

David Kpadeh Sloan of Paynesville Montserrado County APPELLANT VERSUSS The Administrators of the Intestate Estate of the Norbor Abdulai Parbai of Careysburg District, Montserrado County APPELLEE

APPEAL

Heard April 2, 2007 Decided May 11, 2007.

MR JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

The facts in this case show that a land dispute ensued between the Administrators of the intestate estate of one Norbor Abdulai Parbai appellees/plaintiffs and the administrator of the intestate estate of James Boley, the herein appellant. On September 2, 2005, His Honour J. Vinton Holder, Judge of the Monthly and Probate Court, ruled in said land dispute and granted title to one of the parties. It is to this ruling that the appellant herein, David Kpadeh Sloan, representing the intestate estate of the late James Boley, excepted; hence this appeal.

Culled from the records transmitted to us, there is showing that the Administrators of the intestate estate of the late Norbor Abdulai Parbai of Mount Barclay, Carezburg District, Montserrado County, appellees, filed two letters of complaint, dated November 18, 2004 and September 6, 2005, respectively, at the Monthly and Probate Court against the herein appellant, David Kpadeh Sloan of Paynesville.

In their complaints, the appellees alleged interference with their estate through illegal sale by the appellant. The appellees requested the Probate Court to put "complete ban" on all deeds brought before it for probate from such sales. On the subject complaints, the court's records have referred to issuance by the probate court of an "immediate stop order" under the gavel of his Honor William Metzger, dated May 25, 2005.

Review of the records also shows that earlier on, that is to say on the 17 th October, 2004, coappellee Blama Parbai had petitioned the Monthly and Probate Court praying for Letters, of Administration to administer the intestate estate of Norbor Adulai Parbai. Said petition was granted by the Probate Court on the 20 th

of the same month. However, we have also observed that the aforesaid Letters of Administration was neither approved nor registered by the Registrar of Archives for Montserrado County, in accordance with law.

Recourse to the case file further shows that based also on a petition filed by the appellant both a Letters of administration as well as Decree of sale was granted to said appellant, David Kpadeh Sloan, by the Probate Court on the same date, May 3, 2004. The Decree of sale authorized the appellant to sell 10 (ten) acres of land of the intestate estate of the late James M. Boley.

Also on the 10th of November, 2004, David Kpadeh Sloan, the herein appellant/administrator of the intestate estate of James M. Boley, also filed caveat against one Arthur Ford Cooper or any other person or persons related to them, either directly or indirectly, or any other different person or persons who may offer any purported probate instruments, covering any part or whole of the "intestate estate situated within the geographical locality of Fendell, Mount Barclay", Montserrado County. By this narration, this Court notes the huge confusion attendant to the administration of estate in this country.

But at this state, we go back to the letters of complaint referred to earlier. At the hearing of one of the complaints on May 12, 2005, plaintiffs/appellees claimed that they are the bonafide title holder of the subject premises by means of public land sale deed in favor of the late Norbor Abdulai Parbai. They also claimed to be holders of a valid Letters of Administration for the said intestate estate.

The plaintiffs/appellees also argued that the Letters of Administration granted to the defendant/appellant upon inspection was found to be was dated on May 3, 2004 and by operation of law had long expired [as granted by law for twelve (12) months]. In addition, the plaintiffs/appellees, requesting the Probate Court to ensure that the legitimate administrator/heirs be left quietly to manage the estate, also prayed court to summarily set aside the purported interest of the defendant/appellant who claimed his authority under an expired Letters of Administration.

Resisting the plaintiffs/appellee' s contentions, the defendant/appellant maintained that although in keeping with law, the duration of Letters of

Administration is 12 months, even so a request to close an estate is made either by the Administrator or those who have legitimate interest in the estate, and not stranger as the complainants/appellees in the instant case. The appellant further contended that the plaintiffs/appellees not having legal interest in the estate, therefore lack the relevant legal capacity to request the closure of the said estate. The appellant also argued that the appellees bore no blood relationship to the decease. The appellant therefore prayed the Probate Court to dismiss the complaint.

This Court has observed from the transmitted records as well as during arguments before us, that a hearing was had into appellees' complaint on May 12, 2005, before His Honor, William B. Metzger, then presiding in Probate, who thereafter reserved ruling. However, there is no evidence in the records to show that the succeeding Probate Judge, His Honor Vinton Holder, heard the complaint. Nonetheless, records available to this Court reveal that on September 2, 2005, the succeeding Probate/Judge rendered ruling into said complaint. Because this ruling is vital to the determination of this case, we quote verbatim the said ruling as follows:

"When this case was called for hearing, petitions contended that they are the legitimate owners of the subject property by virtue of a public land sale deed and a valid letters of Administration obtained from this court on the 28 th day of October, A.D. 2005 [and that the letters of Administration] relied upon by respondent, has long expired and therefore has no legal effect by operation or law.

"The respondent on the other hand, vehemently maintained that the petitioners have no legal standing to raise issue with respect to the respondent's letters of Administration as they are mere strangers and bore no relationship with the respondent."

"Both parties having proferted certified copies of their respective public land sale Deeds, this court is legally obliged to consider each. The petitioners submitted a certified copy of a public land sale Deed for 400 acres executed by the late President C.D.B. King in 1928, while the Respondents proferted a certified copy of

a public land sale deed of 504 acres of land situated and lying at Mount Barclay in favour of James N. Boley, lot No. NN, registered in volume 48, Pages 23-24."

"With respect to both certified copies of Petitioners and respondents, the Supreme Court held in 1974 in case: WILSON VS. DENNIS 3LLR, PAGE 263 that copies of deeds attested by an official herein, Acting Minister of Foreign Affairs will be given credence by this court in the absence of the original which cannot be found or are unavailable. The Supreme Court in McCAULEY VS. JAMES N. DOE 22LLR, Page 310, Syl 3, held that "MERE POSSESSION OF A DEED DOES NOT NECESSARILY ESTABLISH TITLE". Such possession must be factually alleged in a pleading to afford the adverse party an opportunity to contest the claim." "In this instant case, real opportunity has indeed been afforded either party to contest the claims of the adversary."

"[From] the history of the case suggests that the real issue to which this Court must now address itself concerns the ownership of the property in question. In that connection, the question that comes to the Court's mind is where two parties claim the same property with different deeds at different times, as in the case before us, what is the status of the claimants under the law. Emphasis supplied.

"The long history of legal controversy of this case does not disclose that the 1928 Deed was ever annulled or cancelled by its Grantor for any reason, and no evidence has been shown nor [was] the deed of 1930 ever cancelled.

"In normal circumstances, where two contesting deeds of conveyance exist[from the same grantor] and there is a dispute over their legal validity, [the older deed] the one issued first is superior. This is precisely the case before us concerning the 1928 and 1930 Deeds. Under the elementary principle of law governing deeds relating to real property, the latter deed must yield."

"This position was upheld by the Supreme Court in 1989 in the famous Vai Town Land case as found in 36 LLR, Page 255, Lartey et-al VS. Chief Murphey in which the RESPECTIVE RIGHTS FROM THE SAME SOURCE, THE PARTY SHOWING PRIOR DEED IS ENTITLED TO THE PROPERTY."

"In view of the foregoing, it is the opinion of this Court that the Petitioner having the older deed must prevail as they are legitimately entitled to the immediate possession of the property in question."

"WHEREFORE, AND IN VIEW OF THE FOREGOING, FACTS AND CIRCUMSTANCE, and in careful consideration of the relevant laws cited, the application of the petitioners being sound and legal, same is hereby granted and the Resistance thereto is hereby denied and dismissed. AND IT IS HEREBY SO ORDERED. "

It is from this ruling, appellant herein noted exceptions and has fled to the Supreme Court with a bill of exceptions containing 4 counts.

This Court has reviewed the appellant's bill of exceptions and determined that counts 2 (two), 3 (three) and four (4) are worthy of appellate consideration.

Appellant argued in count two (2) of his bill of exceptions saying: "That because even though the Deed, that is to say, the photocopies of appellees' deed submitted to Your Honor are conflicting in that one of the documents calls for one lot No. NN situated in Wolakon, Caresburg District, Montserrado County, while another part of the Deed is calling for 400 acres of land all of which facts are contradictory and are at variance to each other, Your Honor gave credence to the alleged genuineness as well as being an older deed than that of appellant as a result Your Honor ruled and granted the ownership of the disputed property to the Intestate Estate of late Norbor Abdulai Parbai and for which, among other reasons, appellant there and then, by and thru his counsel excepted to Your Judgment and announced an appeal which was granted by Your Honor."

Also in Count 3 (three) appellant has argued that" Because appellant says that even though Your Honor during the pendency of the case, ordered the parties to produce witnesses with respect to the ownership of the disputed property and those witnesses were produced by both parties your Honor conducted an investigation and ordered your clerk/typist to take notes of the testimonies of those witnesses which the clerk did but yet, the testimonies of appellant's witnesses as well as those of the appellees were never produced so as to enable the parties to attach such records to form parts of the records that are to be transmitted to the Honorable Supreme Court and instead of doing this, Your

Honor proceeded with the rendition of your judgment, to which judgment appellant by and thru his counsel excepted and announced an appeal to the Honorable Supreme Court during its October Term, A. D. 2005."

Finally in count 4 (four), the appellant arguing says: "Your Honor without revoking the LETTERS OF ADMINISTRATION of the intestate estate of James Boley represented by appellant which property the appellees were claiming on their so-called deed, Your Honor proceeded with rendition of judgment to which appellant excepted and announced an appeal to the Honorable Supreme Court of Liberia."

But in resistance to the appellant's arguments enumerated in the Bill of exceptions aforementioned, the appellees argued that appellant's Letters of Administration has expired, and therefore same was of no legal effect, as all letters of administration have 12-months duration, as a matter of law. Further, appellees maintained that the two photocopies of one deed proferted by the appellant in the court below were conflicting and contradictory, and not in agreement with plaintiff/appellant's complaint. The appellees strongly attacked the validity of the appellant's deed as proferted, contending that said deed could not have possibly been signed by President Edwin J. Barclay, in August 1930. The appellees counsel requested the court to take judicial notice of public historical fact, as in the instance, noting that Edwin J. Barclay actually became President of Liberia when he succeeded President Charles D.B. King who resigned on December 3, 1930 as recorded in 3 LLR PP337- 338 (1932).

We must note here that in support of their respective positions, counsels for both parties cited Chapter 3, section 111.1 of the new Decedent Estate Law including the probate procedure code." It is of interest to note that both relied on chapter III section 1 of the New Decedent and Estate Law (Liberian Codes Revised) pp. 642-643, providing:

111. 1SOrder of priority for grating letters of administration:

1. Standard sequence — Letters of administration must be granted to the persons who are distributors of an intestate and who are eligible and qualified in the following order:

a) *The surviving spouse*

b) *The children*

c) *The Grandchildren*

d) *The father or mother*

e) *The brothers or sisters*

f) *Any other persons who are distributees, preference, however being given to the person entitled to the largest share in the estate.*

In the mind of this Court, this case squarely presents one substantive issue. That issue is: Whether the Probate Court has authority to decide on issue of title?

To provide answer to this issue: Whether or not Probate Court has authority to decide on issue of title, we again revert to the records of the case.

Both in the bill of exceptions as well as during spirited argument before this Court, appellant's Counsel contended that the photocopies of the deeds presented in court by the appellees were inconsistent and contradictory and same not in harmony with Plaintiff/appellees' complaint. Therefore, Counsel argued that it was error on the part of the Probate Court Judge to have given credence to the validity of said deeds. Appellant relied on the case Page Versus Harland and King found in 1 LLR463, decided by this court in 1906.

In the cited case, the Plaintiff therein set up a claim to a specific lot which was distinctly described in the complain, but when the deed was offered as Prima-Facie evidence, in support of the plaintiffs claim, none of the boundaries and descriptions appeared.

Addressing said issue, the Supreme Court at the time opined that a disagreement in these very essential points rendered the deed irrelevant to the issue and at variance with the facts laid and pleaded in the declaration.

But in contrast, appellees' counsel have also strenuously Sargued and maintained that it was not possible for President Edwin J. Barclay to have signed appellant's deed in August 1930 when President C. D. B. King, the man he succeeded in office, remained President of the Republic of Liberia until December 3, 1930, at which time he (President King) resigned.

From the arguments contained in the bill of exceptions as well as the briefs filed by both Counsels, the Probate Judge was clearly tempted to consider title in this case. Further, said temptation appears to have been buttressed by what seems to be "extensive authority of the Probate Court" as outlined in some cases decided by the Supreme Court.

In the case KIAZOLU AND KIADII VS ASH — THOMPSON ET AL, this Court held that the probate Court has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person" 34LLR94, 99 (1986).

Notwithstanding, it must be clearly remembered that every court of competent jurisdiction is required to function within the strict parameters granted to it by law. As a matter of law, every court must always be guarded within the strict province of its authority. Against this backdrop, we shall now examine the authority and functions conferred to the Monthly and Probate Court by law.

Chapter Five, Section 2 of the Judiciary Law (LIBERIAN CODES REVISED, Vol. IV 1972) Provides:

" The Monthly and Probate Court of Montserrado County, the Provisional Monthly and Probate Courts and the Probate division of the circuit court shall have original jurisdiction of the following matters arising within their respective territorial jurisdiction: To probate wills affecting real and personal property;

(a) To grant letters testamentary and of administrators;

(b) To direct and control the conduct and settle the accounts of executors and administrators;

(c) To enforce payment of debts of testators and interests and of their legacies and inheritance and to direct distribution of their estate;

(d) To order the sale and distribution of real property;

(e) To cause the admeasurements of dower widows;

(f) To have general supervision and direction of the estate of deceased persons and of minors, mentally disabled persons and persons judicially declared as incompetent and of all affairs connecting to them;

(g) To appoint and remove guidance of property for minors, to direct and control their conduct and to settle their accounts;

(h) To hear and determine application for adoption of children;

(i) To hear and determine proceedings to legitimize illegitimate children;

(j) To probate deeds, mortgages and other instrument, documents and other papers necessary to be probated;

(k) Original jurisdiction (exclusive) of the Monthly and Probate Courts and the probate division of the Circuits

*As can be seen, nowhere in the statute is authority and function granted to the probate court to decide title. The Probate Court simply lacks this authority. Its decision in this regard is void as it is settled principle of law that "where there is want of jurisdiction any judgment rendered under such circumstances is a nullity."
Philip Vs. Nelson and Freeman 10LLR134, 143 (1949).*

Speaking for this Court on this same subject, Justice Tulay said "Jurisdiction to the cause may be raised at any time, and a court which renders judgment in a case over which the law has given no jurisdiction, acts ultra vires and its judgment is a nullity." Dwanyen et al. Vs. Insurance Company of Africa, Republic and Colac, 34LLR 354, 359 (1987).

The holding of this Court in the case Kiazolu and Kiadii Vs. Ash-Thompson et. al. indicating that "the probate court has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person" as herein mentioned, has restricted meaning both in construction and interpretation. Put simply it means that the Monthly and Probate Court jurisdiction over all real properties of the deceased so long as they present no contest over title. But where there is dispute as to title between and amongst parties, or controversy over will or related instrument on the basis of fraud, the Probate Court loses jurisdiction. Under such circumstances, the probate judge must transfer such contest, dispute and controversy over title to the circuit court for its competent determination thereof.

Our statute law, in outlining the original jurisdiction of the Circuit Courts, provides: "The Circuit Court shall exercise original jurisdiction, including jurisdiction in admiralty cases, over all cases as to which another court is not expressly given original jurisdiction by constitutional or statutory provision, provided that in Montserrado County the Court in the first Judicial shall have jurisdiction to try one criminal cases and the circuit in the six judicial circuit shall have exclusive jurisdiction over civil matters directly or indirectly. JUDICIARY LAW Chapter III (Three) Section 2 (Two) Liberian Codes Revised 1972, Text at page 67.

In addition, the Supreme Court has also explained the procedure to be followed in dealing with disputes or contest over will. Speaking on this issue, the Supreme Court indicated that "In all cases of contested wills, the objections and all other issues of whatever nature should, under the statute, be sent to the Court of Quarter sessions (now Circuit Court) to be tried by a jury upon its merit and by it rejected, set aside, quashed, or approved." [Emphasis supplied] Kromah ' [Emphasis supplied] Kromah Vs. Pearson et. Al, 33 LLR 42, 45 (1985).

It therefore follows, that if a Probate Judge proceeded other than laid down by statute, as the Probate Judge did in the instant case, his action is ultra vires.

This court therefore holds, that in the absence of legal authority, the Monthly and Probate Court Judge committed reversible error when the Presiding Judge sought to pass on issues of title and awarded ownership or "better title" to the disputed property to one of the contestants in the case at bar.

In summary, having carefully inspected and reviewed the rather disorganized records brought before us in this case, and also having observed the irregularities in the trial in the court below, it is our unanimous opinion that the judgment of the monthly and Probate Court granting title, be and same is hereby reversed and the case remanded with specific instructions:

1. That said title dispute be transferred to the Civil Law Court, Sixth Judicial Circuit of Montserrado County for its competent determination of title between the contestant parties;

2. That following said determination by the Civil Law , Court, the judgment therefrom shall form the basis of Probate Court resuming jurisdiction and deciding the cause of interference. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.