

**William R. Tolbert, III, CHRISTINE Tolbert Norman, Wokie Tobman, et al.**, surviving heirs of the late William R. Tolbert, Jr., former President of the Republic of Liberia APPELLANT VERSUS **Joseph J. Tolbert, Maria Tolbert Jones and Blama Tolbert** Surviving heirs of the late William R. Tolbert, Jr. of the City Bensonville of Monrovia, Liberia APPELLEES

APPELLANT'S APPEAL. JUDGMENT REVERSED.

Heard: November 4, 2008 Decided: January 29, 2009

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

On March 16, 2007, Mrs. Wokie Tolbert-Tubman, one of the surviving daughters of the assassinated president, Dr. William R. Tolbert, Jr., offered into probate a document purporting to be the will of the late President. Attached to the Petition were two documents: (a) an Affidavit sworn to by the said Wokie Tolbert-Tubman before a notary public of the state of New York and (b) another document entitled Affirmation, executed by Gary Greenberg, an Attorney admitted to practice in the Courts of the same State with offices at 666 Fifth Avenue, New York, NY10103, USA.

The following are the two documents:

#### AFFIDAVIT

"State of New York County of Rockland Before the undersigned, an officer duly commissioned by the laws of New York, on this 21<sup>st</sup> day of February, 2007, personally appeared Mrs. Wokie Tubman, who having been first duly sworn depose and say that:

On April 12, 1980, my father, the President of Liberia, Dr. William R. Tolbert, Jr., was assassinated. In time, his widow moved to the United States where sometime later the family retained the services of Orans, Elsen & Lupert, LLP, a New York Law firm. Specifically we, worked with Sheldon Elsen and Gary Greenberg, partners of that firm.

In 1970, my father, Dr. William R. Tolbert, Jr., (then Vice=President of Liberia), handed me an envelope in which was what he said was his Last Will and Testament and instructed me to secure it in a Bank of Monrovia safe deposit box. I acted in keeping with my late father's instructions.

In 1980, a power of attorney was prepared by the aforementioned law firm on behalf of my mother, Mrs, Victoria A. Tolbert, which was signed by her, directing

that I act on her behalf to retrieve the Will from the bank of Monrovia state deposit box.

I went to Monrovia and retrieved the envelope from the Bank of Monrovia. Please find attached the envelope with the Will Bank of Monrovia receipt #1540 dated June 30, 1970.

I brought the envelope to the United States and delivered it to my mother, my father's widow. She, along with two of my siblings, Mrs. Evelyn Tolbert-Richardson and Rev. William R. Tolbert, III, and I, brought the envelope to the law firm of Orans, Elsen & Lupert, where it was opened in the presence of one of the lawyers of that firm.

Due to the political situation in Liberia in the aftermath of the April 1980 coup d'etat, it was not practicable to present my father's Will in the Courts of Liberia. Hence, we left it in safe keeping with our lawyers Orans, Elsen & Lupert LLP who preserved it in their safe until now.

Witness:

Sworn and subscribed before me this 21 st day of February, A. D. 2007

Mrs. Wokie Tubman

Notary Public

SALMAN BABIDAR

Notary public, state of New York

No. 01da6076539

Qualified in Rock Land County

Commission Expires June 24,2010"

Affirmation "GARY GREENBERG, an attorney admitted to practice in the Courts of the State of New York, affirms under penalties of perjury that:

1. I am an attorney with office at 666 Fifth Avenue, New York, NY 10103..
2. In 1980, I was a member of the firm of Orans, Elsen & Lupert ("OEL"). The Tolbert family was a client of OEL.
3. On February 9, 1989, I prepared a power of attorney that was executed by Victoria Tolbert and Wokie Tubman. I witnessed and notarized the signatures of Victoria Tolbert and Wokie Tubman. To the best of my knowledge, Mrs. Tubman traveled to Liberia with the power of attorney and used it to obtain a document which she described as the Last Will and Testament of Dr. William R. Tolbert, Jr. (the "will").
4. Sometime later in 1989, Mrs. Tolbert returned to the offices of OEL with a sealed envelope. The envelope was opened in my presence and contained the Will. The envelope and Will were then placed in OEL's safe.

5. I left OEL in 2002. I do not know of my own personal knowledge what happened to the Will after I left, but I am informed by OEL that the envelope and Will were removed from the OEL safe in the latter part of 2006 and given to Mrs. Tubman  
Gary Greenberg"

When the Will was read and published, objections were filed against its admission into probate on several grounds along with a Motion to deny and dismiss the petition based on the Statute of Limitation, the said purported will having been presented 27 years after the demise of the alleged testator. The Trial Judge ruled to dispose of the Motion first pursuant to law. After hearing arguments pro and con, the Probate Judge of Montserrado County before whom the processes were venued; handed down an exhaustive and also inclusive ruling in which he decided even the factual issues raised in the main suit, and in his conclusion dismissed the petition on grounds that probation of the will was time barred. Being dissatisfied with the Trial Judge's conclusions of law, Petitioners/Respondents fled to this appellate forum for a review of the ruling submitting a Fourteen Count Bill of Exceptions. Of the Fourteen counts, we shall base the determination of this Motion to Dismiss on Counts Two, Six, Seven and Eight of the Bill of Exceptions.

Count 2. Your honor also erred when you ignored and refused to take judicial notice of the Historical Fact of the April 12, 1980 Coup d'etat which took place in Liberia that led to the unfortunate death of the deceased, the late William R. Tolbert, Jr., his son, A. Benedict Tolbert, members of his cabinet, the confiscation of their properties and those of other relatives and officials of the Tolbert's government, as well as the subsequent flight of the petitioners from the bailiwick of the Republic to seek refuge elsewhere, which issue were squarely raised in Petitioners' Resistance and subsequently argued before Your Honor.

Count 6. Your Honor also erred when in traversing the issue of political upheaval, war and extenuating circumstances that made it difficult to have presented the Will within statutory time, you concluded that because Petitioner Wokie Tubman retrieved the said Will in 1989 and subsequently joined in the petition to obtain Letters of Administration in 1997, nothing actually prevented her from presenting the Will to probate in the same 1997 when Your Honor are aware that the series of wars and carnage in Liberia including the Rebel LURD devastating war of 2003 did not end in 1997, the historical fact of which Your Honor also ignored and failed to take judicial notice thereof.

Count 7. Further to the same issue Your Honor also erred when you invoked Section 2.2 of 1LCLR 28 EFFECT OF FAILURE TO COMMENCE ACTION WITHIN TIME LIMITED and therefore ruled that although the present government was inaugurated on January 16, 2006, yet the Will was presented more than one year after. Your Honor did not consider the fact that the petitioners were out of the bailiwick of the country and therefore said Section 2.2 is not applicable against them, given Section 2.70(1 and 2) of 1LCLR43, ABSENCE FROM THE

REPUBLIC. 2.70(1) which provides that..."If when a claim for relief accrues against a person he is absent from the Republic, the time within which the action must commence shall be computed from the time he comes into or returns to the Republic," while the same section, subsection 2 provides that,... "If absence from the Republic up to one year is not part of the time within which action must be commenced." In other words by calendar practice, considering the time Mrs. Wokie Tubman arrived in Liberia and the time she subsequently submitted the Will to probate could be less than six months. Had your Honor had a hearing you would have been in proper position to know the actual time of her arrival in Liberia following the inauguration. Again Your Honor did commit reversible error, fit subject to be overturned.

Count 8. Your Honor also erred when you failed to take into account, of the facts and circumstances of the political upheaval that persisted in the country since 1980 and the horror that followed especially against petitioners and their families, that subjected them to Disabilities within the meaning of Section 2.65 of 1LCLR 41 which provides that... "If a person in whom a right to relief accrues is under multiple disabilities when or after such rights accrue, the time otherwise limited for commencing an action on such right shall be extended until all disabilities cease or until the expiration of the longest extension available to him under any disabilities from which he suffers..."

Starting with Count Two of the Bill of Exceptions, we are in agreement with Counsel for Respondents, that Courts are duty bound to take judicial notice of historical facts. The April 12, 1980 Coup de'tat that resulted in the assassination of President William R. Tolbert, Jr., is a historical fact that cannot be brushed aside or ignored in the instant case. It is a historical fact that requires no further probe, that after the assassination and overthrow of the government, the Cabinet Ministers, some former government officials, as well as the heads of the other branches of the government were executed and that subsequent to these executions, the late President's son was also secretly executed; that the President's widow, children, and other relations were either imprisoned or placed under house arrest, some for nearly a year or longer. It is a part of our history that the properties of the late president were seized subject to confiscation; that when the Tolberts were finally allowed to leave the country, they left Liberia and sought asylum in other countries. It is also a known fact that the military regime that killed the president and overthrew his government exercised political power over Liberia for five years and that at the expiration of those years of military rule, the Head of State, Samuel K. Doe, ran for the presidency and was declared president of Liberia. These are facts that no judge of Liberia should shy away from taking notice of especially when called upon to do so in the proper setting such as in this contested Will case.

We shall now see how the effect of the above stated historical facts impact this contested Will case. The rule of court governing the presentation of a will states that 30 days after the death of a testator, his will should be presented in Court. See Rule 16, Rules for the Governance of the Monthly and Probate Court Rules

for Procedure in the Court, page 50. The objectors argued, applying that rule to this case, that the Petitioners failed to conform to Rule 16, meaning that the surviving executrix, Mrs. Victoria A. Tolbert, should have presented her husband's will to the Probate Court of Montserrado County on or before May 12, 1980. But could she? The answer is no, because during that period she was not only under house arrest, the property in question had been declared seized by the military government. There was therefore a tangible excuse for non-compliance with the rule. The failure to comply with the rule was no fault of the Petitioner or any member of the Tolbert family. The failure to comply was a result of uncontrollable and unforeseeable circumstances. Movant also cited the statute as found under our Civil Procedure Law, 1LCL Rev. Section 2.13.3 to establish a Will:

"To establish a Will. An action to establish a Will shall be commenced within one year after the death of the testator; provided, however, that when a Will has been lost, concealed, or destroyed, the time within which an action shall be commenced to establish such Will shall be computed from the time that the Plaintiff or his predecessor in interest discovered the loss, concealment, or destruction or could with reasonable diligence have discovered it."

We know that from April 12, 1980 to April 12, 1981, the one year period allowed by statute within which to establish a Will, no member of the Tolbert family, even if by then out of jail or from under house arrest and yet in Liberia, would have ventured to establish the deceased president's will because the Tolbert properties were under the control of the military government and the Tolberts themselves were, if not in jail, or dead, under the careful watch of the military regime. Because of these uncontrollable circumstances the Tolberts missed the timeframe within which to establish the will. For these uncontrollable circumstances, the Probate Judge reasoned that the Statute started to run only after the purported will was retrieved in 1989 from the safe depository at the Bank of Monrovia. The judge therefore did not ignore the historical facts leading from the assassination of the testator up to the time of the discovery of the will in 1989, as was claimed in the Bill of Exceptions. Unlike the Judge, however, counsel for objectors in his Motion ignored those facts and moved for dismissal of the Petition for failure of the Tolberts to have complied with the provision of law.

In count 6 of the Bill of Exceptions, respondents said that the Probate Judge failed to consider the political upheaval, the series of wars and other extenuating circumstances that made it difficult for the Petitioners to have established the will pursuant to that portion of the Statute dealing with the one year period within which to establish a will after it has been discovered, that is from 1989 to 1990.

We know from historical facts that on December 24, 1989 the year the Will was retrieved, Charles Taylor declared war on Liberia. There again it is clear that some uncontrollable occurrences made it impossible for the Petitioner to have offered the Will before the end of that other one year Statutory period. Additionally, even if there had not been a declaration and engagement in war, establishing the Will

would not have been a prudent undertaking; Doe was yet alive and the Tolbert properties were under siege. Also in 1990, Liberians were leaving their country in large numbers to seek refuge elsewhere because of the war. It would have been very risky, even after the death of President Doe, on September 9, 1990 for the Tolbert family to be the ones coming; while others were leaving Liberia, to offer a will for probate in order to meet the deadline. So there again another statutory period lapsed with the alleged Will tucked away in the lawyer's safe in New York City instead of in the files of the Probate Court of Montserrado County.

The Judge, however, seemed to have ignored the year 1990 in Liberian history. But strangely, even though he seemed to have ignored the historical fact of war in the year 1990, the Judge concluded that the Petitioner was in Liberia in 1997 and participated in a petition to administer the testator's estate as an intestate estate. At that time she could have offered the will into probate and why did she not? For the Judge to have reasoned in this manner seems to us to be an acknowledgement of the Respondents' contention that the prevailing warring circumstances in the 1990s were stumbling blocks to establishing the will in 1990 when the right to establish the will accrued through its discovery. But to also say that the Respondent could have offered the will into probate in 1997 raises yet another question which is whether there was any provision of law in support of that proposition in view of the earlier argument that the statute ran out one year after the will was retrieved. In our opinion, both the objectors and Probate Judge did concede the Respondents' argument that when the will was retrieved in 1989 and taken to Mrs. Victoria A. Tolbert, widow of the testator who was then residing in the USA and President Doe was still alive and in power and in addition, series of wars broke out from 1990 up to 1997, Mrs. Tolbert, the only surviving executrix, could not have returned to Liberia to establish the will. Based on that seeming concession, the Movant argued and the Judge ruled that because the Petitioner participated in a petition to administer the late President's estate as an intestate estate, all impediments had been removed: President Doe had been killed, and peace had returned to Liberia, the Petitioner could have established the will then. By parity of that reasoning and conclusion, the Judge was setting yet another deadline for the establishment of the will, which was within one year after her return to Liberia in 1997. Had all obstacles been removed because one member of the Tolbert family came to Liberia in 1997? We do not think so.

We say, just in passing that the fact that Letters of Administration were issued at various times to various persons and a large corporation was formed comprising the estate of the late President, in which both the Objectors and Respondents participated which issues the Probate Judge delved into at length, those activities and undertakings are not sufficient to defeat or offset the testator's will if said Will is proved to be valid. The admission into probate of a valid will revokes all previous Letters of Administration. This dictum is in passing only because the fact that the estate had been treated as an intestate estate and a corporation had been formed, have no bearing on the issue at bar which is the Statute of Limitation as a bar, to establishing the will. We hold that no activities or decisions or agreements entered into with respect to the properties of a deceased person

including the estate of the late president whether by the Court or his or her next of kin can supercede the decision of the deceased as to how his/her earthly possessions should be disposed of under a Will.

We shall now revert to the point made that the Petitioner knew of the existence of the will and yet participated in a petition for Letters of Administration in 1988 and 1996 instead of establishing the will, meaning she concealed the existence of the will from the objectors. This contention is found in count 6 of the Motion to Dismiss. According to the controlling statute, concealment of a will is not a bar to its subsequent admission to probate when the concealment is unveiled. Concealment of a will is in fact one of the exceptions to an application of the general rule as found in 1 LCLR section 2.13.3 quoted earlier. So if the Petitioner, and her mother Mrs. Victoria Tolbert and others knew of the existence of the Will, but concealed it, not only from others interested, but also from the Probate Court, custodian and proper authority of decedent estates, and then the said concealed document is subsequently brought forward to be established, the Probate Court should take cognizance of the law in such cases made and provided. The rationale for this provision is that other beneficiaries who were unaware of the concealment or the existence of the Will should not be denied their rights to whatever properties were devised to them under the Will. Further, to deny admitting a valid will on the ground that it had been concealed for years is to deny the testator his or her right to dispose of his or her property according to his or her wishes. From the circumstances of this case, we believe that the concealment in this case was intended to protect the estate, not from the distributees necessarily, but from being identified by the government that had declared it seized for confiscation. The year 1997, the year Charles Taylor became President was not a time of the kind of peace one would have written home about. It was a time of fear and pending eruption or return to war. Liberians in exile in foreign parts were not sure whether returning to Liberia to stay would be a good and safe idea, and especially for the Tolberts. So the fact that the Petitioner was named in a Petition to administer the estate as an intestate estate was not an indication in our opinion of her mother's or her own decision to return home permanently; that all was now well and that therefore she should have presented the Will at that time. So because of doubts about the political conditions the Will was still kept in a safe in the United States. Two years later, regrettably the would-be proponent/executrix, Mrs. Victoria Tolbert, passed away, a historical fact. We know also that the Charles Taylor ascendancy to the Presidency and the discontentment that followed erupted into serious unsafe conditions in Liberia. Two warring factions came into being, LURD and MODEL, leading to some more deaths, loss of properties, and displacement of people. These unsafe conditions prevented not only the Tolbert family from rushing home but most Liberians in exile abroad as well. The fears kept them away were legitimate and therefore excusable, and we so hold.

The Probate Court has a solemn and legal duty to always allow the wishes of the testator to be paramount. The Probate Court must never lend aid to those who, for their own personal gains or reasons, seek to defeat a will or the intent of the testator. Objections to admission of a will to probate must be viewed with

guarded caution so that the intent of the testator becomes the overriding factor and not the wishes of the beneficiaries or anyone opposed to it. For this reason, the framers of the statute made concealment of a will one of the exceptions to the general application of the Statute of Limitations provisions in the admission of a will to probate. We, hold therefore, that whether it was Mrs. Victoria A. Tolbert, the last surviving executrix of President Tolbert's alleged will, or her daughter Wokie Tolbert-Tubman or even all the Tolbert heirs who might have known of the existence of the alleged will, but concealed it from others and from the law, that concealment, now revealed, should operate in favor of the testator who had every right to dispose of his properties in the manner he chose and those other beneficiaries under the Will who were unaware of the Will. By provision of that exception to the law, the statute therefore again began to run after the concealment ceased, that is when Mrs. Wokie Tolbert-Tubman retrieved the alleged Will in 2006 from the law firm in New York where the late widow of the testator had deposited it and presented it to the Probate Court in Montserrado County, Republic of Liberia in March of 2007.

Further to Count Six of the Bill of Exceptions, we believe that the series of wars that followed the Taylor declaration of war in 1990 leading to the exodus of hundreds of thousands of Liberians from Liberia also extended the Tolbert's period in exile contributing substantially to the delay in presenting the alleged document for probate. Their contentions also find support under some other statutory provisions under our Civil Procedure Code. These are found in 1LCLR. Section 2.70 (1) & (2) entitled Absence from the bailiwick of the Country found at p.110 also Section 2.65 entitled multiple disabilities p.108.

Section 2.70 states:

"(1) Defendant's absence or concealment. If when a claim for relief accrues against a person he is absent from the Republic, the time within which the action must be commenced shall be computed from the time he comes into or returns to the Republic. If, after a claim for relief has accrued against a person, he departs from the Republic and remains continuously absent therefrom for four months or more, if he conceals himself within the Republic for the purpose of avoiding service of process, the time of such absence from the Republic or concealment is not a part of the time within which action must be commenced."

"(2) Plaintiff's absence. If when a claim for relief accrues in favor of a person he is absent from the Republic, the time of his absence from the Republic up to one year is not a part of the time within which the action must be commenced. If after a claim has accrued in favor of a person, he departs from the Republic and remains continuously absent therefrom for four months or more, the time of his absence from the Republic up to one year is not a part of the time within which action must be commenced."

Section 2.65 states:

"If a person in whom a right to relief accrues is under multiple disabilities when or after such right accrues, the time otherwise limited for commencing an action on such right shall be extended until all disabilities cease or until the expiration of the longest extension available to him under any disability from which he suffers; but the extensions to which he is entitled shall run concurrently and not consecutively."

Under these two provisions which also are exceptions to the Statute of Limitations rule with respect to when to bring an action when the right accrues to a Plaintiff, we are of the opinion that Petitioners/Respondent's contentions are good and truthful excusable reasons for their failure to conform to the rules. The then widow, now deceased, Mrs. Victoria A. Tolbert, who had retrieved the Will and saved it, was in exile in the United States and so was Mrs. Wokie Tubman and the others. So although the right to the cause of action to present the Will accrued after the discovery of the Will, the would-be-proponent, Mrs. Tolbert who sent for the brown envelop was residing abroad. Toward the end of the year 1989 war broke out in Liberia. From that time forward Liberia became, and was declared one of the most unsafe places on the face of the earth. Up to the time of Mrs. Tolbert's death, and even after, Liberia was still considered an unsafe place. Mrs. Wokie Tolbert-Tubman who proffered the Will came to Liberia during the seating of President Ellen Johnson-Sirleaf in 2006 as per the records and presented the Will in March 2007. It means that in her calculation or assessment of the Liberian situation, like that of many Liberians living in exile, it was now safe for her to return to Liberia and present her late father's Will in Court for probate. Her return to Liberia to offer the Will into probate was the end of the longest final disability. There was no more war or threats of war and fear, civil rule had been established and a return to constitutional government. President Doe was no more a threat to the Tolberts, Charles Taylor's dominion and the sporadic episodes of war that created fear in the Liberian people had ceased to be. The presence of the United Nations Peace Keepers provided added assurance for security and safety. The surviving Tolberts decided to return and have their late father's Will presented for probate after 27 years of his assassination. We are in agreement with the Petitioners/Respondents that these conditions that affected them particularly and the subsequent political and prevailing wars that affected all Liberians generally were significant, good and sufficient excusable circumstances that prevented the admission into probate of the alleged last Will and testament of the late president. We hold that the general rule of the Statute of Limitations ought not to therefore be invoked in this case, only the exceptions thereto; that this cause of action, which is the proffering into probate of the alleged Will of the late President is not time barred because of those exceptions to the rule. The judgment of the Probate Court Judge sustaining the Motion to Dismiss on the basis of the general application of the rule of the Statute of Limitations is therefore reversed.

The Clerk of this Court is ordered to instruct the Judge of the Probate Court to resume jurisdiction and proceed to have the alleged Will proved according to the probate procedure provided for proving of Wills. AND IT IS HEREBY SO

ORDERED.  
JUDGMENT REVERSED

*Counsellor Roband F. Dahn of appeared for the Appellees. Counsellor F. Musah Dean, Jr. and Necular Y. Edwards of appeared for the Appellant.*