

ANDREW T. DAVIES, Director of Police, et al.,  
Appellants, v. THE INTESTATE ESTATE OF  
ANWAR RIF, Appellee.

APPEAL FROM THE PROBATE COURT,  
MONTSERRADO COUNTY.

Argued May 10, 1976. Decided June 17, 1976.

1. Generally, a search warrant must be obtained to warrant a search made by the police.
2. The Emergency Powers Act of 1973 does not apply to deceased persons and their estates.
3. The taking away of any of the property of an estate without an order from the Probate Court constitutes an unlawful interference with such estate, and one who does so may be liable for the payment of all debts owed by the deceased and for the respective shares due the heirs of such estate.

Upon the death of decedent, police entered his hotel room and took away the cash found there, maintaining it would be checked to determine if it was counterfeit. The money was deposited in a bank. The Probate Court ruled that the money was to be turned over to the sheriff. The authorities appealed from the ruling.

The Court ruled that the money had been illegally appropriated and constituted an unlawful interference with decedent's estate and ordered the money returned to the estate. Ruling *affirmed*.

No appearance for appellants. *Counsellor J. C. N. Howard* appeared for the appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

The late Anwar Rif, a Lebanese national, proprietor and manager of the Maxim Hotel, died intestate in his hotel room suddenly on the night of March 13, 1975. Upon hearing of his death, the appellants, who are police

authorities, allegedly hurried over to the hotel, demanded the keys to the dead man's wardrobe from his nephew, searched the room thoroughly and found \$37,550 in cash belonging to the decedent. Upon inquiry as to the reason for their strange behavior by Counsellor J. C. N. Howard, counsel for the hotel, they informed him that they were taking the money away for safekeeping, to be turned over to the brother of the deceased upon his arrival in Liberia. The counsel then requested that the money be checked in the presence of a representative of the Lebanese Embassy, the nephew of the deceased, and a disinterested person, and that the serial number of each bill be listed. This was done and the police officers took the money away.

Upon arrival in Liberia of the decedent's brother, the police refused to return the amount they had taken away. The relatives then filed a petition in the Probate Court of Montserrado County, praying for the appointment of administrators of the intestate estate of the late Mr. Rif, so as to facilitate his burial in Lebanon. The petition was granted, the administrators were appointed, and letters of administration were issued.

A writ of summons was issued against Andrew Davies, Director of Police, and Joseph Gono, Chief of the Criminal Investigation Division, to produce the \$37,550 taken from the room of the deceased, so as to form a part of the inventory of the estate. The Assistant Minister for Litigation at the Ministry of Justice appeared for the police officers and informed the court that the amount was in the vault and in custody of the Minister of Finance and would be kept there until the government had concluded its investigation of counterfeit currency in Liberia and prosecuted those involved in the commission of the crime.

The court ruled that the amount of \$37,550 was a part of the decedent's estate which fell under the jurisdiction of the court, and therefore should be turned over to the sheriff for deposit in a reputable bank in escrow, or that since the money was already deposited in a vault in the

Ministry of Finance, the sheriff be given a receipt indicating that it was being held in escrow, pending the determination as to whether or not the bills were genuine. The State excepted to, and announced an appeal from, this ruling.

It should be mentioned here that several months later it was determined that there were no counterfeit bills among the money seized by the appellants. The deceased was not buried in Lebanon pursuant to the wish of his family, and there was much difficulty in finding money to bury him. It is our opinion that this determination could have been made in a much shorter time since, as far as the burial was concerned, time was of the essence.

When the case was called for hearing, no one appeared for the appellants, even though the Assistant Minister for Litigation had signed the notice of assignment, nor was any brief filed on their behalf.

Here is a situation in which the deceased had never been accused or charged with committing the crime of counterfeiting while he was alive; and there was no testimony or written evidence that he was ever involved in such an offense. It was only during the proceedings in the Probate Court that it was alleged that the deceased "bore a strong connection with" a group of persons dealing in counterfeit currency, and that the funds found in his room "were part of the money used to facilitate the crime." We wonder what purpose was served by this exercise of seizing the decedent's money after his death, since he could neither be tried nor punished, if indeed he was involved in a crime. But what is more disturbing is that after finding that the money was genuine, the police authorities still refused to return the money to the estate.

Before going into the merits of the case, we should like to deal a little with the question of search and seizure, because when the police rushed into the premises of the deceased, they did so without a warrant of arrest or a search warrant.

Article I, Section 9th, of the Liberian Constitution, states that "no place shall be searched, nor person seized, on a criminal charge or suspicion, unless upon warrant lawfully issued, upon probable cause supported by oath, or solemn affirmation, specially designating the place or person, and the object of the search." The purpose of this provision is to restrain police officers from roaming at will wherever they choose, in search of persons or contraband. Since the Constitution does not prevent all searches, only unreasonable ones, the warrant requirement may be relaxed: (1) when there are exigent circumstances making the securing of a warrant impracticable; (2) when consent is given by the individual whose person or premises is to be searched; and (3) when the search is incident to a lawful arrest, as for example when there is reason to fear that the person being arrested might gain possession of a weapon or destructible evidence.

None of these instances obtained in the case at bar, because Mr. Rif, having died, could neither move, nor give his consent to a search, nor be arrested.

The act restoring the Emergency Powers granted the President of Liberia, published May 7, 1973, and restored February 10, 1975, provides, *inter alia*: "that the Minister of Justice and all law enforcement officers are hereby ordered to arrest and carry out search and seizure without warrant and detain without benefit of bail all persons found directly or indirectly dealing in counterfeit currency or coins, narcotic and other dangerous drugs of whatever kind and persons accused of bank frauds and forgeries." We are certain that it was not the intent of the Legislature that this provision should apply to dead persons. The act empowers the law enforcement officers to move against persons who can be accused, arrested, tried, and punished if found guilty. None of these actions can be carried out on a dead man.

A search warrant serves an important function. Prohibiting a search without warrant is permitted not to

shield criminals nor to make the home a safe haven for illegal activities, but rather that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy has been deemed too precious to be left solely to the discretion of those whose job is the detection of crime and the arrest of criminals. This is why the Constitution requires a judicial officer to pass on the desires of the police before they violate the privacy of the home. The search warrant evidences a judicial determination that there is probably cause to believe that the person or thing to be seized is within the premises to be searched. We do not hesitate to declare that the search carried out by the appellants was unreasonable. The appellants could have satisfied their curiosity in a legal manner by applying to the Probate Court. We shall say more about this later.

The appellants filed a bill of exceptions containing the following counts:

“(1) That the trial judge erred in ruling that the amount should be held in escrow under the control of the Probate Court, when in all cases of fruits of crime the Republic of Liberia is the proper custodian. If the property is money (as in the instant case) it should be deposited in the Treasury as in the case of cash bonds. This having been done, the judge erred in ordering that the Republic of Liberia issue a receipt to the sheriff.

“(2) That the trial judge erred in entertaining an application to the effect that the Government of Liberia interfered in the intestate estate of Anwar Rif, when the statute provides the way and manner in which the Republic of Liberia, its subdivisions and officers may be brought into court. Rev. Code 1:5.18. Respondent submits that it is incumbent upon a judge at all times to observe the Constitution and statute laws of Liberia; not having done so was an error on part of the judge.”

We need not dwell lengthily on the bill of exceptions, because the record certified to us does not show that the issues set forth in the bill of exceptions were ever raised in the lower court. This being so they cannot be heard on appeal. *Richards v. Coleman*, 5 LLR 56 (1935); *Bryant v. African Produce Co.*, 7 LLR 93 (1940); *Cooper v. Republic*, 13 LLR 528 (1960). Furthermore, the law referred to in count 2 of the bill of exceptions states nothing about how the Republic and its subdivisions may be sued. All it states is that they may sue and be sued. There is a cross reference to chapter 66 of the Civil Procedure Law, and that relates to claims before the Permanent Claims Commission, which is not germane to the case at bar.

As for count 1 of the bill of exceptions, possession of the fruit of crime presupposes that a crime has been committed by someone accused of or charged with committing the crime, and that the so-called fruit of the crime was found in his possession shortly after the commission of the crime. According to BLACK'S LAW DICTIONARY (4th ed., 1957), fruits of crime are material objects acquired by means and in consequence of the commission of a crime, and sometimes the subject matter of crime. It has frequent application mainly in cases of larceny, burglary, robbery, and receiving stolen property. According to 29 AM. JUR. 2d, *Evidence*, § 289 (1967): "Where a proper foundation has been laid by evidence which, *prima facie* at least, establishes the felonious taking of property or money, the fruit of the crime with which the accused is charged which were found in his possession shortly after the commission of the crime, is always competent evidence against him, in connection with other evidence which tends to show the possessor's participation in the crime." Mr. Rif was never accused or charged with committing a crime, nor was his property seized in connection with a crime prior to his death and, therefore, it cannot be considered as a fruit of crime to

warrant it being taken away in the manner in which it was done. It follows that if Mr. Rif was not accused or charged with committing a criminal offense, and no fruit of crime was seized before his death, any property which he died seized of forms a part of this estate to be supervised by the Probate Court.

Now to the question of unlawful interference in an intestate estate. The law has always been clear that the Probate Court, except as otherwise provided by statute, exercises full and complete jurisdiction in all matters relating to the affairs of decedents, and exclusive jurisdiction over the estates of any person who was domiciled or who left property at the time of his death within the area over which the court has territorial jurisdiction. See sections 102.1 and 102.4 of the Decedents Estates Law, published August 15, 1972. Prior to the enactment of this statute, this Court, sixty-seven years ago, in *White v. Harmon*, 2 LLR 17 (1909), held that in the absence of an appointment of either executors or administrators, an estate lies in the hands of the judge of the Probate Court. In *Caranda v. Fiske*, 12 LLR 245 (1956), and in *In re Caranda*, 14 LLR 320 (1961), we held that the Probate Court has jurisdiction over all matters respecting estates, whether they be testate or intestate. And this jurisdiction begins immediately after the death of a person and extends to all of the property he owns. It follows then that the property of an intestate estate may be transferred, conveyed, or disbursed only upon authorization of the court. See *Tee v. Chea*, 12 LLR 205 (1955). Therefore, the taking away of all or any portion of the property of an estate without an order from the Probate Court, constitutes an unlawful interference with such estate, and one who does so may be liable for the payment of all debts due by the deceased and for the respective shares of the natural or legal heirs of such estate. See *Gray v. Blau*, 3 LLR 177 (1930); *Ross v. Roberts*, 3 LLR 266 (1931), and *In re Caranda, supra*. If the appel-

lants felt that the money found in the room of the deceased was counterfeit, the proper procedure was to request the Probate Court to permit them to remove it for investigation purposes.

We have cited sufficient legal authority to conclude that the actions of the appellants in searching the deceased's premises without a warrant and taking away the amount of \$37,550, constituted an unlawful interference with the decedent's estate. Therefore, the lower court did not err in ruling that the money taken away by the police authorities be turned over to the sheriff of the Probate Court to form a part of the intestate estate.

To hold otherwise would deprive the Probate Court of its supervisory powers over estates as laid down by statute and in a long line of cases. But more than this, it would be setting a dangerous precedent to allow the State, or anyone for that matter, to unlawfully meddle and interfere with an estate under any pretext that may suit their fancy, to the detriment of legal heirs and creditors.

During the hearing of this matter it was mentioned that the money was taken from the Ministry of Finance and deposited in the Bank of Liberia. In affirming the ruling of the lower court, it is hereby ordered that the amount of \$37,550 plus interest be returned to the estate of the late Anwar Rif, and that the Probate Court of Montserrado County resume jurisdiction over the estate and proceed to administer same forthwith. And it is hereby so ordered.

*Affirmed.*