

E. JONATHAN GOODRIDGE, Attorney in Fact for  
FERNANDEZ ATIM, Appellant, v. His Honor, I.  
VAN FISKE, Commissioner of Probate, Montserrado  
County, and TEETEE BARTEH PAYNE.

APPEAL FROM ORDER IN CHAMBERS ON APPLICATION FOR WRIT OF  
CERTIORARI OF THE MONTHLY AND PROBATE COURT OF  
MONTSERRADO COUNTY.

Argued April 6, 1960. Decided May 6, 1960.

Issues adjudicated by the Supreme Court in denying an application for mandamus cannot subsequently be revived in an application for certiorari.

On appeal from an order of the Justice presiding in Chambers denying an application for a writ of certiorari, *order affirmed.*

*A. Gargar Richardson* for appellant. *Lawrence A. Morgan* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.\*

From a careful study of the records in these certiorari proceedings it is revealed that one Mammie Barteh Shiakar, whose estate is the subject of controversy herein, immigrated from the British Cameroons. In course of time she was naturalized as a citizen of Liberia, and after spending a number of useful years in this land she departed this life on May 22, 1949. One Fernandez Atim, a relative who was intrusted with the business of the said late Mammie Barteh Shiakar, became blind on the eve of her death. As a result of this unfortunate situation, one Captain Martin Debobi, who also hailed from the British Cameroons and had settled here as did the decedent, was clothed with power of attorney to conduct her

\* Mr. Justice Harris was absent because of illness and took no part in this case.

business. Immediately upon the demise of the late Mammie Barteh Shiakar, Captain Martin Debobi, believing that the power of attorney was equivalent to the last will and testament of his deceased principal, presented said power of attorney to the Monthly and Probate Court, Montserrado County, for probate; but it was rejected. Subsequently, Teetee Barteh Payne, alleged daughter of the late Mammie Barteh Shiakar, filed a petition setting forth "that she is the only surviving heir to the late Mammie Barteh Shiakar and is entitled to the estate."

Aside from the petition for the granting of the writ of certiorari in these proceedings being uselessly voluminous, we regard same as far fetched. For the benefit of this opinion, however, we shall quote Counts "9," "10" and "11" of the said petition, which read as follows:

"9. That, although the investigation now pending before the respondent Commissioner is to find out whether Teetee Barteh Payne is the daughter of the late Mammie Barteh Shiakar, and because of the filing of this petition of Teetee Barteh Payne, the ruling of His Honor, J. Everett Bull, has been sustained, yet the respondent Commissioner, in an adroit manner ruled that petitioner's principal, Mr. Fernandez Atim, should produce his certificate of naturalization before he, the respondent Commissioner proceeded with the investigation. After testimony of witnesses on behalf of petitioner, Teetee Barteh Payne was heard without requiring the production of the said Teetee Barteh Payne's certificate of naturalization, both petitioner and respondent being from the British Cameroons and living in Liberia, contrary to law. His Honor, J. Everett Bull's ruling requires production of the certificate of naturalization, as will more fully appear by the application of petitioner's counsel below, and the resistance and the ruling of the respondent commissioner, hereto attached to form a part of this petition.

"10. That should this Court permit the respondent to unearth the case that has been finally closed by the decision of his predecessor, which could have been enforced but for the wilful delay of justice without cause prejudicial to petitioner's interest, this would mean that no suit will ever be ended in any court of justice, and when judgment is rendered and enforcement thereof is delayed by the judge, subsequently another action identical to that already decided by the same court could be brought to serve as supersedeas to the enforcement of a decision, and consequently, cause litigant useless waste of money and precious time.

"11. Further to show that the respondent commissioner is not inclined to complete this investigation which he has started illegally contrary to existing rules and regulations, is the fact that, in a subsequent ruling of his predecessor and colleague, provisions were made to the effect that, during the one year and six months period, Mr. Fernandez Atim, a blind man, petitioner's principal, should receive \$10 per month and also a room be given him in either of the houses on said premises pending the expiration of the one year and six months period aforesaid, and this has not been done, nor has the respondent commissioner interested himself, in fairness to whomsoever the estate may go, to give order for the report of the curator; and consequently the whole estate has been and is now in the air prejudicial to the interest of petitioner's principal, for, no one knows where are the rents collected for the past seven years, or the cash money that was on hand as well as the goods, the wearing apparel and the jewels."

In resisting the petition of petitioner herein, respondent filed returns in which she alleged:

"1. Because respondents submit that the petition be denied and the peremptory writ vacated; for the

said petition, besides being grossly vague, indistinct and contradictory, is further fatally defective and bad in that petitioner has failed therein to set out intelligibly and distinctly the several adverse rulings of the respondent commissioner and the manner in which said rulings are illegal or prejudicial to the interests of the petitioner. Respondents submit that recourse to the petition clearly shows a recital of fact unconnected with the case presently being tried by the commissioner of probate: In other words, the petition is a conglomeration of unconnected and confused counts which states no triable issue but rather renders a confused recital which does not inform respondents of what petitioner intends to prove against them. For such vagueness, indistinctness and unintelligibility, respondents pray a dismissal of the entire proceedings with costs against petitioner.

- "2. Also because respondents submit that this Court, having already passed upon the facts set up in Counts '1,' '2,' '3' and '4' of petitioner's petition during the hearing of the application for the issuance of a writ of mandamus prayed for by the same petitioner against the same respondent, would be reviewing its own decision were it to again entertain the hearing of the same facts; especially so where there has been no appeal from the said ruling of this Court. That is to say, petitioners in their application for mandamus set out the entire set of facts commencing from the coming to Liberia of Mammie Barteh Shiakar to her demise and the final ruling of Commissioner I. Van Fiske refusing to place petitioner in possession of the said Mammie Barteh Shiakar's estate or to further deal with former Commissioner Bull's ruling except to investigate the petition subsequently filed by Tee-tee Barteh Payne who claims to be the daughter

and next of kin of the said Mammie Barteh Shiakar. This Court, having upheld the position taken by the respondent commissioner, denied the application for mandamus and ordered the Commissioner of Probate to proceed with the said investigation. Therefore, the contention of petitioner that it is illegal for the commissioner to proceed with and determine the hearing of the investigation is in effect saying that the ruling of this Court so commanding is erroneous and illegal. Respondents therefore submit that certiorari would not lie to review the mandate of the Supreme Court, especially where there has been no abuse in the exercise of said order.

- “3. And also because, as to Count ‘3’ of petitioner’s petition, respondents say that there has been no ruling made in connection with the taking and filing of an inventory by the curator, nor has there been any application for filing of a bond made by petitioner upon which the respondent commissioner might have made a ruling and which petitioner might consider illegal or adverse to his interest, which alone would constitute a ground for certiorari. Respondents submit that, granting the averments in Count ‘5’ to be correct (but they are not), mandamus would be the proper remedy to compel such action, and not certiorari. The writ should therefore be denied, and respondents so pray.
- “4. And also because respondents say further to Counts ‘5’ and ‘6’ of the petition that the petitioner has never become a naturalized citizen of Liberia, nor has she presented a certificate of naturalization. On the other hand the respondent is and has always been a Liberian citizen, having been born in Liberia of her mother the late Mammie Barteh Shiakar, who was at the time of respondent’s birth

a naturalized Liberian, and her father, who was a natural born Liberian. It is submitted that the facts tendered in said counts lay no basis for certiorari, but rather seek to give testimony of alleged facts which are to be proved at the trial of Teetee Barteh Payne's petition in the probate court. The writ therefore should be denied, and respondents so pray.

- "5. Also because petitioner's petition is inconsistent and contradictory in that whilst in Count '7' thereof, petitioner avers that the respondent commissioner proceeded to try issues of fact without first passing upon the issues of law, yet said petitioner has made profert the respondent commissioner's ruling on said issues of law. In addition to this, in Count '8' of petitioner's petition, petitioner states: 'That according to the respondent commissioner's ruling on the issues of law aforesaid, on the 2nd and 12th days of November, 1956. . . .' which averment clearly shows the falsity of petitioner's petition, for which the same should be dismissed.
- "6. And also because, as to Count '9' of the petition, it is submitted that, in keeping with the decision of former Commissioner of Probate J. Everett Bull, petitioner Fernandez Atim, was required to produce to the probate court evidence of his citizenship by the production of his certificate of naturalization. Respondents submit that it was not illegal or prejudicial to the interest of petitioner for the respondent commissioner to have, pursuant to the former commissioner's ruling, required the said Fernandez Atim to produce said certificate, since his alleged claim to real property in Liberia rested primarily upon his being a Liberian. What is more, petitioner never excepted to this ruling of the commissioner, but continued in

the proceeding without objection. And it is therefore improper for the petitioner to seek to correct his own defaults by a writ of certiorari. The writ, therefore, should not be issued.

- “7. And also because, as in Count ‘11,’ respondents say that facts therein alleged are grossly distorted, and that had the respondent commissioner no intention of completing the investigation, certainly he would not have sat through the several hearings; nor is it true that the curator of intestate estates has no record of the condition of said estate. Respondents submit that, after rightful heirship has been established, then a party entitled to the possession of the assets of the estate may inquire into the report of the curator. Certiorari, however, cannot and would not lie to review, at this stage and in an unrelated proceeding, such matters as are recounted in petitioner’s petition. The writ should therefore be denied.”

It is to be observed that prior to the institution of these certiorari proceedings, petitioner applied to Mr. Justice Mitchell, presiding in Chambers, for the issuance of a peremptory writ of mandamus, which application was denied. Having carefully perused the petition under review, we are at a loss to understand the object or purpose of the petitioner, except that he is adroitly endeavoring to have this Court defeat its own command handed down to the respondent commissioner through its mandate directing that the said respondent commissioner proceed to investigate the claim of relationship on both sides.

We deem it expedient to quote excerpts from the ruling from which this appeal emanates and in which Mr. Justice Mitchell said:

“Regardless of the ruling given in the mandamus proceedings and the effort of the said probate commissioner, now respondent, to obey the mandate of this Court by proceeding to investigate the claim of rela-

tionship on both sides, petitioner has again found his way before this Court. . . . Counsel for petitioner contended that the said respondent commissioner required him, during the investigation below, to present his certificate of naturalization before the opposite party had rested evidence on the application of counsel for Teetee Barteh Payne, petitioner below, now one of the respondents. He maintains that this act was illegal and prejudicial to his rights under the law, and that therefore he sought the issuance of the writ of certiorari. He further contends that to have been required to produce the said certificate of naturalization before he was called upon to produce evidence in his behalf was an infringement on his constitutional privileges. This contention cannot be too well conceded, because the production of the certificate of naturalization was and is very cogent to the inheritance of the estate which he now claims; for without it the court would not be justified to possess him of real property, even though he is able to establish next of kinship. Nor can I see in what manner the production of the certificate could be tantamount to an infringement on his constitutional rights, especially since, if he had produced it, there would have been no benefit accruing to Teetee Barteh Payne therefrom; on the contrary, it would have served as evidence for himself."

From the foregoing, it is crystal clear that the petitioner in these proceedings is either attempting, perhaps through inexperience, to have this Court rescind its mandate in the mandamus proceedings mentioned *supra*, or is deliberately seeking to coerce this Court into doing that which, in the end, will reflect upon this Court censure and discredit. We hereby, in no uncertain terms, deprecate this gesture on the part of the petitioner herein to mislead this Court; and although counsel for petitioner was strictly warned against the repetition of groundless action, yet in the face of the comprehensive ruling quoted, *supra*, he has



persisted in bringing forward this appeal. The sympathy expressed in the ruling under consideration for Fernandez Atim, being an invalid, whose interest is involved, thereby relieving him of all costs is sustained; but counsel having failed to concede the indiscretion on his part to continue this unmeritorious action, should be penalized. Nevertheless, instead of imposing a fine at this time, we hereby confirm the warning stressed in the ruling under consideration; and upon repetition, this Court reserves the right of imposing the maximum fine provided by law in such cases.

In view of the foregoing, the ruling under review denying petitioner's petition for the issuance of writ of certiorari is hereby sustained; costs disallowed. And it is hereby so ordered.

*Affirmed.*