IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2015

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH..... ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, III..... ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... ASSOCIATE JUSTICE

Mustapha Fadallah, of the City of Monrovia of Monrovia, Liberia.....Co-Respondent/APPELLANT	
VERSUS	APPEAL
Priscilla Gibson-Flomo, Co-Administratrix of the Intestate Estate of the late Velma Gibson-Ajavon, also of the City of Monrovia, Liberia .... APPELLEE	
GROWING OUT OF THE CASE:	
Priscilla Gibson-Flomo, Co-Administratrix of the Intestate Estate of the late Velma Gibson-Ajavon, also of the City of Monrovia, Liberia .... INFORMANT	BILL OF INFORMATION
VERSUS	
Ms. Roselyn Swaray, Co- Administratrix of the Intestate Estate of the late Velma Gibson-Ajavon, also of the City of Monrovia, Liberia ..... RESPONDENT	

Heard: April 8, 2015. Decided: July 20, 2015.

B. Mulbah Togbah of Cooper & Togbah Law Office appeared for the appellant. *Laveli Koboi Johnson* of Century Law Offices firm appeared for the appellee.

The instant case presents another classic example of the display by the Judge of the Monthly and Probate Court, His Honour J. Vinton Holder, of a callous and defiant disregard for the law or a masterful demonstration and exposure of an utter lack of knowledge of the law; and it troubles the Court that it has the onerous task of acknowledging, in narrating the occurrences in this case, the exhibition of a clearly acute and dangerous malfunctioning of one of the nation's most important courts, the Monthly and Probate Court for Montserrado County. All of the parties herein seem to be succinctly of the same mind that the acts carried out by the present Probate Court Judge, subsequent

to the initial issuance of letters of administration to two of the heirs of the late Velma Gibson-Ajavon to administer her Intestate Estate, are prime factors responsible for and form the basis for the commencement of the instant proceedings. For the purpose of highlighting and revealing the clearly disreputable errors committed by the Probate Judge and the analysis of the actions taken by him, we deem it appropriate to recant the chronology of events as they unfolded in the case.

The records in this case reveal that following the death of the late Velma Gibson-Ajavon in 1982, upon petition made to the Monthly and Probate Court for Montserrado County, and the satisfaction of the then Probate Judge, Her Honour Gladys K. Johnson, letters of administration were ordered issued, and were issued appointing Priscilla Gibson-Flomo and Roselyn Swaray, the respective informant and respondent in these proceedings, as co-administratrixes of the Intestate Estate of the decedent, Velma Gibson-Ajavon. The records further reveal that the two co-administratrixes co-managed, in relative peace and harmony, the properties owned by the Intestate Estate up to the departure of Roselyn Swaray for the United States of America. Upon her return to Liberia in 2012, a period of 26 years after her departure from Liberia, Roselyn Swaray petitioned and obtained from the Monthly and Probate Court for Montserrado County, presided over by His Honour J. Vinton Holder, extended letters of administration to administer, as the sole administratrix, the Intestate Estate over which she and her sister had previously been granted letters of administration.

The records do not reveal that the Probate Court Judge, in granting the "extended letters of administration" to Roselyn Swaray took recourse to the records which were supposed to have been in the files of the court, and therefore in the possession of the court. Had that required investigation been undertaken by the Probate Court Judge, it would have easily seen that Roselyn Swaray and Priscilla Gibson-Flomo were originally appointed administratrixes of the Intestate Estate of the late Velma Gibson-Ajavon; that the original letters of administration had expired by operation of law; that where the letters of administration had expired by operation of law, the proper course was not a petition for extended letters of administration but a petition for new letters of administration; that assuming the previous letters of administration had not

expired, that there was need to summons Priscilla Gibson-Flomo as any granting by the court of the request of Rosalyn Swaray would have the effect of divesting Priscilla Gibson-Flomo of any right to co-administer the Intestate Estate; and, that in any event, an investigation was warranted so that the court could determine how the Intestate Estate had been administered, by whom it was being administered prior to the filing of the petition for the extended letters of administration, and what was the status of the previous letters of administration issued to Roselyn Swaray and Priscilla Gibson-Flomo. It seems clear to this Court, and this conclusion is supported by the records, that the Probate Court Judge never reviewed the files of the Velma Gibson Ajavon Intestate Estate before determining on the granting of the extended letters of administrations prayed for by Roselyn Swaray; that he never held a hearing on the petition although the purported extended letters of administration falsely asserts that a hearing was had; that he never inquired into the status of the Estate or the letters of administration issued by his predecessor; and that he never made inquiries into the allegations set forth in the petition as would have provided a basis for determining whether to grant or deny the petition.

This was the first serious judgmental error made by the Judge, demonstrating either a vivid exhibition of incompetence or a flagrant disregard for the law. In proceeding to grant the extended letters of administration, as prayed for by Roselyn Swaray, the Judge had clearly abused his authority and exposed the Judiciary to ridicule. We believe that the Judge was under a legal obligation to honor the dictates and requirements of the law and thus to have conducted a hearing into the petition, if for no other reason than the edification of the court and the giving of a semblance, however infinitesimal, of compliance with the law, prior to granting the petition of Roselyn Swaray and issuing, as per her request, extended letters of administration to her alone authorizing her to administer the Intestate Estate of Velma Gibson-Ajavon. To the contrary, the records indicate that there was no such undertaking by the Judge prior to granting the extended letters of administration.

Roselyn Swaray, believing that with the extended letter of administration to administer the Intestate Estate of the late Velma Gibson-Ajavon she was thereby empowered with all of the rights and powers appertaining to the said extended letters of administration, and acting as the sole administratrix of the

Intestate Estate, proceeded to lease to the appellant, Mustapha Fadallah, a parcel of land belonging to the Estate, located on Benson Street, Monrovia, whereon contained a building, for a period of 20 years, with an optional period of an additional 10 years.

The informant/appellee, Priscilla Gibson-Flomo, upon learning of what the Probate Court Judge had done in granting extended letters of administration to her sister, Roselyn Swaray, to solely administer the Intestate Estate of their late mother, and that Roselyn Swaray had concluded a lease agreement with the appellant, wrote a letter to Roselyn Swaray demanding that the lease be cancelled. In the letter, Priscilla Gibson-Flomo asserted that the lease agreement was unlawful since she, as co-administratrix of the intestate estate, was not made a party thereto, as she was entitled to be under the law. Roselyn Swaray, having failed to honour the cancellation demand made by her sister, Priscilla Gibson-Flomo proceeded to the Monthly and Probate Court, by way of a bill of information, praying the court to cancel the extended letters of administration issued in favor of Roselyn Swaray and to void the lease agreement which Roselyn Swaray had entered into with the appellant. The bill of information read as follows:

> "AND NOW COMES INFORMANT, Mrs. Priscilla Ajavon-Flomo, co-administratrix of the Intestate Estate of the late Velma Gibson-Ajavon, praying your Honor and this Honorable Court to set aside, make void to all intents and purposes, and vacate a purported Lease Agreement made and entered into by and between the Intestate Estate of the late Velma Gibson-Ajavon, represented solely by Ms. Roselyn Swaray as (LESSOR) and Mustapha Taher Fadallah as (LESSEE) and showeth cause as follow to wit:
>
> 1. That, informant says that she is co-administratrix of the aforementioned Estate with the respondent who without any legal authority has single handedly seized, leased and committed the said Estate for more than twenty years (20) without the approbation of Your Honor and this Honorable Court, neither did she seek and obtain our consent, thereby breaching the order of this court. Attached hereto and mark "I/1 IN Bulk" are photocopies of the purported lease agreement and relevant document to substantiate Informant's standing as co-administratrix for the aforesaid estate and a letter addressed to respondent to cancel the purported illegal lease agreement to form cogent part of this bill of information.
> 2. That informant begs leave of court and to inform Your Honor that upon hearing of the illegal act committed by the respondent in these proceedings, your humble Informant, wrote the within named respondent, demanding her to cancel the purported lease because under our Law, her action was illegal and to be more specific, the estate which is subject of this litigation cannot be opened perpetually, thereby disobeying all the instructions issued in the letters of administration issued to the administratrixes.

3. That Informant says that because no action has been taken by respondent to correct her wrong, which is disobeying the orders of this court and Your Honor, bill of information is the proper and legal form of action; and so prays.

4. That informant also says that in the event that the said respondent may have received any rental amount in advance, from any would be lessee, this court and Your Honor must make her to refund such rental amount and have the purported lease agreement set aside, ignored and made void for lack of legality; and so prays.

WHEREFORE AND IN VIEW OF THE FORGOING, informant most respectfully prays that Your Honor grants her bill of information as follow:

1. That Your Honor will nullify the action of respondent, and thereafter set aside the purported lease agreement, making the same void based on its illegality.
2. That Your Honor will cause the respondent to pay with immediate effect for the sake of equity, all rental amounts received from the illegal transactions against the Estate purporting to be a leasehold arrangement.
3. That Your Honor will grant unto informant all and any such relief that the end of justice shall demand; and also rule the cost of these proceedings against the respondent; and so prays.

Although the records in the case indicate that the informant's bill of information was filed with the Probate Court on November 27, 2012, there is no evidence in the case file indicating that Roselyn Swaray, the therein named respondent, was ever served with precepts or otherwise notified of the filing of the bill of information. In fact, our thorough review of the case files, both the certified copy that was submitted to the Supreme Court and which formed the basis for the review of the case, and the original that remained with the lower, reveal that no order was issued by the Probate Court Judge, or instructions given, oral or otherwise, directing the clerk of court of court to issue summons against the named respondent or any other persons not named in the caption of the bill of information filed with the court, as we believe was warranted or required under the circumstances of the case, the content of the bill of information and the prayer contained in the bill of information. This accounts also for why the case file does not show that any summons was ever issued. This may explain further why Roselyn Swaray did not file returns to the bill of information. Additionally, the foregoing deficiencies in the process and the procedure pursued by the court also accounts for why Roselyn Swaray, the respondent against whom the bill of information was filed, was never brought under the jurisdiction of the court.

Strangely, however, on January 18, 2013, seven weeks after the bill of information was filed with the Probate Court, the appellant herein, who was not named as a co-respondent in the bill of information, filed returns to the bill of information. The appellant, in his returns, explained the reason for the lapse in time and how he became a party to the proceedings. We deem the returns sufficiently important to quote the same, which we do herein below:

"Co-respondent Fadallah acknowledges the service upon him of an illegal writ of summons, along with copy of a bill of information to which he is not named as a party informant nor respondent, and submits herewith his returns as follows, to wit:

1. Co-respondent Fadallah submits that the writ of summons which was served on him on the 9th day of January, 2013, predicated upon a fraudulent bill of information which was filed on the 27th day of November, 2012, quite one month eleven days after the purported bill of information was against one Ms. Roselyn Swaray in which he is neither named as party informant nor party respondent, and which summons erroneously fails to name or include the proper respondent, "Ms. Roselyn Swaray", against whom informant filed her purported bill of information should be dismissed for willful violation of the statute which provides that the clerk of court shall forthwith issue the writ of summons upon the filing of a pleading.
2. And co-respondent Fadallah further says that the willful failure of the assistant clerk of court to have issued the writ of summons on the party respondent named by informant in her purported bill of information, and choosing to summon a stranger whom the bill of information did not name as a party, renders said bill of information dismissible, as the clerk of court lacks authority to choose parties to an action. Hence, co-respondent Fadallah prays that the bill of information be dismissed.
3. And co-respondent Fadallah says that the entire bill of information is totally false, misleading and diabolically advanced to fraud and thwart justice, and he therefore denies that Priscilla Gibson-Flomo is co-administratrix of the Intestate Estate of the late Velma Gibson Ajavon, as intentionally fabricated by her in her purported bill of information. Co-respondent Fadallah submits that more than twenty six (26) years ago letters of administration was issued to Roselyn Swaray and Priscilla Gibson-Flomo to administer the Intestate Estate of the late Velma Gibson-Ajavon for a period of one (1) calendar year, and said letters of administration expired twenty six (26) years ago while co-administratrix Roselyn Swaray was without the bailiwick of this jurisdiction, and due to the inactivity and slothful behavior of the then co-administratrix Priscilla Gibson-Flomo, she purposely neglected to expend a dime to pursue the case which was pending in the Supreme Court of Liberia against the Velma Gibson-Ajavon's Intestate which this court authorized her to administer, until co-administratrix Roselyn Swaray returned to Liberia and personally applied for and received extended letters of administration, copy of which Extended Letters of Administration executed in favor of Roselyn Swaray alone as sole administratrix to continue the administration of the Velma Gibson-Ajavon's Intestate Estate and have same closed without further delay, is hereto attached and marked Exhibit "A" to form part of co-

respondent Fadallah's returns.

4. That further to the purported bill of information in its entirety, co-respondent Fadallah says that self-styled co-administratrix Priscilla Gibson-Flomo lacks legal capacity to institute any action or file any bill of information on behalf of the Velma Gibson-Ajavon's Intestate Estate, as she is no co-administratrix of decedent Velma Gibson-Ajavon's Intestate Estate. Co-respondent Fadallah contends that if indeed and in truth Priscilla Gibson-Flomo were co-administratrix of decedent Velma Gibson-Ajavon's Intestate Estate, she should have, in keeping with law, furnished co-respondent and this court due legal notice by pleading and serving him copy of her letters of administration indicating which court appointed her as co-administratrix of decedent Velma Gibson-Ajavon's Intestate; her failure to so do renders the bill of information dismissible, and co-respondent Fadallah prays that same be dismissed.
5. Co-respondent Mustapha Fadallah says that count 1 of the purported bill of information is false and misleading, and he denies that Priscilla Gibson-Flomo who has self-styled herself as co-administratrix of Velma Gibson-Ajavon's Intestate Estate is truly co-administrator of Velma Gibson-Ajavon's Intestae Estate. Co-respondent Fadallah says that only the Monthly & Probate Court of Montserrado County, the Provisional Monthly & Probate Court of the District of Careysburg, or the Probate Division of the various circuit courts are legally clothed with authority to appoint individuals as administrators/administratrixes of intestate estates, and not individuals themselves as the self-styled co-administratrix Priscilla Gibson-Flomo has illegally attempted to do, and therefore co-respondent Fadallah prays that her purported bill of information be dismissed for bare-face, criminal falsehood.
6. That further to count 1 of the purported bill of information, co-respondent Fadallah says that this court, clothed with legal authority, appointed Roselyn Swaray as administrator of the Velma Gibson-Ajavon's Intestate Estate as evidenced by copy of her Extended Letters of Administration proffered in count 3 of these returns, and obviously the lease agreement which she executed and/or concluded with co-respondent Fadallah in order to preserve Velma Gibson-Ajavon's Intestate Estate and to prevent it from going to total waste is in the best interest of the Intestate Estate and same constitutes true, proper and genuine administration of said Intestate Estate as she was authorized by this court to do.
7. That further to count 1 of the purported bill of information, co-respondent Fadallah says that during the absence from Liberia of co-administratrix at the time, Roselyn Swaray, and during the twenty seven (27) years pendency of the prohibition which petitioner Abou Abdallah filed against the Estate, the slothful, indolent, careless and self-styled co-administratrix Priscilla Gibson-Flomo never moved a finger to administer decedent Verma Gibson-Ajavon's Intestate Estate, as a result the building seriously deteriorated, and co-respondent Fadallah, following the execution of the lease agreement with administratrix Roselyn Swaray, was compelled to truck away loads of dirt and filth from the building. Moreover, during those twenty seven (27) years pendency in the Supreme Court of Liberia of the prohibition filed by Abou Abdallah, the self-styled co-administratrix Priscilla Gibson-Flomo was in Liberia and never demanded nor received a penny from tenant Abdallah though she claims to have been co-

administratrix; yet her administration of the Intestate Estate yielded zero, for not even a single year's rental of US$3,000.00 per annum for which decedent Velma Gibson-Ajavon had leased her premises to Abou Abdallah was received from the Estate during those twenty seven years.

8. That further to count 1 of the purported bill of information, co-respondent, co-respondent Fadallah denies that a LEASE AGREEMENT substantiates one's legal capacity and authorizes her to serve as co-administratrix of an Intestate Estate. On the contrary, only letters of administration qualifies an individual as administratrix, co-administratrix, etc. of an intestate estate, and substantiates one's legal capacity and authority to administer the estate, as was legally done in the case of administratrix Roselyn Swaray. Co-respondent Fadallah contends that self-styled Co-Administratrix Priscilla Gibson-Flomo not having proffered letters of administration from even a kangaroo court, co-respondent Fadallah prays that her illegal and purported Bill of Information be dismissed.
9. That further to count 1 of the purported bill of information, co-respondent Fadallah says that in consonance with the legally binding lease agreement which he entered into with administratrix Roselyn Swaray, he has already spent US$19,688.00 on the refurbishing of the demised premises, and not even one-third of the renovation has been undertaken. Copies of receipts covering the on-going renovation are hereto annexed in bulk and marked Exhibit "B" to form part of these returns.
10. That as to counts 2, 3, and 4 of the purported bill of information co-respondent Fadallah says that self-styled co-administratrix Priscilla Gibson-Flomo is not only a stranger without legal capacity and authority to perform any act in the Velma Gibson-Ajavon Intestate Estate, but she is an intruder and interferer who, in keeping with law, must be attached in contempt for interfering in decedent Velma Gibson-Ajavon's Intestate Estate. Co-respondent contends that no court in the Republic of Liberia appointed, authorized and empowered her thru Letters of Administration to engage in any activity relating to decedent Velma Gibson-Ajavon's Intestate Estate, and hence, her act in filing her purported bill of information is ultra vires and her purported bill of information should be dismissed and she be attached in contempt for interfering in decedent's estate.
11. That further to counts 2, 3, and 4 of the bill of information, one wonders who this self-styled interferer Priscilla Gibson-Flomo is now masquerading as co-administratrix of the Velma Gibson-Ajavon's Intestate, when not even a kangaroo court appointed her as co-administratrix thru the issuance of letters of administration to her. Consequently co-respondent prays that she be attached in contempt.

    WHEREFORE, co-respondent prays that the purported bill of information be dismissed, self-styled co-administratrix be attached in contempt for interfering in the Velma Gibson-Ajavon's Intestate Estate and be ruled to all costs of these proceedings, granting unto co-respondent all other relief in the premises as justice provides."

Having stated before that our inspection of the several files in the case, both the certified one transmitted to the Supreme Court and the original that remained with the Probate Court do not indicate that any writ of summons was

ordered issued or was issued and/or served on any person, we are taken aback that in the very first count of the appellant's returns to the bill of information he alleged that he was served with summons on the 9th day of January, A. D. 2013. We are taken even further aback by the fact that neither the appellee/ informant, who had commenced the proceedings in the Probate Court, nor the court itself, took issue with the allegation made by the appellant to the effect that he rather than Roselyn Swaray, the named respondent in the bill of information, was served with summons and copy of the bill of information. Instead, the informant, appellee herein, in her reply, *inter alia*, argued that the appellant became a party by virtue of an order of the Judge of the Probate Court, done pursuant to powers granted him under the Civil Procedure Law to *sua sponte* join any party he deems to have an interest in the outcome of the proceedings. The greater appreciation of the response to the allegations made by the appellant in his returns is grasp by a verbatim quote of the reply filed by the appellee/informant, which we do herein below, as follows.

1. That, as to count one of co-respondent's returns, the same lacks any legal merit, because the order to issue summons is to the jurisdiction of the court and not the informant. In the instant case, the court felt it legally binding to summon the co-respondent because his action and that of co-administratrix Roselyn Swaray violated the law governing the Probate Court, which is properly seized with matters relating to deceased property and how the same must be administered and/or cared for; hence, said count one (1) of the co-respondent's returns is a fit subject and dismissal.
2. That still further to count one hereinabove, informant says that because Mr. Fadallah stands to be affected by any decision of the court on the bill of information, therefore it is within the spirit of the law and equity to have him summoned and to make adequate representation on his own behalf owning to the fact that he holds a purported lease agreement in his hand. Accordingly, informant hereby affirms and confirms her entire bill of information; and so prays.
3. That as to count two (2) of co-respondent's returns, the same is legal and proper for the dispensation of justice and that the clerk acted on orders of His Honor J. Vinton Holder, Judge for the Monthly and Probate Court in Montserrado County; hence, the said count must be set aside, overruled denied and dismissed; and so prays.
4. That as to count three (3) of co-respondent's returns, the informant says that the said count lacks any iota of truth because both administratrixes only filed for one letters of administration in 1982 and because of the long litigation that hanged over the property, the Estate could not be closed as instructed by this very court. Therefore, at no time did the administra-trixes seek to extend nor obtain any other letters of administration from this Honorable Court. Accordingly, co-respondent's Exhibit "A" is and can

only be a product of fraud perpetrated by person of wicked minds and with intent to defraud the family of their inheritance. Informant gives notice that at the hearing of this bill of information the administratrixes shall prove to this court that the purported exhibit "A" was procured by fraud and without their knowledge, singularly and/or collectively.

5. That as to count four (4) hereinabove, informant says that by parity of legal reasoning and for one of the administratrixes to have single handedly obtained an extended letters of administration leaving out the other means that certain legal requirements must have been met, either voluntarily or by law; howbeit and in the instant case no such petition was filed before this Honorable Court; hence, informant request court to take judicial notice of the instrument purporting to be exhibit "A" and so prays.
6. That as to count four (4) of co-respondent's returns, informant says that the said averment is self-serving and lacks any legal basis because the said co-respondent has flatly failed to show by what legal means the informant ceased to be an administratrix of her late Father's Estate or authorized her sister who is co-respondent in this case to ever act on her behalf. Further, co-respondent Roselyn Swaray, through counsel, has admitted and conceded to the effect that she erred and is prepared to refund whatever rent she received. So the argument of co-respondent Fadallah can only amount to self-serving and like a desperate man giving out his last breath. Accordingly, informant affirms and confirms her entire bill of information, and so prays.
7. That as to co-respondents counts five (5) and six (6), informant says that the said counts are irrelevant to the issued at bar, especially so when the two administratrixes have been duly appointed by this very Monthly and Probate Court since 1982 and that the said two (2) had in the past executed legal Instruments and leased together the Estate of their late father and without cancelling and/or revoking said letter, neither one of the said administratrixes can single handedly take up administration of the said Estate without the expressed consent of the other and this is what occurred in the instant case.
8. That informant says that a bill of information is the proper legal remedy under the circumstance because it is indeed the order of this court that is not being properly carried out for which information shall lie. Assuming without admitting that co-respondent Roselyn Swaray alone obtained an extended letters of administration, can she on her own and without any authority commit the Gibson-Ajavon Estate for protracted period without the court's approbation [and] while the said Estate remains opened? We say no; therefore, the bill of information is legal and it is also proper to summon the co-respondent to appear in court and answer as to why must he join with co-respondent to undermine the authority of the court and to take whatever money he may have expanded in the process so that equity can also prevail in his favor.
9. That as to count seven (7) of co-respondent's returns, informant says that the same is not only insulting, inaccurate and false, but irreverent to the issue before this Honorable Court. Further, how did co-respondent get to know detail and private information about the informant to call her names like slothful, indolent, and careless when they have had no interaction whatsoever? The only possible way is that the lawyer who had been providing legal assistance to co-respondent Roselyn Swaray and at

the same time serving as broker for the co-respondent Fadallah in the fraudulent Leasing of the Velma Gibson-Ajavon's Estate could even be the author of this unsigned pleadings. What an unethical behavior can this be. Accordingly, Informant affirms and confirms her entire bill of information, and so prays.

10. That as to counts eight, (8), nine (9) and ten (10) of co-respondent's returns, informant says that which is not legally done is not done at all, and also because one cannot benefit from the commission of his/her own crime, the averments contained in the said counts are without any legal foundation. Hence, must be overruled, set aside, denied and dismissed, whilst informant confirms and affirms her entire bill of information.
11. That as to count eleven (11) of co-respondent's returns, informant says that the said count raise no traversable issue, either in law or in equity, thus remain a fit subject for overrule and dismissal and so prays.
12. That informant says that there is legally no returns filed before this court as the purported returns is unsigned and has no author. This returns may probably have been drafted by co-respondent Roselyn Swaray's lawyer who negotiated the fraudulent lease, but got no one to sign on the said pleadings. What a wonder. Informant affirms and confirms her entire bill of information.

WHEREFORE AND IN VIEW OF THE FOREGOING, Informant prays that your Honor and this Honorable court will grant her bill of information in its entirety and consider the concession made by co-respondent, Roselyn Swaray who herself is co-administratrix with the Informant and rule cost of these proceedings against co-respondent Fadallah, and so prays."

In order that the chronology of events which unfolded in the case are placed in the proper perspective, we believe that it is important that we dissect the reply filed by the informant/appellee, especially as regards the claim to the issuance and service of the writ of summons, the same as we did after quoting the returns filed by the appellant. We note particularly that the informant/ appellee, at counts one through three of the reply makes the unambiguous allegations that (a) the appellant was summoned predicated a writ of summons duly issued by the clerk of the Probate Court; (b) the writ of summons was issued by the clerk of court predicated upon the orders of the Probate Judge directing the issuance of the writ, and which the Probate Judge had the authority to do; and (c) the order of the Probate Judge for service of the writ of summons upon the appellant, who was not named as a party to or in the bill of information, was based on the fact that his interest stood to be affected by the outcome of the case, and that it was done in the interest of justice and equity. No reference was made in the returns to whether Roselyn Swaray, the respondent named in the bill of information, had not been served; whether

any orders were issued by the Probate Judge for service of summons on Roselyn Swaray to bring her under the jurisdiction of the court; whether Roselyn Swaray had in fact been served with summons; and that no returns had been filed by Roselyn Swaray to the bill of information.

Given further what we have said about the absence from the case file of any orders issued by the Probate Judge instructing or directing the clerk of the Probate Court to issue a writ of summons and have same served either on Roselyn Swaray, the respondent named in the bill of information, or on the appellant herein, who had filed returns to the bill of information under the guise that he was served with a writ of summons, or the absence from the case file of any such writ of summons ever having issued or served, one must wonder why the Probate Judge did not deem it prudent or befitting to investigate the claims made by the appellant and appellee as to the orders for issuance of the writ of summons or the actual writ of summons before proceeding further with the case, if for no other reason than the fact that none of the mentioned documents regarding the writ of summons and service thereof were in the file or any records contained in the file to evidence that any such act was taken by the judge of the court, or by the clerk of the court, or by the sheriff of the court. We wonder why the Probate Judge did not grasp the fact that he had the authority under the circumstances of the case and the allegations made by the parties that he had the authority to sua sponte conduct or order the conduct of an investigation to determine whether in fact the allegations made by the parties were true or not since the allegations could impugn or affect the very integrity of the court? We shall allude to this more extensively in the course of this Opinion. For now, let us continue with the chronology of events that unfolded in the course of the proceedings.

The records further reveal that following the appellee's filing of a reply to the respondent/appellant's returns, but still without any record of the service of summons and the bill of information on Roselyn Swaray, the only named party respondent to the bill of information, or any filing of returns by Roselyn Swaray to the bill of information, the Judge of the Probate Court, on February 14, 2013, ordered that assignment be made for the hearing of the law issues on February 18, 2013. This order is evidenced by the notation made by the Judge on the last page of the informant/appellee's reply. We are informed

by the records also that because hearing of the law issues could not be had on the assigned date, a new assignment was ordered issued by the judge for hearing on the law issues on March 6, 2013. This order is also evidenced by instructions written by the Judge to the clerk of the court, noted on the first page of the informant/appellee's reply.

As per the said assignment, arguments on the law issues were had on March 6, 2013, but without the presence of Roselyn Swaray, the respondent named in the bill of information, in person or by counsel. It is important to reiterate that as the records in the case file contain no concrete evidence of the issuance and service of a writ of summons to bring Roselyn Swaray under the jurisdiction of the court. Hence, we are again left to ponder how the judge could have assigned the case for the disposition of law issues when the only named respondent in the case had not been served with summons or the bill of information, therefore had filed no returns thereto, and therefore had not been brought under the jurisdiction of the court. Yet, ignoring those facts, the judge proceeded to entertain arguments on the laws issues, and thus understandably with no representation being made by the named respondent, Roselyn Swaray, especially too as no notice of assignment for hearing of the law issues was served on her. For the purpose of emphasis, we note that only counsels for the informant and the appellant were present for the arguments on the law issues, and following which the judge announced that ruling thereon was reserved to another date.

We note from the records that although several assignments were made for ruling on the law issues, no ruling appears to have been made by the judge. Instead, on June 17, 2013, a ruling was made under the caption of "Ruling on the Motion to Dismiss". The motion to dismiss, to which the ruling alluded, was filed on April 24, 2013, a period of 49 days following arguments on the law issues and while the parties were awaiting ruling thereon by the judge. In the motion to dismiss, which sought the dismissal of the bill of information, the appellant acknowledged that he had "inadvertently" submitted himself to the jurisdiction of the court and therefore that he could no longer challenge the jurisdiction of the court over his persons, but he asserted that he was now challenging the jurisdiction of the court over the subject matter of the bill of information. He set forth in the motion as the basis for the challenge that: (a)

the proceeding was one for the cancellation of a lease agreement over which the Probate Court lacked jurisdiction, since jurisdiction over such matter is statutorily vested in the Civil Law Court for Montserrado County, and (b) the bill of information having alleged fraud, a trial could only be had by a jury, which meant in the Civil Law Court for Montserrado County and not the Monthly and Probate Court for Montserrado County.

We see further in the records that although the Probate Court Judge had issued out several notices of assignment for ruling on the law issues and had neither issued out notices of assignment for hearing of the motion to dismiss and therefore had not heard the motion or entertained arguments thereon, and that while the notice of assignment for the ruling was ambiguous in that it stated only that the parties should appear for "ruling" yet upon the appearance of the parties, the ruling which the Judge purported to make was on the motion to dismiss. We must note further that although the notice of assignment for the ruling was ambiguous as to the "ruling", the records, when viewed carefully, leaves the distinct impression that the "ruling" to which the notice of assignment referred was the ruling on the law issues, not a ruling on the motion to dismiss. We have reached this conclusion based on our examination of notations made by the judge on the minutes of the court, documents filed with the court, and the fact that a hearing was had relative to the disposition of the law issues. We find, for example, on the minutes of court for 6th day's session, March 6, 2013, the notation made and signed by the judge, addressed to the clerk, that the matter should be assigned for ruling on May 9, 2013, at 3:00 p. m. When the ruling could not be given on May 9, 2013, the judge issued another instruction, made on the notice of assignment which informed the parties of the assignment for ruling on May 9, 2013 that a new assignment should be made for ruling in the case for May 30, 2013. Again, when the ruling could not be made on May 30, 2013, the judge instructed the clerk, on the new notice of assignment, dated May 24, 2013, that another assignment be issued for the ruling on June 11, 2013. When ruling was not made on June 11, 2013, as assigned, the judge issued a further directive to the clerk, duly signed by the judge, to have the case reassigned for ruling on June 17, 2013. It was on this last assigned date, June 17, 2013, one hundred and three days after the hearing of arguments on the law issues, that the judge

finally made his ruling. But the ruling, made on June 17, 2013, turned out not to be the ruling on the law issues; instead, as captioned, the ruling was the "COURT'S RULING ON MOVANT'S MOTION TO DISMISS INFORMANT'S BILL OF INFORMATION".

We must once more highlight the point that no hearing was had on the motion to dismiss; rather, a hearing was had on the disposition of law issues and the notice of assignment was issued and served in that respect. Yet, the judge purported to make a ruling on the motion to dismiss. For the purpose of this Opinion and the chronology which we have outlined above, it is important that we quote verbatim the ruling of the judge, which we herewith do, as follows:

> COURT'S RULING ON MOVANT'S MOTION TO DISMISS INFORMANT'S BILL OF INFORMATION
>
> On January 24, 2013, Pricilla Gibson Flomo, co-administratrix of the Intestate Estate of the late Velma Gibson Ajavon filed a 12-count bill of information against Ms. Roselyn Swaray, co-administratrix of the Estate of the late Velma Gibson Ajavon, bringing to the attention of the subject Estate and that respondent/movant misrepresented herself as sole administratrix and executed an agreement of lease with a Lebanese national, in person of Mustapha Taher Lavelah, for a period of 20 years, with an option of an additional 10 years, and received from the lessee the initial advance rental payment of US$21,000.00 as rental for the first two years.
>
> Informant also maintained that after discovering of this fact, filed a bill of information bringing to the attention of this court that in order to avoid [cancellation of] the purported lease agreement, she expressed her concern to the said lessee for objection to the entire lease in a letter dated November 9, 2012. That to date, no action had been taken by co-administratrix to correct her wrong, which prompted the filing of this bill of information to prevent the said Estate from going to waste and ruin. Informant prayed court to make void and vacate the lease following the determination of this bill of information.
>
> To which bill of information, respondent filed a motion to dismiss contending that co-respondent Mustapha Taher Fadallah inadvertently submitted to the court's jurisdiction although he was not a party to the main suit and that no summons was served on him thereby bringing him under the jurisdiction of this court.
>
> Co-respondent also maintained that this court has not authority to cancel an agreement of lease and that this court had not suspended, reversed or revoke respondent's letter of administration; therefore respondent Fadallah dealt with co-respondent Rosaline Swaray in good faith as an independent innocent buyer. Therefore, it is against public policy, equity and sound legal principle for this lease agreement [concluded] with co-respondent Rosaline Swaray to be cancelled because Rosaline Swaray did not get an alleged order from the court.
>
> This court therefore entertained oral argument and reserved ruling.
>
> From the records now before this court, it is certain that Pricilla Gibson Flomo and respondent Rosaline Swaray are both co-administratrix residing in the city of Monrovia, Republic of Liberia, and that this cause of action commenced when informant herein became knowledgeable of a long term lease entered into, on behalf of the Intestate Estate of the late Velma Gibson Ajavon, singularly by one of the co-administratrix, Mrs. Rosaline Swaray, posing herself as sole administratrix of the estate and lessor, with a Lebanese business national named Mustapha Tahea Fabellah as lessee. This act of leasing the said property was done without the consent and knowledge of the other co-administratrix of the Intestate Estate of the late Velma Gibson Ajavon and that contrary to the Decedents Estates law of the Probate Court, as require by law, and that said agreement of lease 20 years with an annual rental of US$10,500.00, and against which term co-administratrix Rosaline Swaray received the

amount of US$21,000.00 as advance rental payment for the period of two years certain.

After discovering this fact, informant filed this bill of information bringing to the attention of this court the legal act of the co-administratrix Rosaline Swaray seeking to void the agreement of lease. And, although co-administratrix Rosaline Swaray, in a letter addressed to the lessee, dated November 3, 2012, in which she expressed no objection to having the lease agreement set aside and made void but relented on this commitment, which warranted the filling of this bill of information. No action has been taken by co-administrator, as committed; therefore, informant initiated this action in order to prevent this estate from going to waste and prayed court to make void and vacate the lease in question. The question in the mind of this court that requires the attention of this court is:

1. Whether or not the purported lease made and entered into singularly by co-administratrix Rosaline Swaray posing as sole administratrix of the Estate and lessor, with Mr. Mustapha Teher Fadallah as lessee, without the knowledge and consent and advice by the other co-administratrix Priscilla Gibson Flomo violates [and] contradicts the court's instruction to the administrators/administratrix [regarding the] purported lease?

In the mind of this court, the answer to this question is in the ..... In view of the misrepresentation made by co-administratrix Roselyn Swaray on behalf of Velma Gibson Ajavon Intestate Estate and in consideration of the facts contained in informants bill of information consistent with law. This court, in *Sharpe vs. Urey*, 11 LLR, page 251, quoted the filing from the American Jurisprudence which states "personal representative of decedent must exercise good faith care, diligence in the management and administration of the affairs of the estate they represent in such a way as to preserve the estate and protect it from loss by their own management or act of waste. Included in this duty is the obligation to protect the estate against every demand made against it which is not legally enforceable." 21 AM JUR 496 and 497, Executor and Administrator, Section 223, 224. LLR Volume 2, at page 456, syllabus 5, at page 451.

"In the custody and management of a decedent estate and to conducts the affairs of the estate with the same measure of care and diligence which an ordinary prudence man could exercise under the circumstances of his own affairs.

"An executor or administrator is under a duty to exercise the utmost good faith in all his transaction regarding the estate. While the administrator/executor acting in good faith are treated with indulgence, and not held answerable on slight grounds, they will not be allowed to promote their own personal interest to the injury of the heirs at law; and any fraud upon the part of an executor/administrator which tends to defeat the end of trust imposed in him will justify the court in declaring his act void, whenever this can be done without prejudice to the rights of innocent third person".

Informant reinforce this provision of the statutes in her bill of information when she requested court to make void this agreement of lease on the lack of legality in its entirety and maintained that it was the duty of co-administrator Rosaline Swaray as a personal representative of the Velma Gibson Ajavon to have conducted the affairs of the estate with such care, good faith and diligence; and that entering into the said purported lease as sole administratrix of the estate defeats the end of her trust reposed in her as joint administratrix with informant Flomo; as a result, justifies this court in declaring the purported lease with Mustapha Tehear Fadallah void for lack of legality and declare null the reliance on the established and well settled principle of law that "assent obtain by undue influence, misrepresentations or abuse of a confidential relationship, may invalidate a conveyance of real property" Johnson Duff vs. Harmon et al., (1953) LRSC 6, 11 LLR 344, and Decedents Estates Law, section 107.10, subsection B, C, at page 67.

As to the second issue of whether or not co-administratrix Rosaline Swaray can be held legally liable for disobeying court's instruction issued in the letters of administration, this court believes that from the facts liable for violating the orders of this court, as enshrined in the very letters of administration granted unto her, consistent with law, the Monthly and Probate court has general jurisdiction of Decedents Estates, both testate and intestate Estates. Informant herein maintained that the agreement entered into singularly by co-administratrix Rosaline Swaray posing herself as the sole administratrix of the Ajavon Estates for and on behalf of the late Velma Gibson Ajavon and lessor, with businessman Mustapha Lehar Fadallah, without the knowledge and approval of this court is indeed contemptuous. The act or conduct of Rosaline Swaray in the mind of this court's decree of letter of

administration when she violated out rightly and acted alone, with neither the knowledge or consent of informant as co-administratrix of the Velma Gibson Ajavon Estate and acted alone in this regard is outright and flagrant disobedience to the court's instruction which requires informant to hold defendant Rosaline Swaray liable for violation thereon.

Moreover, this court has the authority to punish for contempt any administrator or administratrix who unlawfully interfere with the administration of the decedent estate as the applicable statues provides that "said court to have the following powers", namely, 1. To punish or contempt by imposing a fine of not more than US$20.00 and imprisoned during its sitting: Caranda vs. Porte, 1 LLR, page 66.

This court says it is on the above that this court is of the opinion that the entire bill of information, having been legally establish, and the motion to dismiss having failed to defeat the bill of information, the said motion is hereby denied and dismissed and the action of the respondent, Rosaline Swaray, is hereby set aside in the entirety and that the said agreement is hereby declared void *ab initio* as said was not done in keeping with law. The respondent is hereby ordered to pay back that ever money received under this illegal transaction to the lessee and that in order to relieve the estate of any future benefit arising out of this illegal transaction. And it is hereby so ordered. Matter suspended.

GIVEN UNDER MY HAND AND SEAL
THIS 17TH DAY OF JUNE A.D. 2013
J. VINTON HOLDER
JUDGE, MONTHLY & PROBATE COURT
MONTSERRADO COUNTY"

At the very least, we see the ruling of the Probate Judge as a disaster to the administration of the law and justice, a demonstration of either a complete lack of knowledge of the law, demonstration of a propensity for the untruth, display of incompetence, and/or a callous disregard for the law, all of which are unbefitting and demeaning of the virtues of a judge of a court of such stature as the Monthly and Probate Court for Montserrado County. In viewing the Probate Judge's ruling in the light in which we have characterized it, we deem it worthy not only to underscore the state of the situation as existed at the time of the ruling but to dissect the ruling in its entirety so that it is exposed for what it is. Firstly, the records show that pleadings were exchanged only between the informant and the appellant (who was not a named party in the bill of information); the records also show that pleadings exchanged between the informant and the appellant presented a number of factual allegations and issues, some of which the parties had given notice to the court they will produce evidence during the trial on the bill of information; the records further revealed that there was no evidence showing that the respondent named in the bill of information, Roselyn Swaray, was ever served with process or that she filed returns to the bill of information. In fact, the records are devoid of any writ of summons having been issued, any service of such writ of summons, or any returns of the sheriff that service had been made

on the named co-respondent, Roselyn Swaray. The records indicate, moreover, that the issues of law were argued by only by counsels for the informant and the appellant, with no participation therein either by Roselyn Swaray or by her counsel, if any she had. In addition, there is a complete absence from the records of any notice of assignment having been issued by the Probate Court for hearing of the motion to dismiss, filed not by Roselyn Swaray but by the appellant, or that any arguments were ever entertained by the court on the motion and the returns filed thereto. In fact, the records indicate that the motion to dismiss, was filed subsequent to the court entertaining arguments on the issues of law, and that the notice of assignment issued by the court for ruling was not for ruling on the motion to dismiss but rather for the law issues which had been argued before the court. But perhaps of the outmost importance, the motion to dismiss challenged the subject matter jurisdiction of the court. These, amongst others, were the conditions that existed at the time the judge gave his ruling.

Given the state of the situation at the time of the ruling, we are prompted to ask, firstly, how could the judge rule on one matter [motion to dismiss] when the notice of assignment was clearly for another matter [law issues]; indeed, how could the judge proceed to rule on the motion to dismiss when the records indicate that there was no specific assignment issued either for hearing of the motion or for ruling on the motion; secondly, by what parity of reasoning or logic could the judge, in passing on what was supposed to be a purely legal challenge in the motion to the subject matter jurisdiction of the court proceed to delve into a full and complete disposition of the entire factual allegations and issues in the case, including the allegation of fraud said to have been perpetrated by Roselyn Swaray in her capacity of administratrix or co-administratrix of the estate, when there had been no hearing on the issues of facts raised in the case; thirdly, how could the trial judge find and adjudge Roselyn Swaray liable when, although she was named as a party respondent in the bill of information, there was absolutely no evidence in the records that summons was ever issued or that she was ever served with summons to be brought under the jurisdiction of the court, that she filed any returns to the bill of information, or that notice of assignment which, as flawed as that might have been, was served on her as could have necessitated her appearance

before the court; how could the judge have reached conclusions of fact and state that the informant had proved by a preponderance of the evidence that Roselyn Swaray had committed the acts for which she was alleged in the bill of information to have committed in the absence of any factual hearing on the bill of information and when no scintilla of evidence was produced by the appellee to substantiate the allegations made in the case; how could the judge adjudge that fraud and misrepresentation had been committed by Roselyn Swaray, who was never served with precept, when there was no testimony, either by the appellee or by any witness, to the effect, and when the only issue before the judge at the time, as stated in the motion which the judge purported to be ruling on, was a challenge to the subject matter jurisdiction of the court over the case; how could the judge proceed to enter final judgment in the case when not only no evidence had been produced before the court or taken by him, but when he had not determined in fact whether the court had jurisdiction over the case, a prerequisite to proceeding any further with the case; and how could the judge proceed to a determination of the factual allegations when he had not, as required by law, disposed of the issues of law. These are but a few of the queries generated by the conduct of the judge.

What is most disconcerting about the ruling is that it is embedded throughout with disingenuous representations, which Judge Holder not only dismissed the motion to dismiss, without determining whether he had subject matter jurisdiction over the case, including whether he could cancel the lease agreement and whether he could adjudicate the issue of fraud raised by the parties, and any evidence being produced, but he also incredulously proceeded to enter final judgment in the case, ignoring all of the governing laws in such matter or situation. Let us see, firstly, how the ruling is disingenuous and full of untruths. We know, the same as did the trial judge, that Roselyn Swaray was named as the respondent in the bill of information. But we also know from the records, the same as we believe the trial judge should have known since the records we have reviewed are the same records that he reviewed and that the records are his records and the records of his court, that Roselyn Swaray was never served precept and was therefore never brought under the jurisdiction of the court. Yet in his ruling, Probate Judge J. Vinton Holder, after reciting the allegations contained in the bill of information, stated: "To which bill of

information, *respondent filed a motion to dismiss* contending that co-respondent Mustapha Taher Fadella inadvertently submitted to the court's jurisdiction although he was not a party to the main suit and that no summons was served on him thereby bringing him under the jurisdiction of this court." Any person reading the quoted excerpts from the judge's ruling is left with the impression that it was Roselyn Swaray had responded to the bill of information, thereby submitting to the jurisdiction of the court; that Roselyn Swaray had filed a motion to dismiss, and had asserted in the motion that co-respondent Mustapha Taher Fadella had inadvertently submitted to the jurisdiction of the court although he was not a party to the main suit, and that no summons was served on him. The fact of the case, as exposed by the records in the case, is that Roselyn Swaray was never served with precept, never filed returns to the bill of information, never filed the motion to dismiss attributed to her, never challenged the subject matter jurisdiction of the court, never asserted at any time in any instrument before the lower court that co-respondent Fadella had inadvertently submitted to the jurisdiction of the court, never appeared for arguments on the law issues, never presented any evidence before the court, and never appeared for the ruling on the motion. How then did the judge reach the conclusion that the "respondent" had made a case for the "co-respondent"?

The Probate Judge added further: "Co-respondent also maintained that this court has no authority to cancel an agreement of lease and that this court had not suspended, reversed or revoked respondent's letter of administration; therefore respondent Fadallah dealt with co-respondent Roselyn Swaray in good faith as an independent innocent buyer. Therefore, it is against public policy, equity and sound legal principle for this lease agreement [concluded] with co-respondent Rosaline Swaray to be cancelled because Rosaline Swaray did not get an alleged order from the court." Again he gives the impression that Roselyn Swaray was an active respondent to the proceedings even though she had never been served with precepts, including a writ of summons.

We see further in the ruling that the judge states: "The act or conduct of Rosaline Swaray in the mind of this court's decree of letter of administration when she violated out rightly and acted alone, with neither the knowledge or consent of informant as co-administratrix of the Velma Gibson Ajavon Estate and acted alone in this regard is outright and flagrant disobedience to the

court's instruction which requires informant to hold defendant Rosaline Swaray liable for violation thereon. " Again we see the probate judge adjudging that for the flagrant disregard of the court's order, as contained in the court's letters of administration, "defendant Rosaline Swaray" should be held liable for the alleged violation.

Lastly the probate judge said this in the last paragraph of his ruling: "This court says it is on the above that this court is of the opinion that the entire bill of information, having been legally establish, and the motion to dismiss having failed to defeat the bill of information, the said motion is hereby denied and dismissed and the action of the respondent, Rosaline Swaray, is hereby set aside in the entirety and that the said agreement is hereby declared void *ab initio* as said was not done in keeping with law. The respondent is hereby ordered to pay back that ever money received under this illegal transaction to the lessee and that in order to relieve the estate of any future benefit arising out of this illegal transaction. And it is hereby so ordered. Matter suspended." Here again, the judge refers to and enters judgment against Roselyn Swaray as respondent even though she was never served with summons, never filed returns to the bill of information, was not the proponent of the motion to dismiss the bill of information, never appeared, in person or by counsel, for any arguments before the court in the case, was never served any notice of assignment, either for a hearing or for ruling, whatever that ruling was intended to be.

The obvious net consequence is that the respondent named in the bill of information, Roselyn Swaray, and accused of certain misconduct, but who was never served with precept and never appeared before the probate court, was completely denied her constitutional right to the due process of law, similarly as was the appellant, the latter in the sense that that he was never given the opportunity to have a hearing on the allegations made before the lease agreement was cancelled. Yet, the Probate Judge, in perpetrating this grossly incomprehensible injustice, seemed not to care that he was acting against the Constitution and statutory laws of the country, and that he was doing so either with full knowledge or sufficient information that he knew or should have known that he was committing gross violations of the law. But this was only a tip of the iceberg, and we are led to wonder how it was possible for the Judge, who we assume, by virtue of his nomination by the Executive, confirmation by

the Legislature and appointment by the President, to be versed in the law, to indulge in acts and conduct which manifest the exact opposite of versatility in the law.

It is from the ruling referenced above, the prime subject of this Opinion, that the appellant, believing that the said ruling contained many errors, noted exceptions thereto, announce an appeal therefrom to this Honourable Court, and filed a bill of exceptions cataloging the errors of the trial judge. As with other instruments quoted in this Opinion, we believe the nine-count bill of exceptions deserves quotation in its entirety. The document reads, as follows:

> "Co-respondent Mustapha Fadallah, Appellants herein, having excepted to your Honour's ruling made on June 17, 2013, from which he announced an appeal to the Supreme Court of Liberia, sitting in its October term 2013, asks Your Honor to approve this bill of exceptions so that the Supreme Court could correct your many mistakes.
> 1. Although your Honor called the case for disposition of law issues on March 6, 2013, and the parties raised many law issues which they argued on March 6, 2013, Your Honour failed to rule on the law issues. No decision was ever made on the law issues. In this jurisdiction, issues of law are decided before issues of facts. This was reversible error.
> 2. In count one (1) of Co-respondent Fadallah's returns, he alleged that he was not mentioned as a party in the bill of information. Yet he was served summons while the main respondent in the bill of information was never served so that she who allegedly violated the order of the court was never brought to court. While, the court can add any party to a case, the main party defendant must be brought to court before a party can be added. This was an essential issue of law and it was error to have failed to decide on it.
> 3. In count eleven (11) of the resistance to co-respondent Fadallah's returns, informant raised the legal issue of unsigned pleading in court. Although no clerk certificate was given in support of the allegation, the court was under duty to pass on it. It was a reversible error not to have passed on it.
> 4. In this jurisdiction, the clerk of court is under duty to immediately issue summons once a complaint is filed so that the named defendant can be brought under the jurisdiction of court before any necessary party is added. In the instant case, only co-respondent Fadallah was summoned, being a soft target. It was necessary for the court to have passed on this issue so that the clerk of court will not have discretion to decide on whom to summons other than the party complained of. It was error for the court to fail to pass on this issue.
> 5. Having failed to pass on any legal issue in keeping with his announcement for the parties to argue the legal issues, as found on page one (1) of March 6, 2013, the judge failed to conduct a hearing so that the following allegations could be established:
> 5a. That Informant Priscilla Gibson-Flomo was present in Liberia for twenty-six (26) years and never protected the Estate she was appointed to co-administer; that all these years she was in Liberia the Estate never realized one dollar as an income. It was a reversible error not to have had a hearing to establish it.
> 5b. That only when co-administratrix Roselyn Swaray came back to Liberia after twenty-six (26) years that she, Roselyn Swaray, sought the extended letters of administration to enable her deal with the Estate and save it from total destruction. It is a reversible error for the court not to have [had a] hearing to establish this fact because indeed if informants had behaved this way, then she did not deserve to be in charge of the Estate. The Court could have established this if it had conducted a hearing and it was a reversible error to have failed to conduct a hearing to establish this fact.
> 5c. In count four of informant's reply to co-respondent Fadallah's returns, informant gave notice that she would present evidence to show that co-respondent Roselyn Swaray procured the extended letters of administration by fraud. It was a reversible error that the court failed to have a hearing to establish his fact.

> 6. In count five (5) of informant's reply to co-respondent's Fadallah's return, informant alleged that co-respondent Roselyn Swaray never filed any petition for the extended letters of administration. It was a reversible error for the court not to have had a hearing to establish his fact.
> 7. The Decedents Estates Law provides, in section 107.3, that "Letters granted to fiduciaries by the court are conclusive evidence of the authority of the person to whom they are granted until the degree granting them is reversed or modified upon appeal or the letters are suspended, modified, or revoked by the court granting them." The court failed to establish that co-respondent as a third party dealing with the administrator, knew or should have known that her letters had been revoked which was not the case.
> 8. It was a reversible error for the court to have failed to conduct a hearing to establish that co-respondent Fadallah, relying of the authority of the administration, Roselyn Swaray, he had made lot of investment in the Estate. The court was in error for failing to have a hearing to establish this.
> 9. While the Probate Court has authority to modify, suspend or revoke letters of administration or any document issued by it, it has no authority to cancel any document issued by it [and] it has no authority to cancel any lease agreement between a third party and an administrator of an Estate; it was therefore a reversible error for the probate court to order the cancellation of appellant's lease with Roselyn Swaray as administrator of the Intestate Estate of the late Velma Gibson Ajavon. For all these errors which you made in your ruling made on the 17th of June, 2013, to which co-respondent Mustapha Fadallah excepted and announced an appeal to the Honorable Supreme Court, Your Honor is respectfully requested to approve this bill of exceptions to enable appellant to complete his appeal as announced."

From the bill of exceptions and the chronology of events enumerated herein before, this Court deems the following questions to be the salient and therefore warrant the Court's consideration:

1. Whether the Probate Court erred in proceeding to hear the law issues in the case in the absence of any service of summons on the named respondent in the case and based solely on summons allegedly served on the appellant who was not named in the bill of information as a party to the action but who, in response thereto, filed returns challenging the jurisdiction of the court over his person and traversing of the allegations in the bill of information primarily against Roselyn Swaray, the named respondent in the bill of information?
2. Whether Judge Holder, when disposing of the motion to dismiss, which challenged the subject matter jurisdiction of the court, erred in not passing on the issues raised therein but proceeded to dispose of the factual matters raised in the case?
3. Whether Judge Holder erred in entering judgment liable in the case based on the factual allegations made by the appellant and appellees in the pleadings filed by them, without first disposing of the law issues and the benefit of taking evidence to substantiate the allegations made in the said pleadings by the parties thereto?

In answering the first question, this Court says that it is of the strong opinion that the trial judge acted in error, indeed in grave error, in scheduling the case for hearing of the law issues when, at the time, the records clearly showed that no precept had been issued against Roselyn Swaray, the respondent named in the bill of information, evidenced by the caption of the case; that no service of precepts had been made on the said named respondent; that although the appellant had filed returns wherein he made the claim that he had been served summons, the case filed showed no evidence of the issuance or service of summons upon the appellant or any returns by the sheriff of any such service. Indeed, the motion to dismiss the bill of information, filed by the appellant following the hearing of arguments on the law issues, seemed to have back tracked from the assertion made in the returns which was filed prior to the hearing of the arguments on the law issues that he was served with summons. In the latter instrument, the motion to dismiss, the appellant asserted, in contradiction to what he had said in the returns, that he had inadvertently submitted himself to the jurisdiction of the court and was therefore not contesting the jurisdiction of the court over his person. But even with this admission, the judge knew or should have known, as a matter of law, that the appellant could not be substituted for Roselyn Swaray, the named respondent in the bill of information, without written authority from her to represent her interest. Our law is very clear that no person who had not been served with summons or who has not otherwise submitted to the jurisdiction of the court can be bound by the action or judgment of the court. *Kiazolu v. Pearson et al.*, 35 LLR 550 (1988); *The Intestate Estate of the Late John N. Lewis v. Metzger et al.*, 38 LLR 404 (1997).

At best, the judge, faced with the accusation made by the appellant, should have conducted an investigation into how a person not party to the proceedings, was allegedly served with summons without the orders or instructions of the court. This was particularly important since the appellee had set forth the excuse that the appellant was served with summons on the orders of the judge, but the case file showed no evidence either of the issuance of the summons, any order by the judge for the issuance of such summons, or any returns of the sheriff that his office had served the alleged summons. But equally important, it would have brought to the attention of the judge that no

summons had been ordered issued, had been issued or had been served on the only respondent named in the bill of information, thereby enabling him to issue the necessary order for summons to be issued and served on the named respondent. Under the circumstances, one is prompted to enquire as to whether the act or process exhibited in the case was, with the acquiescence of the Probate Judge, common practice in the Probate Court. Whatever may have been the reason for the display of callousness or indifference, we believe that an investigation was prudent, especially since the request of the informant was that the lease agreement executed by Roselyn Swaray with the appellant should be cancelled and that she should be made to return to the appellant all funds received from him against the lease payment.

The judge knew or should have known that in proceeding as he did, no disposition of the law issues would or could be binding on Roselyn Swaray and certainly no judgment growing therefrom, even if a trial was had on the facts of the case, would be binding on her. *Kiazolu v. Pearson et al.*, 35 LLR 550 (1998). Hence, the exercise was not only one in futility but also one that clearly revealed that the judge had no appreciation for what he was doing or the impact of the law on such action. But the judge, feeling that he could ignore the fact that the named respondent in the case had not been served with precepts and hence had filed no returns in the action, proceeded to entertain hearing on the issues of law solely on the bill of information filed by the appellee against Roselyn Swaray and the returns filed by the appellant who was not named in the case as a party co-respondent but who characterized himself as such, who did not file a motion to intervene, against whom no motion for joinder as a party respondent had been filed by the informant/appellee, who exhibited no authority to show that he was authorized by Roselyn Swaray to represent her interest in the case, and notwithstanding the records in the case contained no evidence showing that the judge had ordered issuance and service of summon on him or that summons had in fact been issued and served on him.

We do not dispute that any person feeling that his or her interest could be adversely affected by a decision of the court and that his or her interest could not be adequately protected has the right to seek intervention for the purpose of protecting that interest. Since the appellant was not named as a

party-respondent by the appellee, he could have, as allowed by law, filed a motion to intervene. See Civil Procedure Law Sections 5.51 and 5.54. See also *Insurance Company of North America v. Bhatti & Sons et al.*, 35 LLR 191 (1988); *Badio et al v. Cole-Lartson et al.*, 33 LLR 125 (1985); *Nouredine et al v. Johnson*, 30 LLR 575 (1983); *UMARCO v. AMS et al.*, 25 LLR 267 (1976). Or, given the allegations made by him, the appellant, that he was not named by the appellee as a co-respondent in the bill of information, the appellee could have filed a motion to have him, the appellant, joined as a co-respondent. Civil Procedure Law, Rev. Code 1:5.51, 5.52; *Yonkon et al. v. Tulay et al.*, 33 LLR 227 (1985). Or, the Probate Court Judge, believing that the interest of the appellant could be affected by the judgment of the court, could have *sua sponte* ordered that the appellant be joined as a party to the suit and that accordingly summons should be issued and served on him. Civil Procedure Law, Rev. Code 1:5.51; *Sio v. Sio*, 35 LLR 92 (1988). The records in the case file, how-ever, do not reveal that any of those steps were taken by any of the parties or by the judge to bring the appellant under the jurisdiction of the court.

Yet, the Probate Court Judge, not believing that he had committed an error or not caring that he was acting in violation of the law, proceeded, following arguments on the law issues and assignment for ruling thereon, to commit a second major error by actually ruling on what he said was the motion to dismiss, upon which no assignment had been issued, no hearing conducted and no arguments had. But be that as it may, the admission by the appellant in the motion to dismiss filed subsequent to arguments on the law issues and the judge reserving ruling on the law issues, that he had inadvertently submitted himself to the jurisdiction of the court, served to cure the error which had been committed regarding how the appellant became a party to the proceedings.

This bring us to the second issue in the case which exposes further ridicule of the lower court, in that even though the judge had never assigned the motion to dismiss for arguments on the legal issues raised therein to the subject matter jurisdiction of the Probate Court over the proceedings, the judge completely ignored those legal issues and proceeded instead to dwell into the facts of the case, as if evidence had been produced, and upon which he entered a final judgment of liable against Roselyn Swaray, on whom no service of process had been made. We do not believe that the judge suffered any

blindness of the eye such that he could not see this most important challenge to the subject matter jurisdiction of the court over the proceedings. Yet, the Judge's decision chose to state that the sole issue he deemed to be dispositive in the motion to dismiss was "Whether or not the purported lease made and entered into singularly by co-administratrix Roselyn Swaray posing as sole Administratrix of the estate and Lessor with Mr. Mustapha Teher Fadella as Lessee without the knowledge and consent and advice by the other co-administrator Priscilla Gibson Flomo violates, contradicts the court's instruction to the administrators/administratrix thus voids this purported lease?" demonstrates that he had every intention of passing on factual issues contained in the bill of information and ignoring the legal issues raised in the motion to dismiss, which was that the bill of information was dismissible because the Monthly and Probate Court was without the jurisdiction to cancel a lease agreement and the appellee's accusation that Roselyn Swaray fraudulently procured her letters of administration raised the factual issue of fraud that could only have been determined by a jury trial in the Civil Law Court. In the Judge's haste to have the lease agreements canceled, he disregarded the cardinal rule that, unless an issue has been rendered moot, as in the motion for jury trial in *Jawhary v Watts et al.*, 42 LLR 474 (2005), which this Court deemed moot as a result of the trial judge's dismissal of the petition for declaratory judgment during his ruling on the law issues, subordinate courts are mandated to resolve all of the law issues introduced by the parties in their pleadings as well as those raised in motions. In this case, Judge Holder had an even greater duty to deal with the issues of law the appellant broached in the motion to dismiss because it directly objected to the probate court's assertion of subject matter jurisdiction and when there is such a dispute over a court's jurisdiction, "every other thing in the case becomes subordinated until the court has determined its jurisdiction to hear and dispose of the particular matter. This is true because if a court lacks jurisdiction to entertain a matter, whatever decision or judgment is rendered by it is a legal nullity." *Scanship (LIB) Inc. v. Flomo,* 41 LLR 181 (2002). This principle was reinforced in *Paynesville City Corp v. Aggrieved Workers of Paynesville City Corp.* decided on August 2, 2013, "This Court has said in numerous opinions that once jurisdiction has been challenged, the court must stop all other proceedings in

the case and determine its own jurisdiction. In fact, the law imposes that duty on the court even if none of the parties raises the issue, that is, the court, of its own motion or initiative has the duty to first determine its own jurisdiction over the subject matter before it can proceed to entertain the matter and render a ruling therein." See also *Netty-Blanquett v RL et al.* decided on July 23, 2009; *Nat'l Milling Co. v Bridgeway Corp*, 36 LLR 776 (1990); *Liberia Agricultural Co. v Mingle*, 36 LLR 413 (1989); *Chebo v Caranda et al.*, 33 LLR 452 (1985).

Judge Holder did note even have any other issues to subordinate because the legal issues in the motion to dismiss exclusively pertained to the probate court's jurisdiction. Yet, he laughably ignored the jurisdictional questions in his ruling on the motion and proceeded to cancel the lease agreement in the selfsame ruling. Perhaps he elected to overlook the issue of jurisdiction because, had he addressed it, he would have been confronted with the inconvenient truth that he did not have the authority to cancel a lease agreement.

The Constitution vests the Legislature with the power to establish all of the subordinate courts, and in so doing, the Legislature also determines the particular subject matters over which each subordinate court can legally preside. LIB. CONST., ART (34)(e). In accordance with this concept, this Court has emphasized, "[j]urisdiction of courts is vested in them by the statutes creating them and anything outside of that jurisdiction is *void ab initio*." *Scanship* at 188-89. In other words, "[A] court is under a legal obligation to determine, in the first instance and before it proceeds to any determination of a case on the merits, whether it is clothed with the requisite personal and subject matter jurisdiction ... [A] court must satisfy itself that it has the authority to act in the matter of which a party calls upon it to act, and if it finds that it lacks authority, jurisdictional or otherwise, it must dismiss the matter or the action." *Modu Cole v Wah et al.*, decided on December 4, 2014. See also *The Ministry of Lands, Mines, and Enerygy et al. v. Liberty Gold et al.*, decided on January 16, 2014. This Honorable Court has further decreed that, "The rendition of a judgment without jurisdiction is a usurpation of power and makes the judgment itself *coram non judice* and ipso facto void." *Massaquoi v. Massaquoi*, 35 LLR 508, 511 (1988).

In determining whether Judge Holder was statutorily empowered to cancel the appellant's lease, it is necessary to examine the Judiciary Law, the

statute in which the Legislature, at Section 5.2, carves the jurisdictional bounds of the Monthly and Probate Court. A mere scan of the said Section 5.2 of the Judiciary Law reveals that the statute plainly and unambiguously lists the subjects over which a probate judge may exclusively preside and the cancellation of lease agreements is conspicuously absent.

§ 5.2. Original jurisdiction (exclusive) of the Monthly and Probate Court, the Provisional Courts and the Probate Divisions of the Circuit Court.

The Monthly and Probate Court of Montserrado County, the Provisional Monthly and Probate Courts and the Probate Divisions of the Circuit Court shall have exclusive original jurisdiction of the following matters arising within their respective territorial jurisdictions:

(a) To probate wills affecting real and personal property;

(b) To grant letters testamentary and of administration;

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

(d) To enforce the payment of the debts of testators and intestates and of their legacies and inheritances and to direct the distribution of their estates;

(e) To order the sale and distribution of the real property of deceased persons;

(f) To cause the admeasurement of dower, or interests in lieu thereof, to widows;

(g) To have general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them;

(h) To appoint and remove guardians of the property for minors, to direct and control their conduct and to settle their accounts;

(i) To appoint and remove guardians of the property of incompetents, to direct and control their conduct and to settle their accounts;

(j) To hear and determine applications for the adoption of children;

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

(l) To probate deeds, mortgages and other documents affecting or relating to real property and other instruments, documents and papers necessary to be probated;

This Court is therefore genuinely perplexed as to which of the listed grounds Judge Holder used to determine that it was lawful for him to cancel a lease agreement. As a very experienced judge of the Monthly and Probate Court for Montserrado County, this Court believes Judge Holder is well acquainted with what the Judiciary Law permits him to do and prohibits him from doing. Given that Judge Holder was most likely aware of his jurisdictional

limits, what conclusion should be reached with regard to his decision to cancel the lease agreement? Only the judge is aware of his reasons but, whatever they were, they certainly were not in accordance with the Judiciary Law. On the other hand, if Judge Holder canceled the lease agreement as a result of his ignorance of the law, then we would be at an even greater loss because if a judge who has presided over the probate court for the amount of years that Judge Holder has and still has not sufficiently grasped the exceedingly basic concept of which subject matters he can and cannot hear, then we can only wonder what else he does not know that he should. It is on this basis that we unequivocally declare that the Judiciary Law prohibits the Monthly and Probate court from exercising jurisdiction over cases in which a party seeks to cancel a lease agreement.

It should also be noted that that Counsellor Laveli Koboi Johnson, a senior member of the Supreme Court Bar and former Minister of Justice is the lawyer for the appellee who prayed Judge Holder to cancel the lease agreement. This Court is aware that no lawyer is infallible no matter how long he or she is engaged in the practice of law, but we are nonetheless flummoxed as to why such a highly reputable member of the Bar would blunder in this very elementary fashion. Since Counsellor Johnson does not have a track record for these types of errors, we choose to believe that this was just an uncharacteristic mistake on his part.

The other law issue in the motion to dismiss that the judge, in his illegal and provocative zeal to cancel the lease agreement, may have been reticent to handle since he would have had no choice but to concede that he was not clothed with jurisdictional authority is the appellee's allegation of fraud in the procurement of the letters of administration. Upon the raising of the fraud issue by the appellees, Judge Holder, even if neither party questioned the court's jurisdiction, should have referred the matter to the Civil Law Court for a jury trial because, as the afore quoted Section 5.2 of the Judiciary Law establishes, the Probate Court does not have subject matter jurisdiction to determine the issue of fraud. Only the Civil Law Court can dispose of a fraud allegation since this Honourable Court has repeatedly determined that allegations of fraud, being a factual dispute, must necessarily be proven at a trial by jury. *Beyslow v. Coleman et al.*, 9 LLR 156 (1956); *Multinational Gas and*

Petrochemical Company v. Crystal Steamship Corporation, 27 LLR 198 (1978); *Fayad v. Dennis*, 39 LLR 587 (1999); *Trokon International et al. v. Reeves et al.*, 39 LLR 626 (1999); *The Management of West Africa Resources Corporation v. Mathies and Kamal, Arnous and Company*, 40 LLR 21 (2000); *Konneh et al. v. The Intestate Estate of the late J. W. Marshall*, 40 LLR 429 (2001); *Knuckles v. The Liberian Trading and Development Bank, Ltd.*, 40 LLR 511 (2001). However and unsurprisingly, Judge Holder flabbergastingly did not adhere to this very simple and basic procedure. He simply elected to wholly ignore the issue of fraud as if the issue is merely discretionary. This decision by the judge to flout his obligation to transfer the issue to the Civil Law Court is yet another reason why this ruling is absolutely void of any legal soundness. Since the appellee sought to have the lease cancelled, the appropriate route for the appellee to have taken would have been filing a petition with the Monthly and Probate Court to revoke Roselyn Swaray's duly issued letters of administration and, assuming that the petition would have been granted, then saunter over to the Civil Law Court, armed with her revocation decree, to have the lease agreement canceled. Seeing as the appellee elected to pursue this unlawful course, which was unfortunately endorsed by the judge, this Court accordingly holds that Judge Holder should have not only tackled all of the legal issues raised in the appellant's motion to dismiss the bill of information but he should have also then granted the motion since the probate court is indeed not the proper court to dispose of allegations of fraud or cancel lease agreements.

Turning to the third issue, this Honorable Court has, on innumerable occasions, declared that the resolution of factual issues is obliged to have been preceded by a disposition of the issues of law raised in the pleadings, including any law issues raised in a motion to dismiss. It has been declared that "the disposition of law issues shall be the first duty of a trial court or judge, and that the party against whom the ruling on the law issues is entered may except thereto, so that the said alleged erroneous ruling may be reviewed by the appellate court." *Decoris Oil Palm Corp. v Third World Construction Ltd et al.*, 35 LLR 304 (1988). In *Kamara et al. v Heirs of Essel*, decided on July 5, 2012, this Court affirmed, "We reiterate, the same as we have done in many cases in the past, that the factual issues raised in a case can only be entertained, dealt with or passed upon by the court after the court has first disposed of the law issues

raised in the pleadings; and that even where no issues of law are raised, the court must still go through the formality of first assigning the case for hearing of the law issues and ruling thereon that the case contained no law issues, and hence that the matter was being forwarded for trial of the facts. Not to follow such a procedure laid down in our statute and pronounced upon in the many opinions by this Court was clear error by the trial court." See also *Williams v John et al*, 1 LLR 259 (1894); *LAMCO J.V. Operating Co. v Gailor*, 36 LLR 351 (1989); *Doe v. Mitchell*, 34 LLR 210 (1986); *Wilson v. Firestone Plantation*, 34 LLR 134 (1986); *Bank of Monrovia v Massoud*, 22 LLR 199 (1973).

When disposing of the law issues, including law issues raised in a motion to dismiss, especially issues which go to the jurisdiction of the court, a trial judge's duty is to not merely address the legal issues the judge considers to be the most relevant; he or she is compelled to rule on each and every legal issue referenced in the pleadings. It had previously been noticed that more and more judges of the subordinate courts were beginning to neglect their responsibility to pass on all of the law issues that the respective parties plead, so, in *Mananaai v. Momo*, decided on July 5, 2012, speaking through Mr. Justice Banks, this Honorable Court sounded the warning, "Perhaps some of our lower courts may be of the impression that because this Court has ruled that it need not pass upon all of the issues raised by the parties on appeal that the lower courts also have the right to dispense with passing on all of the law issues raised in the pleadings. *Jawhary v. Hassoun,* 40 LLR 418 (2001); *Knuckles v. The Liberian Trading and Development Bank, Ltd.*, 40 LLR 511 (2001). We would like to make it abundantly clear, in no ambiguous term, that no lower court has that authority, and a deviation from the prescribed rule requiring that the lower courts dispose of all of the law issues contained in the pleadings will be treated as an abuse of justice by the court if by such action the rights of a party-litigant is seriously jeopardized."

Judge Holder's conscious divergence from this rudimentary legal principle is even more disconcerting considering that he had previously conducted a hearing on the law issues and all that remained was for him to deliver a ruling, which he declined to do. So, why did he not rule as he indicated that he would at the end of the hearing? Was this dereliction of his fundamental legal duty due to a realization that some of the legal issues raised

were beyond his ability to sufficiently tackle? Was his refusal to address any of the legal issues raised in the pleadings a product of a perception that if he had actually traversed them, it would have left him with no choice but to provide the appellant with a favorable ruling, an outcome Judge Holder would have preferred to avoid? This Court is left with no other option but to ponder these questions because Judge Holder's decision was such a disregard of the law that we can only conclude that it is either an example of ineptitude or unscrupulousness, or maybe even both.

Despite already holding that the motion to dismiss should have been granted, we have chosen to delve even deeper into this judgment that Judge Holder attempted to masquerade as a legitimate ruling from a court of law by deciding whether, in said "ruling", he passed on any factual or legal issues without providing the parties the benefit of a hearing to argue said issues and, predictably, the answer to this question is a blatant yes. The records of the case show the following events occurred: (1) The appellee filed a bill of information that asked the court to cancel a lease agreement to which the appellant is the lessee. The appellant, although not the named respondent, filed his response to which the appellee replied; (2) Judge Holder then conducted a hearing to dispose of the law issues presented in the pleadings; (3) The appellant subsequently filed a motion to dismiss the bill of information, which the appellee resisted; (4) Judge Holder next issued a ruling on the motion to dismiss in which he denied the motion and granted the prayer contained in the bill of information to have the lease agreement cancelled and the money received therefrom reimbursed. Even assuming the probate court had appropriately asserted jurisdiction over this case, this sequence of events is entirely devoid of any hearing on the issues that would lead to the cancellation of the lease agreement and reimbursement of the rental payments. In order to reach that conclusion, there are numerous factual determinations that had to have been made and we have incessantly pronounced that issues of fact require trials, at which, oral and/or documentary evidence shall be obtained in order to evaluate the veracity of the respective allegations by the various parties. Thusly, a judge commits a critical gaffe by deciding factual issues without the introduction of evidence. *Cooper et al v Cooper Estate et al.*, 39 LLR 750 (1999); *Koryan v Korvayan*, 30

LLR 246 (1982). We have further preached, "Courts of justice should not render judgments upon presumptions, but in all cases must base their decisions upon facts gathered from the hearings of evidence." *Sasay v Sasay*, 29 LLR 505 (1982). This is the policy because "In this jurisdiction, it is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence." *Forestry Development Authority v Walters et al.*, 34 LLR 777 (1988). See also *IB Bank v Ochoada* decided on February 19, 2013; *King v Intl Trust Co.*, 20 LLR 438 (1971).

In this case, for Judge Holder to have concluded that, at the time the lease agreement was executed, the appellee was a co-administratrix of the intestate estate of the late Velma Gibson-Ajavon along with Roselyn Swaray, thereby rendering the lease agreement unlawful since the law demands that if an estate has multiple administrators or executors, one cannot act without the consent of the others, he would have had to reach the factual conclusion that the appellee was a co-administratrix in 2012. As stated above, this should have entailed a hearing of the evidence provided but no such hearing took place. According to the records contained in the case file, since the inception of this case, the only hearing that took place was a hearing on the disposition of the law issues, from which Judge Holder did not even issue a ruling prior to reaching these factual determinations. There was no hearing for the judge to weigh the factual claims contained in the appellant's and the appellee's respective pleadings that would sufficiently enable him to decide that the appellee fulfilled the legal standard to prove her case by a preponderance of the evidence. Without the requisite hearing, how could Judge Holder have conceivably ruled in the manner in which he did?

Moreover, assuming that Judge Holder not only had jurisdiction but he also conducted a hearing on the proffered evidence, the documentary evidence submitted by the appellee to prove that she was indeed one of the co-administratrixes when the property was leased is woefully thin. There has been no denial of the appellee's claim that she and Roselyn Swaray obtained letters of administration to co-administer the intestate estate in the early 1980s but the issue is whether she was a co-administratrix in 2012 when the lease was signed because any letters of administration, as an operation of law,

expires twelve months after its issuance, "unless foreign claims are involved; and even in that instance, no intestate estate should remain open for more than eighteen months." *Nungbor v. Van Fiske*, 13 LLR 304, 308 (1958). See also *Knowlden v. Johnson*, 39 LLR 345 (1999); *St. Stephen v Gbedze* decided on August 2, 2013; and Rule 30 of the Rules for the Governance of the Monthly and Probate Court.

Despite the twelve to eighteen month period for the expiration of the letters of administration, the appellee, in support of her alleged current co-administratrix status, only attached a defendant's answer from 1985 in which she and Roselyn Swaray, as co-administratrixes of the Intestate Estate of Velma Gibson-Ajavon, instituted summary proceedings to recover possession of real property against a Lebanese national named Abou Abdallah. Although the attached defendant's answer does not amount to conclusive proof of being a co-administratrix in 1985, assuming if the appellee was truly a co-administratrix in 1985, without any proof of renewal or extension of the early 1980's letters of co-administration to show that the appellee was a co-administratrix in 2012, the appellee deplorably fails to prove that she and Roselyn Swaray were co-administratrixes when the lease was signed. This lack of evidence induces this Court to inquire about the basis on which Judge Holder decided that "entering into the said purported lease as sole administratrix of the estate defeats the end of the trust imposed in her as joint administratrix with informant Flomo." A judge "cannot base his ruling upon evidence which has not been formally admitted into evidence by the court as forming part of the record in the cause before the court." *Dagber v. Molley*, 26 LLR 422, 427 (1978). In this case, the judge based his ruling on evidence that does not seem to even exist; that being letters of co-administration in favor of the appellee and Roselyn Swaray from 2012. As a matter of fact, the sole letters of administration in the records is the extended letters that Roselyn Swaray acquired on August 6, 2012 that appointed her as the sole administratrix of the intestate estate, which then empowered her to solely represent the estate as the lessor to the appellant. This matter of the evidence is further support for this court's view that Judge Holder's ruling holds no legal value whatsoever.

Unfortunately, this is not the first instance in which Judge Holder has made errors of the magnitude shown in the instant case. In *X-Change Facilities Inc. v Intestate Estate of Cooper et al* decided on August 18, 2006, Erwin J. Cooper had lawfully acquired letters of administration from the Monthly and Probate court to administer the intestate estate of his late father Edwin J. Cooper, Sr. but the letters was later revoked by Judge Holder. Since Section 107.10 of the Decedents Estate Law states that letters of administration may be revoked by the judge of the probate court only upon the filing of a petition for revocation, this Court held, "there is no record that a petition for the removal of Erwin J. Cooper was ever filed before the Monthly and Probate Court for Montserrado County, or that he was cited to show cause why a decree removing him as administrator should not be. In the absence of record that a petition for his removal as administrator was filed with the Probate and Monthly Probate Court for Montserrado County, and that he was cited to show cause why a decree removing him as administrator should not be, we hold that the decree of the Probate Court removing Erwin Cooper as administrator and appointing Magdalene Cooper-Johnson and Marie E. Leigh-Parker was improper and illegal." In addition to his unauthorized *sua sponte* revocation of the Erwin J. Cooper's letters of administration, Judge Holder, just as he did in the present case, which we have ruled to be improper as he is the Judge of the Monthly and Probate Court, proceeded to nullify a lease agreement by declaring it "illegal, null and void".

Later, in *Sloan v Administrators of the Intestate Estate of Parbai,* decided on May 11, 2007, this Court had to overturn a ruling handed down by Judge Holder when he once again acted beyond his jurisdiction. In that case, he awarded title to one of the parties despite the fact that it is settled law that when two parties allege ownership of real property, it is only by an action of ejectment, which is under the exclusive jurisdiction of the Civil Law Court, that the issue of title can be resolved. Mr. Justice Kabineh M. Ja'neh, speaking on behalf of this Honorable Court in that case, wrote "[T]he Monthly and Probate Court has 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 ... This court therefore holds, that in the absence of legal authority, the Monthly and Probate Court Judge committed reversible error when [Judge Holder] 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." *Id.*

After Judge Holder ruled that an intestate estate's sale of a portion of land that was still under lease was tainted and therefore void, this Court in, *Maakundu et al. v. Maakundu et al.*, decided on January 28, 2009, while noting that the lease agreement in question was not included in the records of the case, responded by asserting, "There are numerous questions that need to be clarified. Questions such as: Was there a clause in the lease for the decedent to buy after the expiration of the lease? One of the witnesses testifying in the Gissi Court made the statement that there was a clause in the agreement that after the expiration of the lease, the lessor could offer to sell the property. Based on this alleged clause of the agreement, or since the decedent had developed the property and in the spirit of good will, did the lessor's administrators make an offer to the decedent's administrators to buy the property and the administrator(s) connived to have other names other than the estate's name put on the deed? Was the estate's funds used to purchase the property? As the appellants contend, did they before they became administrators, hear of the offer to sell and then took up the opportunity to independently buy the property subject to the expiration of the lease? Did they then purchase with their own money or the estate's money? ... In face of these questions which can only be made clear by the hearing and gathering of evidence, how could the Judge of the Probate Judge, His Honour J. Vinton Holder, based on only arguments before him have ordered that the subject property be made a part of the inventory of the intestate estate for closure of the estate?" These sorts of questions have become commonplace when scrutinizing the rulings that are handed down by Judge Holder.

Similarly, in *Jawhary et al. v. Sirleaf-Hage et al.* decided on January 24, 2014, the Chief Justice of the Republic of Liberia, His Honour Francis S. Korkpor, Sr., speaking for the Court, dedicated a significant portion of the opinion to, as he phrased it, "address some of the glaring irregularities committed by the

Judge of the Monthly and Probate Court for Montserrado County, His Honor J. Vinton Holder, in his handling of this case." In that case, Judge Holder, incredulously broke and initialed the seal of the Last Will and Testament at issue six days prior to the death of the decedent and a full twenty-five days prior to the filing of the petition to admit the will into probate. This prompted the Chief Justice to remark "that the conduct of Judge Holder, as herein described, is novel and unprecedented in this jurisdiction and in any similar jurisdiction known to this Court ... This Court thus wonders what evidence was available to His Honor J. Vinton Holder on April 13, 2010, which convinced him that the late Milad R. Hage had in fact, died, which in turn led him to break and initial the seal on the purported last will and testament of the late Milad R. Hage. We wonder also, whether or not this was a deliberate act by the learned Judge to circumvent the dictates of the Decedents Estates Law. Whatever Judge Holder's motive may have been when he broke and initialed the seal of the purported last will and testament of Milad R. Hage, we hold that his conduct, was inconsistent with and repugnant to the Decedents Estates Law and therefore clearly illegal." In reaction to Judge Holder's decision that the land, buildings and structures at issue are neither real nor personal, the Chief Justice observed that the judge's finding, "finds no support in law or in the certified records of this case. Additionally, this argument defies logic and common sense." Regarding the Judge Holder's choice to remove the previous executor without an investigation or hearing, the Chief Justice wondered, "How else could a probate court judge determine that one or more of these grounds have occurred, except through investigation, but so far, we have seen no evidence of any investigation conducted by his Honor J. Vinton Holder relative to these allegations? This failure by Judge Holder to conduct an appropriate investiga-tion of such serious allegations leads us to the conclusion that he has been derelict in his duty to supervise the administration of the Hage Estate." The Chief Justice also disappointingly noted that Judge Holder tacit endorsement of the appellant's wrongful conduct "calls in question the level of supervision exercised by the learned Judge or the lack thereof. We therefore believe that in addition to Judge Holder's own irregularities as set forth above, his failure to take notice of these obviously statutorily non-compliant conduct on the part of the appellant and to initiate corrective

measures, also compel a remand of this case to the Monthly and probate Court for further proceedings." Justice Korkpor concluded that Judge Holder's actions and decisions "raises a question as to the legality of the entire probation process" and "violative of the Decedents Estates Law and therefore reprehensible."

More recently, in this very term of this Court (March Term, 2015), in the case *Louise Clarke-Tarr v. Daniel K. Wright,* this Court had the occasion to expressed its utter disgust with the inappropriate manner in which Judge Holder had dealt with the case, the manifold errors he had made and irregularities he had committed in the handling of the case, and the gross abuses and disrespect he had shown for the law in the manner in which he had conducted the proceedings, and in some instances in which he had falsified his court's own records by stating that proceedings had been conducted when in fact no proceedings had been undertaken by him or the court. Indeed, in the face of the manifold compounded and egregious errors made and abuses committed by Judge Holder in the *Clarke-Tarr* case, including granting extended letters of administration to a person who had not only previously served as an administrator of the estate, filed a report on the estate and petitioned the court for the closure of the estate, upon which a predecessor probate judge of the same court had closed the estate almost thirty years earlier, and to in the process further adjudicate issues of fraud, this court was constrained to dismantle his every action and decision, especially in light of the injuries which he was inflicting on the parties.

We have elected to probe into the history of appeal cases emanating from the rulings handed down by Judge Holder to establish a pattern of the wanton and callous disregard of the very laws he took an oath to uphold, or, in the alternative, to expose a persistent demonstration of ignorance of the law. In the afore referenced *Mananaai* case, this Court, through the voice of Mr. Justice Banks, sounded a warning to judges who commit basic errors: "[T]his Court will take appropriate action against the trial judge or make the appropriate recommendations to ensure that our justice system is secured and that it functions to the expectation of the Liberian people and the Liberian nation state. This system no longer has room for such tolerance that has the

propensity to place our justice process, the justice system, and the justice mechanisms at risk."

From all that we have said in regard to the instant case, it is quite obvious that we are totally unimpressed with Probate Judge J. Vinton Holder display of grotesque incompetence, an almost complete lack of the requisite legal skills and knowledge in and of the law and the legal process, all of which are required of a judge. In fact, not only are we highly disappointed and disturbed with the manner in which Judge Holder has conducted matters brought before him involving estates for, exposing the hard earned lifetime works, resources and properties of deceased persons to serious risks and jeopardy, but we take serious offense to his seeming utter indifference to the negative effects and repercussions of his actions upon persons who, under the law, are entitled to the enjoyment of such estates following the death of the decedent as well as persons who the decedents believed should enjoy the sacrifices of their life's labor. We are appalled by his frequent and consistent disregard for and abuse of the law and the justice system we are striving so hard to uphold and enhance.

Disciplinary action against a judge who continually flounders is appropriate because Judicial Canon Ten directs that all judges "be studious of the principles of the law" and Judge Holder's choices in this case, and several other cases that precede this current matter, are certainly not indicative of a judge who is abreast of the principles of the law, or who, being abreast of the principles of law, has made a determined and conscious decision to disregard and abuse the law. Judicial Canon Thirty-Four further demands that "a judge should indicate the reasons for his action in an opinion showing that he had not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and contributes useful precedent to the growth of the law." It was necessary to shed light on Judge Holder's constant failure to abide by the Judicial Canons, as we have done above, because "We have said repeatedly that one who seeks admission to the practice of law in Liberia or who is given the authority to administer the law is assumed to be knowledgeable in the law, and where he fails to demonstrate such knowledge, the court must speak of that failure so that we can, using the knowledge of that failure, make the further efforts to improve the legal

system. We realize how painful these assertions must be, but we must cease and refrain from hiding behind our failures and openly confront them, so that our people, especially the policy decision makers, can see that our system needs reform." *Id.* A judge must not only know the law, he must practice the law and be seen as a true administrator of justice. We have not seen a demonstration of this expectation in Judge Holder's handling of matters in his court. We should state further that when other judges have displayed conduct similar to that displayed by Judge Holder, we have not hesitated to take similar action in suspending such judges. See *In re Emery Paye*, Supreme Court Opinion, October term, A. D. 2012, decided February 13, 2013.

Specifically, from all that we have said in regard to the instant case, we do not hesitate to state in the most unambiguous terms that we are absolutely and utterly unimpressed with Probate Judge J. Vinton Holder's display of what we deem grotesque incompetence, an almost complete lack of the requisite legal skills and knowledge in and of the law and the legal process, all of which are required of a judge. In fact, not only are we highly disappointed and disturbed with the manner in which Judge Holder has conducted matters brought before him involving estates for, exposing the hard earned lifetime works, resources and properties of deceased persons to serious risks and jeopardy, but we take serious offense to his seeming utter indifference to the negative effects and repercussions of his actions upon persons who, under the law, are entitled to the enjoyment of such estates following the death of the decedent as well as persons who the decedents believed should enjoy the sacrifices of their life's labor. The case is a rather simple one and any student of law would or should know how to proceed with it. The fact the Judge Holder choose not to abide by the simple rudiments of the law attest to the level of his display of incompetence. His judgment was clearly void *ab initio*.

We are further appalled by his frequent and consistent disregard for and abuse of the law and the justice system we are striving so hard to uphold and enhance.

Accordingly, and noting with serious concern the manifold abuses which Judge Holder continues to inflict on our judicial and justice process, and this Court's resolve not to condone such display of abuse by judicial officers, we have determined that he be suspended and he is hereby suspended from

presiding as Judge of the Monthly and Probate Court for Montserrado County for a period of one year. By virtue of his suspension, all salary, allowances, emoluments, and other benefits of whatever kind and nature, including transport, fuel, callings cards, etc. are suspended for the duration of Judge Holder's suspension as a judge.

While this Court cannot at this time ascertain the full magnitude of the injuries which Judge Holder has inflicted upon the Judiciary, the nation's justice system, and persons seeking justice and access to justice, as more of those will unfold as we continue to decide on appeals taken from the Monthly and Probate Court for Montserrado County, we believe that the injuries in this case and other cases we have referenced in this Opinion are of sufficient magnitude to warrant the penalty which we have imposed herein.

With regards to the specific acts committed in the case, we hold that as it was an egregious error on the part of Judge Holder, firstly, in not only granting the motion to dismiss due to a want of jurisdiction by the Monthly and Probate Court; secondly, by proceeding in the face of the want of jurisdiction to go into the underlying bill of information and to do so without a hearing to ascertain the truthfulness of the factual allegations; and thirdly, in granting the appellee's prayer therein to have the lease agreement cancelled, his entire actions should be and is hereby reversed. The bill of information is therefore denied. And it is hereby so ordered.

Judgment reversed.