

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT
MARCH TERM, 1961.

MOHAMADI KABA, *et al.*, Administrators of the Intestate Estate of SIDIKI KABA, Deceased, Plaintiffs-in-Error, *v.* SALEEBY BROTHERS and RASAMNY BROTHERS, Lebanese Merchants, and I. VAN FISKE, Commissioner of Probate, Montserrado County, Defendants-in-Error.

ASSIGNMENTS IN ERROR TO THE MONTHLY AND PROBATE COURT OF
MONTSERRADO COUNTY (TWO CASES).

Argued April 17, 1961. Decided May 18, 1961.

1. The commissioner of probate may, without formal summons, cite the administrators of an intestate estate to appear in proceedings connected with their administration.
2. There is no form of action entitled "action of claim."
3. A chattel mortgagee may, orally and without consideration, waive his mortgage lien by conduct inconsistent with its existence, and thereafter be estopped from enforcing it.
4. A chattel mortgage may be extinguished by sale or assignment of the mortgaged chattel in violation of statutory requirements and amounting to conversion of the chattel by the mortgagee.
5. A judgment awarding an amount in excess of the jurisdiction of the court may be attacked on jurisdictional grounds at any subsequent stage of the proceedings.

Defendants-in-error obtained judgments by default on "actions of claim" against plaintiffs-in-error as administrators in intestacy. On assignment of error and review of the facts and law, the *judgments* were *reversed*.

William N. Witherspoon for plaintiffs-in-error. *Albert D. Peabody* for defendants-in-error.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Because these two cases involve the same plaintiffs-in-error, the same subject matter, and the same manner of procedure adopted by the lower court in the judicial handling and disposition of said cases, as well as because the assignment of error in both matters is identical in substance, we shall pass upon them as one matter.

Due to alleged irregularities in the institution and disposition of these causes by the court of origin, the petitioners in these remedial proceedings felt it necessary to flee to this Court with petitions for writs of error for the review of these cases. Upon a careful perusal of the records presented to us, it is observed that petitioners, in Count "1" of the assignment of errors, alleged, in substance, as follows:

"The alleged claim should have been venued in the probate division of the monthly and probate court, and not in the law division."

This Court has long held to the rule that:

"... all the papers in every action should and must be addressed to the proper division of the court in which relief is sought." *Moddermann v. Roberts*, 1 L.L.R. 218, 219 (1888).

The contention of plaintiffs-in-error in this respect is well founded; hence same is hereby sustained. Count "2" of the assignment of errors being in substance a repetition of Count "1," we shall pass to Count "3."

In Count "3" the plaintiffs-in-error complain that they were not served with summons, and that the alleged service and returns were illusory and misleading. We cannot concede that the service of the precepts and returns there-to are not genuine, since it does not stand to reason that the

administrators of the intestate estate of the late Sidiki Kaba would disregard the law and the court after having been appointed by the said court. On the other hand these matters are not of such a grave nature that the plaintiffs-in-error, should have felt it necessary to go into hiding to evade imprisonment or some other severe punishment; especially when they could have obtained, as in the present circumstances, competent counsel to represent their interest. As a matter of course the probate commissioner, upon the complaints of the claimants in the proceedings before him, should have cited the plaintiffs-in-error to appear for investigation; and upon their failure to obey the orders thus issued and served for their appearance at the time specified, the said probate commissioner should have dealt with them according to the law in such cases made and provided, the said plaintiff-in-error being officers of his court. No formal summons was necessary for their presence in court.

Count "4" of the assignment recites the same facts and circumstances passed upon in Count "1." Therefore we will pass wherein the petitioners allege:

"And also because plaintiffs-in-error further say that there is, as far as they are aware, no action provided for in our statutes called an 'action of claim.' The court had the right to refuse jurisdiction *sua sponte*. Not to have done so, plaintiffs-in-error submit, was manifest error."

Recourse to the statutes will reveal the fact that an "action of claim" is foreign to the forms of actions provided for therein. The defendants-in-error have chosen the wrong form of action, and therefore the said "action of claim" should have been ignored by the commissioner of probate, and he should have proceeded in the regular manner as outlined by this Court in *Strong v. Williams*, 2 L.L.R. 515 (1925).

In Count "6" of the assignment the plaintiffs-in-error deny that the estate of the late Sidiki Kaba was indebted

to claimants. Although they admit that the late Sidiki Kaba was involved in some transaction with Saleeby Brothers over the purchase of a truck, they allege that the said transaction was a chattel mortgage and that, upon the death of Kaba, claimants Saleeby Brothers seized said truck and sold same without reference to the administrators, and hence, having seized their property from which all payments were to be made, they closed the account; therefore, claiming any balance against said estate and obtaining baseless judgments and executions thereon, as granted by the probate court, was manifest error.

The circumstances and conditions herein complained of are supported by the records in both cases. It is disgusting to observe the manner in which claimants with impunity contravened the law governing intestate estates by interfering or intermeddling with the said estates without order of court or some mutual understanding reached between the administrators and themselves.

Further, it seems rather irregular under normal circumstances for the probate commissioner to have permitted claimants to interfere with the aforesaid intestate estate, without having them assume the liabilities of the said estate and responsibility for the shares of all the heirs thereof. Our statute law governing estate provides as follows:

“No person shall meddle or interfere with the estate of any person, unless authorized to do so by the court exercising probate jurisdiction for the county in which the decedent resided; and any person so doing shall thereby become liable for the payment of all the debts due by decedent and for the respective shares and legacies of all the heirs and legatees of the estate.”
1956 Code, tit. 9, § 1.

Applicable principles of common law respecting waiver of liens and illegal sales by chattel mortgagees have been authoritatively summarized as follows:

“A chattel mortgagee may waive his mortgage lien,

or be estopped to enforce it, by conduct inconsistent with its existence, and such waiver or estoppel need not, of course, be shown by written evidence, nor be supported by a consideration." 11 C. J. 674 *Chattel Mortgages* § 441.

"Where the mortgagee after condition broken takes possession of a part of the mortgaged property and retaining the same assigns the mortgage to a third person, he is guilty of a conversion of such property, and the value thereof should be applied in payment of the mortgage; and so also a sale after default in violation of statutory requirements is the conversion of the property and will operate to extinguish the mortgage." 11 C.J. 686 *Chattel Mortgages* § 465.

Therefore the contention of plaintiffs-in-error in this count is sustained. Moreover, although this point was not raised in their assignment of errors, yet in passing we would like to observe that, in addition to this incurable legal blunder, the respective amounts which form the basis of the so-called action of claim, far exceed the jurisdiction of the monthly and probate court, as conferred by law, in that the amount claimed by Saleby Brothers is \$2,069.62, and in the case of Rasamany Brothers the amount claimed is \$2,217.49. Each of these amounts is in excess of the jurisdiction of the probate court. This Court has held:

"Where want of jurisdiction over the cause appears upon the records, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings; for any act of a court beyond the jurisdiction conferred upon it by law is null and void." *Hill v. Republic*, 2 L.L.R. 517 (1925), Syllabus 4.

In respect to the issue raised that there was insufficient evidence to support judgment by default in these proceedings, we shall quote from the record in both cases. In the case of *Saleby Brothers v. Mohamadi Kaba, et al.*, we have the following:

"Q. What is your name?

"A. My name is Claude Nader.

"Q. Where do you live?

"A. In Via Town, Bushrod Island, Monrovia.

"Q. Are you acquainted with Saleeby Brothers, claimants in this action?

"A. Yes.

"Q. Are you employed; if so, by whom and in what capacity do you serve?

"A. I am employed by Saleeby Brothers as the accountant of their garage.

"Q. Saleeby Brothers, claimants in this action, have filed a claim against the administrators of the intestate estate of the late Sidiki Kaba. Being the accountant of their garage, you have been brought here as a witness to testify in behalf of the claimants. Please state all the facts and circumstances that lie within your own certain knowledge touching the claim.

"A. According to the ledger of the former accountant, the balance of the late Sidiki Kaba figures the amount of \$3,097.32, and Saleeby Brothers were trying to sell the truck. The amount for the truck was \$1,027.70. This amount was paid by Saleeby Brothers against the said truck. The balance due is \$2,069.62.

"Q. Say, if you can, whether Sidiki Kaba, or the administrators of his estate made any further payment against this claim.

"A. No.

"Q. Say again, if you can, the amount balance to date against the estate of the late Sidiki Kaba, claimed by Saleeby Brothers.

"A. The amount balance is \$2,069.62.

"Q. Do you have a statement in your possession to show this amount?

"A. No."

Here the testimony of the accountant terminated, and the claimants rested evidence and asked for judgment. Upon the testimony of this one witness who introduced the ledger kept by the former accountant, judgment was rendered as follows:

“This case was called for hearing pursuant to adjournment. At the call of the case the claimants were present with their legal representative but the defendant failed to appear. The above-entitled claim was filed by the claimants against the administrators of the intestate estate of the late Sidiki Kaba on June 3, 1959, when a copy of it was ordered served on the said administrators. Up to this stage they have not appeared in person or by counsel; and the claimants made application for judgment by default. To this the court reserved its opinion and ordered the defendants called at the door three times, which was done by the sheriff, who thereafter reported that said defendants failed to answer after having been called. Then and there the application for judgment by default was granted. At this stage the claimant and his witness were duly qualified, testified and discharged with the thanks of the court. After having proved this claim, judgment was prayed for by default. Same is granted. In view of the evidence adduced at this trial and the law controlling, the court is of the opinion that the plaintiff has proved his claim, to which he is justly entitled. The defendants are hereby adjudged to pay said claim. And it is hereby so ordered.

“Application to court by claimant’s counsel: ‘The ruling of this court in this case is highly accepted and appreciated by claimants, and claimants hereby pray for execution against the respondents for the recovery of the amount claimed.’

“Court’s Ruling: The application just made by claimants’ counsel is hereby granted, and the clerk of

this court is hereby ordered to issue an execution against the defendants for the collection of said claim. And it is so ordered.”

In the case of *Rasamny Brothers v. Mohamadi Kaba, et al.*, we have the following:

“Attorney N. B. Thorpe of the Richard Smallwood Law Firm, for Rasamny Brothers, respectfully submits to court that since the date of summons the respondents have failed to file a formal appearance to answer to the claim filed against the respondents, and are still absent from court; this being the case, claimants ask for judgment by default against the respondents, and submit.

“*The Court:* In view of the application made by counsel for claimants, the sheriff of this court will proceed to the door and call the respective administrators three times and make his report to the court. And it is so ordered. (Case suspended for a few minutes; court resumes business; case called.) The sheriff returned and reported that he called three times at the door and there was no response. At this stage the court ordered the sheriff to call the claimants in the Matter of the Intestate Estate of the Late Sidiki Kaba at the door, and reported to the court that they did not answer. Wherefore the court granted judgment by default and ordered the qualification of Rasamny Brothers’ witnesses to depose:

“Q. What is your name and where do you live?

“A. My name is Richard D. Ashaima of the City of Monrovia.

“Q. Please say whether you are employed, and if so by whom and in what capacity you serve.

“A. I am employed by Rasamny Brothers, Inc., and I serve as Secretary for the Company.

“Q. Please say whether you were acquainted with the late Sidiki Kaba.

“A. Yes.

"Q. Rasamny Brothers instituted a claim against the estate of the late Sidiki Kaba. You have been called to testify in said matter. You will please give all facts and circumstances which lie within your certain knowledge touching said claim for the benefit of the court.

"A. In the year 1952, we sold one De Soto truck to the late Sidiki Kaba. He made part payment up to March, 1953, and from that time entirely stopped all further payments. We sent him monthly statements and wrote him several letters reminding him of the balance still outstanding against the account, but all our efforts proved of no avail, and he never made any further payment until his death. When we got notice of the appointment of his administrators, we referred the matter to our lawyers to file a claim against his estate for the amount of \$2,217.49 still due, and this is all I know about the matter.

"The Court:

"Q. You personally kept this special account?

"A. Yes. I kept the account.

"At this stage the claimants rested evidence, and submitted the matter to the court which rendered the following judgment:

"In view of the evidence adduced at the trial and the law controlling, the court is of the opinion that the plaintiff has proved his claim to which he is justly entitled. The defendants are hereby adjudged to pay the said claim; and it is hereby so ordered."

It is obvious from a review of the testimony of the two witnesses quoted *supra*, one in each of the causes in support of his respective employer's claim, that the evidence adduced at the trial is insufficient to support the alleged claim. Under the surrounding circumstances in these matters, the contention of plaintiffs-in-error that "sufficient evidence must definitely be brought to support,

substantiate and prove the alleged claim," is supported and borne out by the records in these proceedings.

In perusing the said records, it is discovered that the claimants left their interests entirely to their witnesses, one in each case, to substantiate and prove, whilst the said claimants failed even to appear at the trial of said causes, to say nothing about taking the witness stand to testify in their own behalf in support of their respective claims.

In view of the circumstances recited hereinabove and the law we have quoted herein, we find it necessary to reverse the judgments thus rendered in said causes, and they are therefore reversed and made null and void. The executions issued in consequence of the said judgments are hereby vacated, and the claimants are estopped from further asserting said claims to satisfy the amounts alleged to be due against the truck illegally taken over by said claimants from the intestate estate of the late Sidiki Kaba, repossession of which truck was without the order of court and also without a mutual understanding between the administrators of the aforesaid estate and themselves. Each claimant firm is ruled to pay the costs of his respective cause. And it is hereby so ordered.

Reversed.