the law, the executor had a duty to defend the estate against all suits and to protect it against all doubtful and invalid claims.

The Court further held that the trial judge was correct in ordering the sequestration of the rent and the holding placing the of same in an escrow account since title to the property was in dispute. and It pointed out that an injustice would be serve could occur by having same released while the outcome of the case had still not been determined.

On the issue that the trial judge had failed to pass on all of the issues of law raised in the pleadings, the Court stated said that the trial court was not required specifically to pass on all of the issues raised in the pleadings if the failure to do so did not materially affect the substantive rights of the parties,. In particular, the Court averred and particularly where the issues involved were mixed law and facts.

Lastly, the Court held that the evidence presented by the appellees met the standard of preponderance of the evidence, in contrast, to that presented by the appellant, who did not testified on his own behalf but relied on a deposition taken by him before a magistrate,, and which alleged evidence the Court said did not go beyond mere allegations unsupported by any documentary evidence or witnesses. Mere allegations, the Court said, asserted, are not proof. And even had the sale been genuine, the Court opined, the amount alleged to have been paid was so minimal that it was tantamount to unjust enrichment of the appellant and therefore could not be condoned by the Court. The jury, in such situation, being the sole judges of the facts and having given consideration to the entire evidence, had the right to bring in a verdict supportive of the evidence. In such a case, it said, the verdict should not be disturbed. Accordingly, the Court *affirmed* the verdict and the judgment of the trial court.

James R. Flomo and *B. Anthony Morgan* appeared for appellant. *Snansio Nigba* and *Charles Abdulai* appeared for the appellees.

MR. JUSTICE GREAVES delivered the opinion of the Court.

The premises, subject of these proceedings, are located on 16th Street, Monrovia, Liberia, and was owned by the late Augusta Barclay of said City, who, during her lifetime, leased it to Salami Brothers in 1959 for a period of twenty (20) years, with an option of another twenty (20) years. Before Augusta Barclay's death in 1967, she executed a will in which she devised the said premises to Prince Barclay (co-plaintiff in the court below and co-appellee before this Court), her grandson, who was then a minor. In the said will, the decedent appointed her son, Isaac Barclay, as sole executor of her last will and testament. The will further stated, at clause 3, that until Prince Barclay reached his majority, the money generated from the leasehold should go towards his education and support.

According to the lease agreement between the late Augusta Barclay and Salami Brothers, the first period was to end in 1989, during which period an amount of Four Hundred Dollars (400.00) was to be paid annually. The second twenty (20) year period was to commence immediately following the end of the first period, which was to end in the year 1999 and for which period an annual rental of Six Hundred Dollars ($600.00) was to be paid.

The lease agreement further revealed that lessee was to erect a gas station or a building at their own costs and charges during the existence of said lease (clause 3). The lessee went

ahead and constructed an apartment building on the demised premises. The lessor died in 1967 and the lessee left the country (date unknown).

On the 4th day of February, A. D. 1998, plaintiffs/ appellees in their capacities as executor and beneficiary of the last will and testament of the late Augusta Barclay instituted an action of ejectment against defendant/appellant. In their complaint they alleged, among other things, that prior to the civil conflict, that is, during the period of the 1980's or there-about, and during the 1990's, when they were not in Monrovia due to political reasons, defendant/appellant unauthorizingly, illegally, and unwarrantedly entered the subject premises and exercised control, possession and claim over same contrary to their rights; that they, on several occasions in 1996, 1997 and 1998 demanded that the defendant/appellant and others occupying the premises under his influence vacate said premises; and that the defendant/appellant had refused to do so or to cause his so-called tenants to vacate and turn over the subject property to them. They therefore prayed that the defendant/appellant be adjudged liable and ordered evicted from said premises.

Defendant/appellant filed an eight (8) count answer, along with a one (1) count motion to dismiss plaintiffs/appellees' complaint. In said answer he stated, among other things, that while it may be true that the subject property was willed to co-plaintiff Prince Barclay by Augusta Barclay, his late grand-mother the property is no longer owned by the co-appellee; that the subject property was sold by co-appellee Prince Barclay in 1977 to Sinkor Leasehold, a company owned by Alford W. Morgan, the defendant/appellant, and his brother Lafayette K. Morgan, after it had been duly transferred by deed to him in 1976, for a sum of Two Thousand United States Dollars (US$2,000.00); and that a deed was duly executed by him. Defendant/appellant further alleged that plaintiffs/appellees, with intent to fraudulently deprive him of his bonafide property for which he paid valuable consideration, had concealed in their complaint the facts relating to the execution of the deed by co-appellee Isaac Barclay, then executor of the estate of the late Augusta Barclay and the subsequent conveyance of the subject property by co-appellee Prince Barclay to Sinkor Leasehold; and that Sinkor Lease-hold had purchased the lease and paid the balance loan when Salami Brothers defaulted on the loan. Further, the defendant/ appellant contended that plaintiffs/appellees had no legal capacity to sue since they or none of them owned or had any title or right of possession to said property as they had not filed or made profert of any title in their own name with the complaint. Defendant/appellant then prayed for the dismissal of the complaint.

The defendant/appellant's motion to dismiss consisted of one (1) count, which stated: "Because plaintiffs/appellee have no legal capacity to sue since they, or none of them, own or have any title or right of possession to the property, subject of these proceedings; as is evidenced by the fact that they have not filed or made profert of any title in their own name with the complaint".

The motion to dismiss, filed by defendant, was heard and denied. The plaintiff/appellees subsequently filed a motion for sequestration of rent, which was resisted by defendant/ appellant. The court heard same and granted the said motion. The court ruled the matter to trial, stating that there were no pure issues of law in the complaint, answer and reply. Therefore, the pleadings were ruled to trial as they contained mixed issues of law and facts. In addition, the court determined that the only pure issue of law in the pleading was disposed of in the motion as heard and denied by the trial court. The defendant/appellant then filed a motion for continuance stating that his material witness, A. W. Morgan, was out of the country and wished the trial postponed to the next term of court. The motion was heard and denied by the trial judge. The trial was held and a verdict was returned in favor of plaintiffs/appellees.

The defendant/appellant excepted to said verdict and filed a motion for new trial, which was heard and denied and a final judgment was rendered against defendant in which the court ordered the sheriff to have plaintiff put in possession of the premises. The defendant excepted to said judgment and announced an appeal to this Court, which appeal was granted by the trial judge.

The Supreme Court, sitting in its October Term, A. D. 2001, reversed the ruling of the trial judge and remanded said case for a new trial on ground that the denial of appellant's motion for continuance was erroneous.

The Civil Law Court accordingly resumed jurisdiction in said matter during the March Term, A. D. 2002. On the 8th day of April, A. D. 2002 defendant filed a petition for deposition. Appellees then filed resistence to the appellant's petition for deposition. His Honour Yussif B. Kaba, presiding over said court for that term, then issued an order to the stipendiary magistrate at the Temple of Justice, Joseph Fayiah, Jr., mandating him to proceed to take the deposition of A. W. Morgan, appellant, on the 11th day of April, A. D. 2002 at 11 o'clock a. m. On April 13, 2002, appellees' counsel filed a bill of information before the trial judge in which they contended that the two (2) days given them for the taking of the deposition was too short to adequately represent the interest of their client and that the trial judge had failed to pass on the petition for deposition and resistence thereto. The bill of information was heard and denied by the trial judge, and the ejectment action was accordingly assigned for trial.

During the trial, the plaintiffs/appellees testified on their own behalf. In their testimonies, both stated on record that the property in question, the subject of the ejectment action, was previously owned in fee simple by the late Augusta Barclay, mother of co-plaintiff/appellee Isaac Barclay and grandmother of co-plaintiff/appellee Prince Barclay. They further testified that the late Augusta Barclay, prior to her death, executed her last will and testament in which the property in question was willed to co-appellee Prince Barclay, who was a minor when she passed away in 1967. Moreover, plaintiffs testified that co-appellee Isaac Barclay was named as sole executor of said will and that the estate had not

been closed up until the present. They further stated in their testimonies that prior to the death of the testatrix, Augusta Barclay, she had leased the property in question to Salami Brothers for a two twenty (20) years period and that proceeds from said lease was to be used for the education and up keep of co-appellee Prince Barclay. They produced into evidence copies of the last will and testament of the late Augusta Barclay, the title deed of Augusta Barclay to the property in question, and the lease agreement from Augusta Barclay to Salami Brothers.

The defendant/appellant then took the stand and produced five (5) witnesses, in addition to the deposition given by A. W. Morgan, the defendant himself. In his deposition the defendant testified that the property in question was leased to Salami Brothers for a two (20) twenty years period and that this lease was assigned to the International Trust Company and that he bought the leasehold rights from INTRUSCO. The defendant further testified that he noticed from the lease instrument that Isaac Barclay, co-appellee, was the executor of said estate and began to pay the annual rent for the property to him; that he was informed by the executor that the property in question was willed to co-appellee Prince Barclay who was not of age at that time, but that the executor was now transferring the said property to Prince Barclay who had reached his majority; that the executor gave him (the defendant) a copy of the deed from him to the co-appellee Prince Barclay. The defendant also alleged that he was subsequently approached by co-appellee Prince Barclay who offered him for purchase the property in question, in addition to two (2) others; and that he (the defendant) negotiated and purchased the property which is the subject matter of this litigation. The defendant also testified to two (2) instruments: The transfer deed from co-appellee Isaac Barclay to co-appellee Prince Barclay and the second deed from co-appellee Prince Barclay to Sinkor Leasehold.

Ellen Hall, the clerk of the Civil Law Court, was defendant's second witness. She presented to the court the two (2) deeds that were testified to and admitted into evidence during the first trial. These deeds were alleged to be deeds from Isaac Barclay to Prince Barclay and from Prince Barclay to Sinkor Leasehold.

The third witness, Counsellor Jenkins K. Z. B. Scott, stated that he knew nothing about the transaction between A. W. Morgan and Prince Barclay concerning the property in question. However, what he did know was that when he was Justice Minister a land matter was brought before him involving the Barclay family in which co-appellee produced a will.

The fourth witness, Joyce Vaskinda, testified that she had no personal knowledge of the transaction between co-appellee Prince Barclay and the defendant. She informed the court that her knowledge was limited to the fact that the defendant once visited her home and informed her that co-appellee Prince Barclay had promised to sell his home to him and that she had informed him that she and her husband had already purchased the property. She testified further that the defendant had a blank deed which was not signed and that she had heard that co-appellee Prince Barclay had sold the property in dispute to the defendant.

Defendant's fifth witness, Samuel D. Deranoramo, Sr., testified that he previously worked with the probate court and that in 1976 or thereabout, the co-appellee had brought a deed to the court in the name of Prince Barclay to be probated and registered. He stated also that due to the fact that there was need for another witness to sign the deed he requested the co-appelle to sign it, which he did. The defendant then rested evidence and requested the court to admit the two (2) deeds and the deposition of defendant into evidence, which request was granted by the trial judge over the objections of plaintiffs' counsels.

The trial jury brought a unanimous verdict of liable against the defendant. After the filing of a motion for a new trial by defendant, and following a hearing of the said motion, the trial judge, in a combined ruling denied the motion and affirmed and confirmed the verdict of the trial jury, stating in his final judgment that "*the final ruling/judgment does not determine the rights that accrued under the lease which lease was admitted to by the parties. The ruling goes only to the determination of title to the property, the subject of these proceedings".* [Emphasis added] The judge then ordered the clerk to prepare a writ of possession to have same placed in the hands of the sheriff for service in order to place the plaintiffs in possession of the property. The defendant's counsel excepted to the ruling and announced an appeal to this Court, sitting in its October, A. D. 2002 Term, which appeal was granted by the trial court.

Defendant thereafter filed a seven (7) count bill of exceptions. The counts that are relevant to the disposition of this matter are counts 1, 2, and 6, which we hereby quote for the benefit of this opinion:

1. Because, aside from the issue of "lack of capacity to sue" which was raised in defendant's motion to dismiss, the court failed to pass on all the other issues of law raised in the pleadings, the complaint, answer and reply; to which defendant then and there excepted.
2. Because on the 24th day of September, A. D. 1998, the court, without taking into consideration the fact that plaintiffs did not sue for rent in this action and that the subject property having been leased by Augusta Barclay to Salami Brothers for 40 years which had not expired, and that the plaintiffs cannot now be entitled to possession, ordered that all rents from the subject property be placed in escrow; to which defendant then and there excepted.
6. Because on the 5th day of August, A. D. 2002, the 42nd day jury sitting, Your Honour denied the motion for a new trial filed by defendant, even though the jury ignored the evidence apparent on the records, which clearly shows that the plaintiffs are not entitled to possession of the subject property, for the property was leased for 40 years, which have not expired, to Salami Brothers, to whom the defendant is privy. The evidence clearly shows that the lease agreement made profert by plaintiffs is for a period of 40 years, the first twenty years commenced the 30th day of June, 1989, and the second twenty years commenced immediately, meaning that the lease should end in the year 2009; to which final judgment defendant then and there excepted.

We have deemed the following four (4) issues worthy of our attention in disposing of this appeal. They are:

1. Whether or not plaintiffs/appellees have the legal capacity to institute this action of ejectment; or in other words, do the plaintiffs/appellees have standing to bring this suit against the defendant/appellant?
2. Whether or not the trial judge's order that the rent for the premises in question be sequestrated was illegal?
3. Whether or not the trial judge committed a reversable error by not passing on all the issues of law in the pleadings before ruling the matter to trial, as alleged by defendant/ appellant? and
4. Whether or not the evidence adduced by plaintiffs/ appellees in this matter supports the verdict of the trial jury?

The issues as outlined by this Court shall be discussed in chronological order beginning with the first issue, which is whether or not plaintiffs/appellees have the legal capacity to institute this action of ejectment, or in other words, do the plaintiffs/appellees have standing to bring this suit against the defendant/appellant. The defendant/appellant filed a one (1) count motion to dismiss plaintiffs/appellees' complaint, relying on section 11.2(e) of the Civil Procedure Law, Rev. Code, 1 LCLR 118, under motion to dismiss, which reads: *"1. Time; Grounds.* At the time of service of his responsive pleading, a party may move for judgment dismissing one or more counterclaims on any of the following grounds:...(e) that the party asserting the claim has not legal capacity to sue. Black's Law Dictionary (5th ed.), at page 803, defines legal capacity to sue as the "Right to come into court". It is not necessary in pleadings to aver the capacity of a party to sue or be sued, except to the extent required to show the jurisdiction of the court. A party desiring to show the issue of lack of capacity shall do so by specific negative averment". Capacity is defined as: Legal qualification (i.e. legal age), competency, power or fitness. Ability to understand the nature and effects of one's acts. The ability of a particular individual or entity to use, or to be brought into, the courts of a forum. *Ibid.*, page 188. The Standing to Sue Doctrine "means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. "Standing" is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court. The requirement of "standing" is satisfied if it can be said that the plaintiff has a legally protectible and tangible interest at stake in the litigation. *Ibid*, page 1260. We are of the opinion that the requirement for standing has been satisfied in the instant case. The undisputed facts during the trial in the court below show that the late Augusta Barclay, in her last will and testament devised the property in litigation to co-appellee Prince Barclay and named co-appellee Isaac Barclay as sole executor of said will. The proceedings before us was instituted by co-appellee Isaac Barclay in his capacity as executor of the Testate Estate of the late Augusta Barclay and co-appellee Prince Barclay in his capacity as a devisee of the subject premises under said will,

"This Court has held that it is the duty of an executor or administrator to defend all suits that may be brought against said estate and to protect the estate against all invalid and doubtful claims and obligations that industry and care can furnish". *The Estate of the late T. A. Jackson v. Urey et al.,* 11 LLR 25, Syl. 4, text at pp. 255-256.

The facts in this matter also show that up until now said estate has not been closed. The plaintiffs/appellees do have standing to sue as they have a legally protected and tangible interest at stake in the instant case.

As to the second issue of whether or not the trial judge's order that the rent for the premises in question be sequestrated is illegal, we support the trial judge's action in placing the rent from the premises in question in an escrow account as it would have worked injustice to the plaintiffs/appellees to have the defendant/appellant collect the rent while the outcome of the trial had not been determined. Sequestration, in general, is the process by which property or funds are attached pending the out come of litigation. BLACK'S LAW DICTIONARY 1225. We have determined in the first issue that the plaintiffs/ appellees have standing to sue and therefore the Court is duty bound to protect their interest in whatever way possible until the final disposition of this matter.

Relative to the third issue of whether or not the trial judge committed a reversible error by not passing on all the issues of law in the pleadings before the court below, as alleged by defendant/appellant, we hold that this Court has held that "A trial court is not required to specifically rule on all issues raised in a pleadings if the failure to rule on those issues does not materially affect the substantive rights of the parties; especially where the issues cannot be determined without reference to a factual matter." *Cheng and American International Underwriters (AIU) v. Tokpa,* 29 LLR 22 (1981), Syl. 7, text at pages 32 and 33. Reverting to the records in this matter we observe that the remaining issues raised are issues of fact and mixed issues of law and fact which, according to our practice and procedure, must go to the jury. The judge did not err by ruling those issues to trial by the jury aside from the law issue on capacity to sue which he correctly ruled on.

As to the fourth and last issue of whether or not the evidence adduced by plaintiffs/appellees in this matter support the verdict of the trial jury, this Court holds in the affirmative. The evidence in this case shows that the plaintiffs/appellees were the two witnesses for plaintiffs (themselves). They testified to the effect that the property in question was willed to co-appellee Prince Barclay during his minority and that co-appellee Isaac Barclay was named as sole executor of said will, which was the last will and testament of the late Augusta Barclay, grandmother and mother of the plaintiffs. The records show that during the lifetime of the testatrix, she leased the property in question, located on 16th Street, Sinkor, Monrovia, containing two (2) lots, to Salami Brothers for a twenty (20) year period. Under said lease, Salam Brothers was to build a gas station or building/buildings on said premises. The records also show that Salami Brothers did build a building (two-storied) on said premises. The rent for the premises was Four Hundred Dollars ($400.00) per annum

for the first twenty years and Six Hundred Dollars ($600.00) per annum for the second twenty (20) year period. After the construction of the building, Salami Brothers left the country without contacting them (plaintiffs) and when they made inquiries from the tenants in the building, they found out it was the defendant in charge of the premises. After numerous contacts between the parties which ended into deadlock, the plaintiffs/appellees instituted this suit. Both plaintiffs/ appellees denied ever issuing the two (2) deeds which the defendant alleged in his deposition were given to him by the plaintiffs.

The defendant on the other hand, in person of A. W. Morgan, did not take the stand during the trial, but his deposition, taken in the magisterial court, was admitted into evidence by the trial judge over the objections of plaintiffs counsel. The other witnesses who testified for defendant admitted that they did not know about the transaction between defendant and plaintiffs. The trial court admitted into evidence the two deeds testified to by defendant during his deposition before the magisterial court.

The peculiar thing about the evidence in this case is that firstly the defendant stated that he came into possession of the property in question through an assignment of the leasehold rights of said property to him by the International Trust Company (ITC). Than next, that Salami Brothers had procured a loan from ITC in order to build the structure (building) that is on said land, but did not complete payment of the loan when they left the country. He (defendant) therefore managed to get the assignment of the leasehold and completed payment of the loans to the bank. This, he said, was how he initially got in possession of the property. In reviewing the file of the case, we have found no evidence to support this argument of the defendant. There is no documentary evidence or testimony of witness(es) to support his allegations except his lone testimony at the deposition before the magistrate. "*Mere allegations are not proof, and factual allegations pleaded must be proven at the trial*; for it is evidence alone which enables the court to decide with certainty the matter in dispute". "Where affirmative defense is set in an answer to plaintiff's claim, upon which issue is joined, the burden of proof is upon the defendant as to the affirmative defense". "The jury is the exclusive judge of the evidence and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence. Hence, where the jury has reached a conclusion, after having given consideration to the evidence which is sufficient to support a verdict, the same should not be disturbed by the court". [Emphasis supplied] *American Life Insurance Company, Inc. v. Holder et al.,* 29 LLR 143 (1981), Syl 4, 7 and 8.

Further study of one of the deeds offered into evidence by defendant's counsel, allegedly from co-appellee Prince Barclay to Sinkor Leasehold, shows a sum of Two Thousand Dollars ($2,000.00) as consideration for the sale of the property to the defendant. Assuming the sale was genuine, such a paltry amount for two (2) lots situated on 16th Street, in Sinkor, Monrovia, with twelve (12) apartments and a two (2) story building seems inequitable. If this Court condones such a transaction it would certainly be encouraging the practice of injustice emanating from unjust enrichment as in the case of the defendant in this matter.

Relative to the two (2) deeds in question, allegedly from co-appellee Isaac Barclay to co-appellee Prince Barclay to Sinkor Leasehold, same are *void ab initio*. The property in question being a testate estate which had not been closed and the assets of said estate distributed according to the will, it would be illegal to sell and distribute the assets of the estate without having petitioned the court for the closing of said estate and same being granted. Furthermore, the sale is also void as same was not sanctioned by the probate court in keeping with law. See Decedent Estate Law, Rev. Code 8:109.3; *Tetteh v. Stubblefied,* 15 LLR 3 (1962), Syl. 3; Rules 8 and 11 of the Rules Governing the Monthly & Probate Court. Also, the alleged deed from the executor (co-appellee Isaac Barclay to Prince Barclay should have been an "executor's deed" instead of a warranty deed, following the right procedures and authorized by court upon granting of the executor's petition to close said estate. Hence, the whole transaction is *void ab initio* for reasons stated *supra.*

We are therefore of the opinion that the trial below was regular, properly conducted, and the evidence cogent and therefore the judgment is hereby affirmed and confirmed with modification. We hold the lease agreement between Salami Brothers and Augusta Barclay expired in the year 1999. The Clerk of this Court is hereby ordered to send a mandate down to the court below ordering the judge presiding therein to resume jurisdiction and enforce this judgment. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.