

Modu Cole, of the City of Monrovia, Liberia APPELLANT v **His Honor Stephen A. Wah**, stipendiary Magistrate, New Kru Town Magisterial Court, Monrovia, Liberia, Liberia, and **William C. A. Cole, Jr.** also of the City of Monrovia, Liberia
RESPONDENTS/APPELLEES

APPEAL

LRSC 9

Heard: April 4, 2013 Decided: January 16, 2014

MR. JUSTICE BANKS delivered the Opinion of the Court.

These appeals are the direct result of two rulings made by the judge of the Monthly and Probate Court for Montserrado County, one of which ruling was in favour of William C. A. Cole, Jr., the appellee herein, and against Modu Peh Cole, the appellant herein, and the other ruling in favour of Modu Peh Cole and against William C. A. Cole, Jr. The two rulings from which the appeals were taken centered on a struggle for the control or occupancy of property belonging to the Intestate Estate of the late William C. A. Cole, Sr., said to be the biological father of both the appellant and the appellee. In the one case, instituted by William C. A. Cole, Jr. against Modu Peh Cole to have the judge of the Monthly and probate Court for Montserrado County revoke the letters of administration issued in favour of Modu Peh Cole to co-administer the Intestate Estate of the late William C. A. Cole, Sr., the probate judge ruled that Modu Peh Cole was in fact the biological daughter of the late William C. A. Cole, Sr., and that as such she was entitled to and clothed with the standing and authority to petition the court for and to be granted letters of administration to co-administer, along with William C. A. Cole, Jr., the Intestate Estate of their late father, William C. A. Cole, Sr. In the second case, wherein Modu Peh Cole filed summary proceedings in the Monthly and Probate Court for Montserrado County to have the judge review and reverse the final judgment of the magistrate evicting her from property said to be owned by the Intestate Estate of the late William C. A. Cole, Sr., the probate court judge ruled that the court did not have jurisdiction to entertain summary proceedings against the magistrate as the matter complained of was summary proceedings to recover possession of real property, over which only the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, had jurisdiction, conferred by statute. The judge noted that the fact that the summary proceedings to recover possession of real property involved an intestate estate did not thereby cloth the probate court with jurisdiction of the matter growing out of said action. Based on the foregoing, the probate court judge instructed the magistrate to proceed with the enforcement of his eviction ruling against Modu Peh Cole.

The genesis of the two appeals can be traced to the death of the late William C. A. Cole, Sr., who died without leaving a will. Although at the time of his death the deceased had never married, he was said to have left six children born onto different mothers. Following the death of the deceased, one of the children, William C. A. Cole, Jr., applied to the Monthly and Probate Court for Montserrado County for letters of administration to administer the intestate estate of his late father. The facts, as contained in the records, indicate that the Monthly and Probate Court granted the application and issued to the applicant, William C. A. Cole, Jr. letters of administration to administer the property regarding which the application had been filed.

Subsequently, following the advent of the Liberian civil war, a dispute developed between William C. A. Cole, Jr. regarding the occupancy of the premises of the estate and rental fees being received by the administrator from the lease of certain property of the estate. Specifically, Modu Peh Cole, who had been living with her mother following the death of her father, William C. A. Cole, Sr., and whose portion of the estate had been rented to tenants and the proceeds therefrom used for her upkeep, returned to the premises of the estate and demanded that her room in the house of the estate be given to her for her to live therein. The records reveal that she also demanded that her brother, William C. A. Cole, Jr. give an account of the rents which he had allegedly been receiving but not sharing with her. Whereupon William C. A. Cole, Jr. instituted in the Magisterial Court for New Kru Town summary proceedings to recover possession of real property, stating that Modu Peh Cole bore no relationship to him or the late William C. A. Cole and that she and others were illegally occupying the premises of the estate, and praying that the court should therefore evict and eject them from the premises. A trial was held and judgment was entered by the Magistrate ordering the immediate eviction of the occupants of the property of the estate, except for Modu Peh Cole who, being the sister of William C. A. Cole, Jr., and daughter of the decedent, was given a period of two weeks to cave the premises. It was from this ruling that Modu Peh Cole filed in the Monthly and Probate Court for Montserrado County a one page petition letter of summary proceedings seeking a review and reversal of the decision of the magistrate. We herewith quote the said letter, as follows:

MAY IT PLEASE YOUR HONOUR:

I am constrained to file this complaint against Magistrate Henry F. Nyumah, Acting Stipendiary Magistrate, New Kru Town magisterial court for Your Honour's attention and intervention in form and manner to wit:

1. That I am a defendant in an action of summary proceeding to recover possession of real property pending before the respondent magistrate.
2. That during the trial, the plaintiff, William C. A. Cole, Jr., who is my natural brother, produced into evidence photocopy of a letter of administration which he fraudulently obtained in 1979 from your Honourable Court.
3. That during the trial, defendant informed the respondent magistrate that the production of a letter of administration into evidence in such action of this nature signifies that the magisterial court did not have jurisdiction, and as such the matter should be transferred to the Monthly and Probate Court Montserrado County. Same was decided by the respondent magistrate.
4. That despite the fact that during the trial defendant raised issues as to the legal sufficiency and defectiveness of the so-called letters of administration, such as photocopy, selling a portion(s) of the estate without court decree, death of one of the administrators (not replaced), His Honour Henry Nyumah maintains that same constitute sufficient conveyance of title to plaintiff.
5. And that on the 17th day of June, A.D. 1998, the respondent magistrate, contrary to the law of the Republic of Liberia, rendered a final judgment against (defendant) ordering my immediate eviction from the property of our late father, of which I am a beneficiary. I announced an appeal.

Wherefore petitioner respectfully requests Your Honour to cite the respondent magistrate to show cause why, if any, he cannot be held for judicial malpractices and further order him to stay further proceedings in this matter until final determination or this summary proceeding.

The respondent, William C. A. Cole, Jr., upon receipt of citation from the Monthly and Probate Court for Montserrado County, filed resistance to the petition letter and a motion to dismiss the summary proceedings against the magistrate. The thrust of the resistance and more was three-fold: (a) That neither the Magistrate nor Counsellor M. Kron Yangbe, both of who had been named in the body of the letter-petition were parties to the summary proceedings to recover possession of real property; (b) that the court lacked jurisdiction over the subject matter of the summary proceedings petition as the case growing out of which the petition was filed was an action to recover possession of real property, and as such that any summary proceedings or appeal could only be taken to the Civil Law Court for Montserrado County and not the Monthly and probate Court for Montserrado County; and (c) that the process for review of a judgment from a magisterial court was not the filing of a letter, as had been done by the petitioner, but rather that

same should have been done by filing of a petition. It is worth, for the purpose of analyzing the contentions of appellant Modu Peh Cole, on this appeal, to quote the nine-count motion to dismiss filed by the respondents, and the resistance filed thereto. We herewith quote, firstly, the motion to dismiss, as follows:

1. His Honour, Magistrate Stephen Wah, New Kru Town Magisterial Court, City of Monrovia, Liberia, says that this Honourable Court has no appellate jurisdiction in the action of summary proceedings to recover possession of real property in which final judgment was rendered on the 17th day of June, A. D. 1998, by his predecessor, His Honour Henry Nyumah; only the Circuit Court, Sixth Judicial Circuit, Montserrado County, has appellate jurisdiction in aid of its appellate jurisdiction to review the judicial acts of a magistrate. There is no statute extant in this country that confers jurisdiction, original or otherwise, on the Probate Court for Montserrado County sitting in Monrovia to review the judicial acts of a magistrate in Monrovia; it is the law that confers jurisdiction on the court and not by consent of party.

2. That Counsellor M. Kron Yangbe has never been and is not a party plaintiff or defendant in any action pending or has been decided by the Magisterial Court of New Kru Town, presided over by His Honour Stephen Wah. Therefore, this Honourable Court should refuse jurisdiction.

3. That the practice and procedure provided for in the Civil Procedure Law are the same in the Probate Court. Section 101.2, Special Proceedings are commenced by filing a petition with the clerk and issuance of a citation. A citation shall specify the time and place of the hearing on the petition, shall specify the supporting affidavit, if any, accompanying the petition, and shall direct the respondent to appear and file returns. 1 LCLR 143, section 16.4. In the instant case, no petition was filed and served together with the citation as provided by statute. To the contrary, a letter was written and served together with a citation on Magistrate Wah and Counsellor M. Kron Yangbe. Consequently, this Honourable Court has no legal and personal jurisdiction in this case.

4. That any document filed in a case must contain a caption setting for the name of the court, the name of the parties, and others. In this case, there are no names of parties stating who brought the so-called summary proceeding against the magistrate as provided in 1LCLR, section 8.1(3), pages 102 and 103.

5. There is no valid reason stated in the letter to halt the execution of a valid judgment rendered by a court of competent jurisdiction of the parties and the subject matter, copy of which is attached as exhibit "A". Magistrate Wah only cited the Henries Law Firm, attorneys for one of the parties thereto, as a further notice

for enforcement of the judgment and did absolutely nothing more, Therefore, it is false and misleading that Magistrate Wah interfered and acted irregularly in any manner in a matter that is no longer pending before the court below.

6. That about four (4) months after the date of the final judgment of the Magistrate Court, on the 13th day of October, A.D. 1999, Modu Peh Cole procured letters of administration upon petition and unknown to William C. A. Cole, Jr. who was duly appointed by this Honourable Court since 1979, and was administering the Intestate Estate of his late father, William C. A. Cole, Sr. It is the fraudulent procurement of the letters of administration of Modu Peh Cole that is the subject of probe before the probate court, and not eviction proceedings already decided since June 17, 1998 and constitutes res judicata, not subject of appellate review by any court.

7. That summary proceedings will not lie in a case that is not pending before a magistrate and without any showing of prejudicial acts committed against a party. Does issuance of a notice of assignment constitutes an improper conduct on the part of a court? The answer is certainly in the negative. Does placing the estate in the hands of a curator after the date of the final judgment of the court legally nullify the judgment of a court of competent jurisdiction over the subject matter and parties? No. The caption of the case in which the notice of assignment was issued is "William C. A. Cole, Jr. vs. Modu Peh and occupants, Action of Summary Proceedings to Recover Possession of Real Property", and not Intestate Estate of William C. A. Cole, Sr. or Summary Proceedings against the New Kru Town Magistrate, Stephen Wah, nor the William C. A. Cole, Sr. Intestate Estate." Therefore, these summary proceedings and the citation are irrelevant to the case in which the Notice of Assignment was issued, served but the Henries Law Firm refused to accept and sign same, contrary to the ethics of the profession. Page 5, Rule 21. Magistrate Wah and Counsellor M. Kron Yangbe deny all and singular the allegations of law and facts contained in the letter not specifically traversed herein and pray that same be denied and dismissed with costs.

Wherefore and in view of the foregoing, Magistrate Wah and Counsellor M. Kron Yangbe pray that this case be dismissed and the court below be ordered to enforce the judgment with costs.

We also herewith quote the five-count resistance to the motion to dismiss the petition in summary proceedings, as follows:

1. That as to count one (1) of the motion, respondent says that the same is false and misleading and should be dismissed because the house in question is an intestate estate which is currently being administered by the probate court.

Certainly, the probate court judge does have jurisdiction if a subordinate court attempts to interfere in matter that is pending before the said probate court. Count one (1) of the motion should be dismissed.

2. That as to count two (2) of the motion, respondent says the records before this court is replete with the facts that Cllr. Kron Yangbe is the legal counsel for William C. A. Cole, Jr. on whose behalf the magistrate is attempting to evict the respondent in these proceedings. Any reference to the said Cllr. M. Kron Yangbe is no error as he is part and parcel of the entire matter.

3. That as to counts three (3), four (4) and five (5) of the petition, it is a settled practice within our jurisdiction that summary proceedings, complaining of irregularity committed by a magistrate or justice of the peace may be instituted through letters of complaint or through a formal petition to the court. Irrespective of the form, the object remains the same. The complaint of summary proceedings was therefore properly brought before this court.

4. That as to counts six (6) and seven (7) of the motion, respondent says that whether or not the letters of administration obtained by the respondent was done fraudulently remains an allegation which is being heard by the probate court. Until and unless this matter is resolved by the probate court, the magisterial court cannot exercise jurisdiction over the subject property. Once the property is under the curator of the court, an attempt by the magistrate to evict any of the parties constitutes an irregular action which is certainly a proper subject of summary proceedings. Counts six (6) and seven (7) of the motion should be dismissed.

5. The respondent denies all and singular the allegations of law and facts that were not specifically traversed in these returns.

It was predicated upon the contentions stated in the quoted pleadings, exchanged by the parties to the summary proceedings, that the Judge of the Monthly and Probate Court for Montserrado County entertained arguments and made the ruling, one of the matters complained of in these appeal proceedings. Thus, in aid of the analysis made herein, we quote the said ruling:

On the 24th day of June, A. D. 1998, petitioner Modu Peh Cole, filed a five (5) count summary proceedings against respondent Magistrate Henry F. Nyumah, Sr., of the New Kru Town Magisterial Court. The basis of said summary proceedings are found in counts three (3) and five (5). For the benefit of this ruling, the court shall summarize these counts, as follows:

(3) That during the trial petitioner/defendant asked/informed the respondent magistrate to have said matter transferred to the Monthly and Probate court as

his court lacked jurisdiction for the fact that the plaintiff William C. A. Cole, Jr. had offered into evidence letters of administration in his name to buttress his side of the case.

(5) And that on the 17th day of June, A. D. 1998, the respondent magistrate, contrary to the law of the Republic of Liberia rendered a final judgment against petitioner/defendant ordering her immediate eviction from the property of their (she and plaintiff) late father to which she is also a beneficiary.

The respondent Magistrate Henry F. Nyumah, Sr. then filed a four (4) count returns to said petition, the relevant portions of which are found in counts one (1) and three (3) are hereby summarized by this court below:

(1) That the action from which these summary proceedings grew is summary proceedings to recover possession of real property", legally and property cognizable before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, and not before this court. Further, probate courts can only have jurisdiction in summary proceedings against justices of the peace and magistrates in all cases where there are no courts created for this specific purpose, especially in the leeward counties. Therefore, this court lacks jurisdiction over the subject matter.

(3) That summary proceedings cannot and will not lie at this stage of the matter because the matter was determined in the court below and final judgment was rendered accordingly. Petitioner excepted and announced an appeal which was accordingly granted. The case is only pending before the below court for the perfection of an appeal bond. Petitioner is therefore estopped by operation of law to seek remedy through summary proceedings when she has one through an appeal available to her.

At the call of the said matter for hearing, the respondent magistrate, through his counsel, M. Kron Yangbe, requested this court to spread a submission on the records of this court which was in effect a motion to dismiss. The court wants to note here that the contents of the said motion and the resistance to said motion are all similar to the returns and petition filed in the summary proceedings action and this court does not deem it fit to restate them in this ruling.

There are several issues involved in these proceedings, but this court will only concern itself with those that are germane to this matter, and therefore has narrowed the issues to the following:

(1) Whether or not this court lacks jurisdiction in this matter as alleged by the respondent magistrate as:

(a) The ruling of the court below is a final judgment and therefore summary proceedings will not lie;

(b) The nature of the action summary proceedings to recover possession of real property" is cognizable only before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, on appeal and even on summary proceedings in this county?

Dealing with the issue in this matter, this court shall deal with (a) of said issue: Whether or not this court lacks jurisdiction in this matter as alleged by the respondent magistrate as the ruling of the court below is a final judgment and therefore summary proceedings will not lie. This court reverts to the case Naye A. Hallaey vs. Mahmoud Farart, 7 LLR 124, text page 125: "A final judgment is one which disposes of the case, either by dismissing it before a hearing is heard upon its merits, or after trial, by rendering judgment either in favor of plaintiff or defendant." "An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the process of a cause, but does not adjudicate the ultimate rights of the parties." Also this court reverts to the Black's Law Dictionary (5th Edition), page 756 "final Judgment": One which puts an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sued for, so distinguished from interlocutory judgments. A judgment which terminates all litigation on the same right."

Recourse to the records in the court below show the following ruling at the back of the writ in question: "Therefore the Summary Proceedings to Recover Possession of Real Property action filed against the defendants, Modu Peh Cole and occupants, by William C. A. Cole, Jr., an administrator of the Intestate Estate of the late William C. A. Cole, Sr. is hereby sustained. The defendants, with the exception of Modu Cole, are ordered to immediately vacate from the plaintiff's premises, and for Modu Peh Cole, who is alleged to be the sister of the plaintiff, is given up to the end of June, A. D. 1998, to vacate the premises. After said ruling, the counsel for defendant/petitioners excepted to said ruling in these words: To which ruling of Your Honour, defendant except and says that he takes an appeal; which was noted by the court.

And further to the same issue (a), petitioner/defendant Modu Peh Cole, admitted in count five (5) in her letter of summary proceedings against the respondent magistrate that he respondent magistrate rendered a final judgment in this matter on June 17, A. D. 1998. Therefore, the court has no alternative in view of the supporting evidence and the quoted laws to rule that said ruling of the respondent magistrate was a final one (final judgment). Petitioner should have perfected the

appeal as announced to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, R. L.

As to part six (6) of said issue, whether or not this court lacks jurisdiction in this matter as alleged by the respondent magistrate as the nature of the action "summary proceedings to recover possession of real property" is cognizable only before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, on appeal and even on summary proceedings, this court reverts to the New Judiciary Law, Chapter e, Section 3.2: The Circuit Court shall exercise original governed jurisdiction, including jurisdiction in admiralty cases, over all cases as to which another court is not expressly given exclusive original jurisdiction by constitutional or statutory provisions; provided that in Montserrado County, the circuit court in the First judicial Circuit shall have jurisdiction to try only criminal cases and the circuit court in the Sixth Judicial Circuit shall have jurisdiction to try only cases other than criminal. Also in Chapter 3, section 3.3 of the New Judiciary Law: The circuit judges shall have the power, authority and jurisdiction exclusively to issue or order the issuance of writs of injunction, the writs for summary proceedings in the nature of prohibition, addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them.

As seen from the above, indeed the Sixth Judicial Circuit has the jurisdiction for summary proceedings and appeal in an action in the court below for summary proceedings to recover possession of real property, but bearing in mind also that the Monthly and probate court also has appellate jurisdiction (Kiki Nowa and Cheh Dueak vs. Mary Elizabeth Wolo, 8 LLR 355, syl. 1), but not in the instant case.

Wherefore, and in view of the foregoing, the petitioner's petition is hereby denied, and the respondent magistrate is hereby ordered to resume jurisdiction over said matter and have same enforced. Costs [are assessed] against the petitioner. And it is hereby so ordered.

Given under my hand and seal of court in open court this [22nd day of June, A.D. 2001] 18th day of September, A.D. 1998.

John L. Greaves
Judge, Monthly and Probate Court
Montserrado County, Liberia.

The petitioner/appellant, Modu Peh Cole, excepted to the ruling of the trial judge and prayed for an appeal to the Supreme Court for a review of the said ruling.

The exception having been noted and the appeal granted by the court, the appellant, in fulfillment of the requirements of the Civil Procedure Law governing appeals from courts of record, and acting within the time allotted by law, submitted her bill of exceptions to the trial judge for his approval. The approval having been granted, the bill of exceptions was filed same with the clerk of the probate court. In the three-count bill of exceptions, the appellant set out the following as the errors committed by the trial judge, regarding which she seeks reversal by the Supreme Court:

1. That Your Honour erred and made a reversible error when, in Your Honour's ruling, as contained on page three (3), you erroneously held that you lacked jurisdiction to hear summary proceedings and also held that summary proceedings will not lie.

2. That Your Honour erred and made a reversible error when you ruled that even though the intestate estate at issue, the William C. A. Cole, Sr. intestate Estate, though under the probate court, the irregular acts of the magistrate relative to said property is not cognizable before Your Honour, contrary to Chapter 5, section 5.4, of the new Judiciary Law of Liberia.

3. That Your Honour erred and made a reversible error when you ruled that the magistrate did not commit any irregular act when in fact the magistrate sole intent was to evict the petitioner from a property which is a subject of litigation before Your Honour, a superior court judge. Wherefore and in view of the foregoing, appellant prays Your Honour's approval of this bill of exceptions and grant unto appellant further relief as may be just and legal.

The issues presented in the bill of exceptions constitute the crux of the first appeal and which the parties have called upon the Supreme Court to resolve in these consolidated appeal proceedings. We note that the appellant, having complied with all of the appeal requirements stipulated by law, this Court is appropriately vested jurisdiction to hear the matters raised by the parties in respect of the said appeal. This brings us to the appeal taken in the second action heard by the Monthly and Probate Court for Montserrado County and ruled upon by the judge of said court.

The second appeal in these dual appeal proceedings, this time taken by William C. A. Cole, Jr., and which also involved Modu Peh Cole, grows out of a ruling made by the judge of the Monthly and Probate Court appointing Modu Peh Cole as co-administrators of the Intestate Estate of the late William C. A. Cole, Sr., said to be the father of the two contending parties to the first action as well as this second action. The records reveal that following William C. A. Cole, Jr.'s action of summary proceedings against his sister,

Modu Peh Cole, to recover possession of real property belonging to the Intestate Estate of William C. A. Cole, Sr., over which the complainant served as administrator, and which property he alleged was being illegally occupied by his sister, Modu Peh Cole, the latter, apparently to secure her interest in the property of the estate, regarding which she had been ordered evicted by the magisterial court, proceeded on September 19, 1998, to file a petition in the Monthly and Probate Court for Montserrado County, praying the court to issue in her favour letters of administration so that she would co-administer with her brother, William C. A. Cole, Jr., the intestate estate left by their late father, William C. A. Cole, Sr. Copy of this new petition was served on the respondent, William C. A. Cole, Jr., through his counsel, Counsellor M. Kron Yangbe, on the 23rd day of September, A. D. 1998. On the 28th day of September, A. D. 1998, William C. A. Cole, Jr., through his counsel, filed returns wherein he strongly objected to any appointment by the Monthly and Probate Court of his sister, Modu Peh Cole, as co-administrator of the Intestate Estate of their late father William C. A. Cole, Sr. In stating his opposition to the petition and the prayer contained therein, William C. A. Cole, Jr. advanced the following contentions in his returns, which we herein quote:

William C. A. Cole, Jr., administrator of the aforesaid intestate estate, in response to the petition says as follows, to wit:

1. Because respondent acknowledges the receipt of copy of the petition on his counsel on the 23rd day of September, 1998, and in answer thereto says he denies the entire petition and petitioner's right to be named co-administrator.
2. That count one of the petition is not a valid ground for letters of administration for petitioner to be added as co-administratrix of the deceased estate. There is no provision of statute that if the whereabouts of one of the administrators is unknown or presumed dead, a stranger must be added to administer the estate.
3. That count two of the petition is false and is a tissue of lie purposely to mislead the court. The case mentioned therein filed in the magisterial court in New Kru Town to evict petitioner from the premises owned by the estate was decided in favor of the present sole administrator, William C. A. Cole, Jr., and upon petition to this Honourable Court is a summary proceedings against the magistrate, this Honourable Court confirmed the decision of the magistrate and ordered him to proceed to enforce his judgment, of which this court is asked to take judicial notice. The effect of the decision of the magistrate and this Honourable Court are prima facie evidence of the probable and valid cause of action that was filed by respondent against the petitioner relative to her alleged right to occupy and own the property of the deceased.

4. Further, the issue of petitioner's alleged relationship as daughter of the late William C. A. Cole, Sr. was raised in the summary proceedings action alluded to against the petitioner and same was decided against her and confirmed by the Monthly and Probate Court in Monrovia as mentioned hereinabove. Therefore, the doctrine of res judicata is binding on petitioner and also constitutes the law of the case. Petitioner is also barred and precluded from raising the issue of her relationship to the estate of the late William C. A. Cole, Sr., same having been judicially decided by this court against the petitioner.

5. That further to counts 4 and 5 of the petition, William C. A. Cole, Jr. or his co-administrator was not counsel to or accountable to petitioner's relative to the affairs of the estate in issue she not having any legal standing to it. Only a person qualified under the law should be consulted on estate, testate or intestate. The entire petition should be denied and should be dismissed with costs against the petitioner."

The above were the pleadings exchanged between the parties regarding whether Modu Peh Cole should be granted letters of administration to co-administer, jointly with her brother, William C. A. Cole, Jr., the intestate estate of their late father. However, because there seemed to have been a mix-up as to the returns filed by William C. A. Cole, Jr. opposing the petition of his sister, and the Probate Court Judge, seemingly unaware that such opposition had been made before the court, and believing that in the absence of such opposition, the petitioner, Modu Peh Cole, had sufficiently shown entitlement to co-administer the intestate estate of the late William C. A. Cole, Sr., granted the petition, without conducting a hearing, and issued in favour of Modu Peh Cole letters of administration to co-administer the intestate Estate of her late father. This action by the Monthly and Probate Court prompted William C. A. Cole, Jr. to file a motion in the Probate Court praying the judge to revoke the letters of administration issued by the court in favour of Modu Peh Cole authorizing and empowering her to co-administer, jointly with the movant, William C. A. Cole, Jr., the Intestate Estate of their late father, William C. A. Cole, Sr. In the motion, the movant, William C. A. Cole, Jr. alleged the following:

1. Because on the 23rd day of September 1998, writ of summons together with a petition was served on respondent/movant to appear on the 30th day of September 1998 to answer the petition and at the same time respondent/movant should file in the office of the clerk his returns on or before the 30th day of September 1998. Accordingly, on the 28th day of September 1998, respondent/movant filed in the office of the clerk of court his returns to the petition and simultaneously served a copy thereof on the petitioner/respondent. Copy of the

returns showing receipts of the returns by the clerk of court and counsel for petitioner/respondent, marked exhibit "A", [is hereto attached] forming [an] integral part of this motion.

2. That according to section 23.1 of the Civil Procedure Law, the court shall decide any issue not required to be tried by a jury; and the law further requires that all issues of law must first be passed on by the court before trial of facts. *Wolo v Wolo* 8 LLR 36. Where a notice of assignment is served on the lawyer or party, and either on or both failed to appear, the court should proceed without the party failing to appear to first decide the issue of law. Revised Rules of Court (Circuit Court), Rule 28. The returns filed by the respondent/movant contained issues of law and facts, and the procedure herein mentioned was not followed in this case, in that the issues of law raised in the returns were not decided by the court. What is worse is that the returns duly filed and served was extracted or stolen from the case file and consequently it was never referred to and the case was treated as ex parte, as will fully appear from clerk's certificate dated 29th day of October, A. D. 1998, and marked exhibit "B", forming a cogent part of this motion. Consequently, the letters of administration was obtained by fraudulent means and misrepresentation of material facts. Additionally, Modu Peh Cole is not a daughter of the late William C. A. Cole, Sr. and she falsely misled the court that she is.

3. That where objections are interposed to the granting of letters of administration, the court will stay granting the petition until the petition is determined. Probate Code, section 107.7. On the court that grants letters of administration that still has jurisdiction may revoke same where the letters was obtained by a false suggestion of a material fact that petitioner, now respondent is a daughter of the late William C. A. Cole, Sr. Probate Procedure Code, pages 66 and 67, sections 107.9 and 107.10(d). Respondent/movant has no remedy except to file this motion for relief. Wherefore and in view of the above, respondent/movant prays Your Honour to revoke and declare null and void ab initio the letters of co-administration dated the 13th day of October 1998, in favour of petitioner/respondent and all costs be ruled against her. And to further grant unto respondent/movant further relief that the court will consider legal and just.

The motion to the probate court to revoke its appointment of Modu Peh Cole as co-administrator, with her brother, of the intestate estate of their late father, having been duly served on Modu Peh Cole, the latter filed a resistance to the same, not only contending that she was the biological daughter of the late William C. A. Cole, Sr. and therefore entitled to administer his estate but also that the movant had no standing to challenge her appointment as co-administrator of the estate.

We herein set forth in part the resistance of Modu Peh Cole to the motion to revoke:

And now comes respondent Modu Peh Cole and respectfully prays this Honourable Court to dismiss movant's baseless motion to revoke Letter of co-administration for the following factual and legal reasons to wit:

1. That as to count one of movant's motion, same is false and misleading in that the petition that was filed by the respondent for co-letters of administration was duly heard by the court and passed upon accordingly. Further, movant herein is not the father of the respondent in these proceedings. He certainly has no standing to even attack the reference petition of the respondent for co-letter of administration. Count one of movant's motion should be dismissed.

2. As to count two of movant's motion, same should be denied and disregarded in that before the co-letter of administration was granted the respondent, the court passed upon all issues of facts and laws that were raised therein and that the court was satisfied certainly, in fulfillment of Section 23.1 of 1 LCLR and Wolo vs. Wolo, 8 LLR 36.

3. Further to count two of the motion, respondent says that under our jurisdiction, the respondent as in the instant proceedings is not required to serve copies of her petition on Movant, moreover, whereby a caveat has never been filed with the Probate Court prohibiting granting of Letter of co-administration to respondent. Further, respondent says that the movant was not in fact a party to the petition that was filed by respondent. The respondent had filed a petition to be named co-administratrix of her late father's property like the movant herein. Movant has no standing to raise any issue regarding its petition as he, the movant, is not the father of the respondent.

4. That further to count two of the motion, respondent says that she is the lawful daughter of the late William C. A. Cole, Sr. and that same is not misleading as alleged by movant. Respondent says that she shall produce living witnesses to refute Movant's allegation during trial.

5. As to count three of the motion, respondent prays court to dismiss same since in fact the movant failed to file a caveat.

The Judge of the Monthly and Probate Court, upon receiving the motion and the resistance thereto, determined that in the interest of justice and for the protection of the estate a full hearing would be conducted into the allegations made by the parties; the letters of administration granted to William C. A. Cole, Jr. and Modu Peh Cole to co-administer the estate of the late William C. A. Cole,

Sr. should be suspended pending a final determination on the question of whether Modu Peh Cole was the daughter of the late William C. A. Cole, Sr. and therefore entitled to be an administrator of his estate; and that pending such final determination, the Curator for Montserrado County should take charge of and administer the estate. Although the ruling was excepted to, no redress was sought at the time from the Supreme Court. Instead, the parties proceeded, as per the instructions of the probate court, to present evidence, oral and documentary, in support of their various opposing contentions. At the close of the evidence and the arguments by the parties, the probate court judge, on August 3, 2001, entered the following ruling:

Respondent Modu Peh Cole filed a petition before this court on the 18th day of September, A. D. 1998, to co-administer the Intestate Estate of the late William C. A. Cole, Sr., along with the administrator, William C. A. Cole, Jr., who is the petitioner in these proceedings. Said petition was duly served on the petitioner, but according to a clerk's certificate emanating from this court, the petitioner did not file his returns to the said petition, nor did he show up for the hearing of the said petition. The petition was granted and the respondent was granted letters of administration to co-administer said estate.

The petitioner, William C. A. Cole, Jr., subsequently informed this court that indeed he had filed his returns to said matter and that from a perusal of the proceedings before this court, the law issues were not disposed of before going into the issues of fact. The court subsequently suspended the letters of administration given respondent Modu Peh Cole and William C. A. Cole, Jr., placed the said Estate under the administration of the Curator and assigned this matter for disposition of the law issues.

This court then identified the following law issues: Whether or not the respondent Modu Peh Cole is a legitimate heir of the late William C. A. Cole, Sr. which entitles her to co-administer his estate; and (2) Whether or not the respondent made misrepresentation to this court which led it to issue the said letters of administration to her. The court, noting that these issues are mixed issues of law and fact, ruled same to trial.

At the trial, petitioner William C. A. Cole, Jr. produced three witnesses, including himself (William C. A. Cole, Jr.), Theresa Nebo, and Eddie Goll. Testifying on his behalf, petitioner stated that the respondent is not his sister and that he only met her in 1990 when she went to the house which is in dispute, in Logan Town, to seek refuge during the 1990 crisis.

Madam Theresa Nebo testifying stated that the late William C.A. Cole, Sr. had only two children: William, Jr. and Eddie Cole. Eddie Cole, testifying stated that he got to know the respondent in 1996 when his brother William, Jr. offered her shelter at their home and that she is not their sister.

The respondent produced four witnesses at the trial, including herself (Modu Peh Cole), Jackson Goweh, Miatta Sherman and Elizabeth Cloteh Page. Taking the stand on behalf of herself, the respondent testified that the late William C. A. Cole, Sr. was her father and that she lived at Logan Town, Bushrod Island, with him; also Vai Town. That she, William Jr. (petitioner) and Eddie, her brothers, attended the Catholic Cathedral School while living with their late father. She further testified that after they left Vai Town, they moved back to Logan Town where he died. She named one Sherman and Big Corneh as her late father's friends. She went further to say that her late father had six (6) children: Dorothy, William, Eddie, Modu, Magay and Shalle Cole. She also stated that she was even named after her grandmother, Modu Peh Cole, William C. A. Cole's mother.

The next to take the stand on behalf of the respondent was Jackson Goweh, an employee of the Catholic Cathedral School, upon whom a writ of subpoena duces tecum had been served to produce documents to the effect that Modu, William Jr. and Eddie attended said institution. Mr. Goweh, who is employed at said School as a secretary and record analyst, produced two report cards for Louise Modu Cole and William C. A. Cole, Jr. which showed both their father's name was William C. A. Cole, Sr. Same were marked as R/1 and R/2 respectively, and subsequently admitted into evidence by this court. Madam Miatta Sherman then took the stand and testified to the effect that she knew the late William C. A. Cole, Sr., who lived in Vammuyan Corneh's yard with his children that included respondent Modu Peh Cole. Madam Sherman had also lived in the same yard during the time the Coles lived there and she is still living there; that the respondent looks exactly like her late father. Then came the last witness for the respondent, Madam Elizabeth Cloteh Page, the mother of one of the sons of the late William C. A. Cole, Sr., Eddie Cole, who had earlier testified for the petitioner. Madam Page confirmed that the respondent is the daughter of the late William C. A. Cole, Sr.; that respondent was introduced to her by her late father as his daughter in the presence of his girlfriend, one Ghanaian by the name of Agnes. When the late William C. A. Cole, Sr. died, the respondent was given a room in the house in Logan Town as her own like William, Jr. and Eddie Cole; that the respondent, William, Jr. and her son, Eddie Cole, are all brothers and sister.

We shall now discuss the said issues that were ruled to trial by this court.

Coming to the first issue as to whether or not Modu Peh Cole is a legitimate heir of the late William C. A. Cole, Sr. which entitles her to co-administer his estate, this court reverts to Black's Law Dictionary (5th Edition}, page 651, Heirs. A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditament, upon the death of his ancestor, by descent and right of relationship. One who would receive his estate, under statute of descent and distribution. Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law. The word "heirs" is no longer limited to designated character of estate as at common law." Also Chapter 11, Intestate Administration. 1. Standard Sequence: Letters of Administration must be granted to the persons who are distributees of an intestate estate and who are eligible and qualified, in the following order: (a) the surviving spouse; (b) the children; (c) the grandchildren; (d) the father or mother; (e) the brothers or sisters; (f) any other persons who are distributees, preferences, however, being given to the person entitled to the largest share in the estate.

From the evidence gathered at the trial and the law quoted above, we hold that the respondent Modu Peh Cole is indeed the heir and daughter of the late William C. A. Cole, Sr. and thus entitled to co-administer said Estate along with petitioner William C. A. Cole, Jr. The evidence shows that the petitioner and his witnesses, especially the other brother, Eddie Cole, had conspired against the respondent in order to have her deprived of her right to share in her late father's estate. Thanks to the mother of the very Eddie Cole who helped to expose the said scheme by testifying that respondent is William Sr.'s daughter, as he told her so. Madam Miatta Sherman also testified to this also, which this court has no reason to doubt the truthfulness of these witnesses testimonies.

As to last issue of whether or not the Respondent made misrepresentation to this Court which led it to issue the said Letters of Administration to her, this court will first revert to the law, then will discuss said issue. The law governing said issue is found in Chapter 107, Section 107.10, SUSPENSION, MODIFICATION, OR REVOCATION OF LETTERS FOR DISQUALIFICATION OR MISCONDUCT AS FOUND IN THE NEW DECEDENTS ESTATES LAW OF LIBERIA: In any of the following cases a creditor or person interested, any person on behalf of an infant or any surety on a bond of a fiduciary, may present to the court having jurisdiction a petition praying for a decree suspending, modifying or revoking those letters and that the fiduciary may be cited to show cause why a decree should not be made accordingly: (d) where the grant of letters was obtained by a false suggestion of a material fact.

The question here is did the respondent obtain the said letters of administration given her by this court by a false suggestion of a material fact to this court? We think not. In her petition for letters of administration to co-administer the Intestate Estate of the late William C. A. Cole, Sr. the respondent stated that she is the daughter of the late William C. A. Cole, Sr. and she therefore wanted to co-administer said Estate along with William C. A. Cole, Jr. in order to [protect her interest in said Estate. The evidence adduced at the trial surely convinces this court that she is indeed the daughter of the late William C. A. Cole, Sr. and nothing else.

Wherefore, and in view of the foregoing, the petitioner's petition is hereby denied and dismissed, and the petitioner and the respondent are hereby re-instated as administrator and administratrix to administer their father's Estate. The Curator of this court is hereby ordered to have the said Estate turned over to the said William C. A. Cole, Jr. and Modu Peh Cole who have been duly appointed by this court to administer the affairs of the said Estate. Costs against the petitioner. And it is hereby so ordered."

The crux of the ruling above was whether the respondent Modu Peh Cole had sufficiently established by the evidence that she was the natural daughter of the late William C. A. Cole, Sr., for if she could establish such link, then under the Probate Code she was, with her brother William C. A. Cole, Jr., first in line of descent and therefore was entitled to serve as administratrix of the estate of her late father, and the movant would have no legal basis for opposing her appointment. The probate judge having made that determination in favour of Modu Peh Cole, and the movant, being dissatisfied with the said ruling, noted exceptions thereto and announced an appeal therefrom to the Honourable Supreme Court of Liberia. In fulfillment of the several requirements for perfection of the appeal, the movant, William C. A. Cole, on August 13, 2001, filed a ten-count bill of exceptions. We herewith quote the same for the benefit of this Opinion:

1. Because the Final Judgment of this Court dated August 3, 2001, in this case is not supported by the evidence adduced at the trial, in that there is a material variance between the name of respondent appearing on the petition filed by her for letters of administration to co-administer the intestate Estate of the late William Cole, Sr. and the record of the Catholic Cathedral School, marked by the court as P/1 and P/2 respectively for reason that, according to the petition for letters of administration, her name is Modu Peh Cole, whereas the record from the School shows the name Louis Modu Cole, which is not one and the same person, and William C. A. Cole and not William C. A. Cole, Sr.

2. That the school record marked by court P/1 and P/2 are irrelevant and immaterial to the issues raised in the petition and the returns thereto for reason that same was not pleaded nor annexed to the returns, nor the original petition for letters of administration, nor appear anywhere in the record prior to the production of evidence at trial. Consequently, same were objected to for placing mark of identification thereon and subsequent admission into evidence but the court overruled the objection, to which exceptions were noted. See (a) Petition for Letters of Administration filed October Term 1998 by Modu Peh Cole and the November 7, 2000, sheet 1, Returns thereto, (b) Minutes of Court.

3. That the trial court conceded the legal blunder committed by respondent during the trial, when he offered in evidence documents marked P/1 and P/2 respectively, for reason that respondent never gave notice that he rested oral evidence before he offered documentary evidence to be admitted, but the trial judge said in his ruling on this crucial issue, that the Probate Court does not entertain the technical procedure that obtains in the circuit court; therefore, the court allowed respondent to repeat the application for admission in evidence. Counts marked P/1 and P/2 respectively, to which petitioner excepted.

4. That during the trial petitioner asked on the cross, if prior to petitioning the court for letters of administration, respondent had prior family meetings or consultation with petitioner who was already administering the estate, and obtained his consent, the court sustained the objection interposed by the respondent to which petitioner excepted.

5. That the documents marked P/1 and P/2 same being the alleged record from the Catholic Cathedral School were not signed by the custodian or any official of the institution to make same authentic. Additionally, the Letters from the principal although the same was never testified to nor effected in evidence, respondent requested court to take judicial notice thereof as written evidence, contrary to 1 LCLR. See Page 262 and over the objection of petitioner.

6. That petitioner says Your Honour's Final Judgment is not supported by the evidence adduced at the trial for reason that the best evidence in a case of this nature is the parent, either the father or the mother, and in the absence thereof the birth record of the child; none of these were produced at the trial. Consequently the respondent did not prove paternity that the late William C. Cole, Sr. was indeed for father. Yet, Your Honour ruled contrary to the evidence.

7. That petitioner says that there are material variances between the testimony of the respondent and her own witnesses, in that respondent never said that she lived with the late William C. A. Cole, Sr. in Vai Town and Logan Town and the deceased

acknowledged respondent as his daughter before any Justice of the Peace as required by law and practice. Moreover, Miatta Sherman and Elizabeth Page testified that respondent lived with the late William C. A. Cole, Sr. while he, the deceased, was living in Vai Town and Elizabeth Page said that respondent was living with her mother and not with William C. A. Cole, Sr. The documents marked P/1 and P/2 respectively show William C. A. Cole, and not William C. A. Cole, Sr.

8. That on the 13th day of October 1998, when the case Modu Peh Cole, Petition for Letters of Administration was called, only instructive question was asked on the direct and the answer was only yes, I do, without any testimony of petitioner/respondent to prove the allegations laid in the petition to warrant granting same. See Minutes of Court, Sheets 1, 2, and 3, October 13, 1998. The petition does not contain any ground for Letters of Administration according to Probate Procedure Code, Section III, Page 86, nor any valid reason to co-administer the estate, especially unfavorable to the prior administrator who was already administering the Estate.

9. That according to the law and procedure, an administrator can orderly be removed from office for misconduct if he has been confronted with the evidence as proof on the misconduct, but no complaint was made against the petitioner who was already administering the Estate of William C. A. Cole, Sr. Yet, Your Honour removed petitioner as administrator without just cause, contrary to law, and to which petitioner excepted.

10. That Your Honour Final Judgment dated August 3, 2001, is not supported by the evidence, coupled with your granting the petition for letters of administration to respondent.

WHEREFORE, and in view of the foregoing, petitioner prays Your Honour to approve this document so that the Appellate Court will review and correct the adverse ruling and final judgment.

The filing of the above quoted bill of exceptions, within the time prescribed by law and compliance with the other requirements of the appeal statute in perfecting the appeal in this second action have conferred jurisdiction upon this Court to make a determination of the issues presented by the parties. As noted before, because the first action, narrated by us earlier in this Opinion, and the second, narrated immediately above also, are so closely interlinked, embed the same facts and present basically the same issues, and as the determination of one action effectively determines the other action, we have decided to consolidate the two actions on this appeal. This is how Modu Peh Cole, the appellant in the first appeal action and the appellee in the second

appeal action, captured the issues in her brief, filed by her counsel, and which she sought to have this Court consider in the consolidated appeals:

1. Whether or not the Probate Court committed any reversible error based upon the facts and circumstances of this case?
2. Where the father of a child born out of wedlock accepted the child openly as his child, lived with the child and sponsored the child in school, can another child argue that such child was not the child of the man? William C. A. Cole, Jr., on the other hand, stated the issues for consideration by this Court in the consolidated appeal actions as follows:

1. Whether or not the Monthly and Probate Court of Montserrado County has appellate and original jurisdiction to review the magisterial court in the City of Monrovia?
2. Whether or not where a party wishing to file an application for letters of administration has an obligation to inform the heirs of the deceased, and those who has interest in the estate or after the filing of the petition has an obligation to cite the heirs and interesting persons in the estate prior to the granting of the Letters of Administration by Court?
3. Whether or not in the absence of the testimony of the biological parents of a child, can the evidence of anybody [else] establish who the biological parents of a child are?

While we do not dispute that any party may set forth issues which he or she deems this Court may consider and formulate a resolution thereto, we believe that from the facts culled from the records in the both actions, and more specifically from the bills of exceptions filed by the respective parties, the issues in these consolidated appeals may be stated thus:

1. Whether the Monthly and Probate Court for Montserrado County erred in ruling that it was not clothed with the jurisdictional authority to entertain summary proceedings against a magistrate who has entered a final ruling against a party in an action of summary proceedings to recover possession of real property merely by virtue of the fact that the property from which the party was ordered evicted was an estate property and the person ordered evicted was alleged to be an heir to the property?
2. Whether the Judge of the Monthly and Probate Court, after a full hearing on the issue of the paternity of Modu Peh Cole, erred in granting letters of administration to the said Modu Peh Cole to co-administer, along with William C. A. Cole, the intestate of the late William C. A. Cole, Sr., the alleged father of the contesting parties?

Before proceeding to address the issues stated above, we should point out that there were ancillary issues presented in the bill of exceptions filed by the parties, especially with regards to question propounded to the parties and their witnesses while on the witness stand, but we have determined that they are not of sufficient magnitude to require the separate attention of the court, and that in any case, even if we decide that errors were made by the trial judge in deciding upon the appropriateness of the questions or the objection raised thereto, his rulings did not in any way prejudice the outcome of the case as decided by him. Hence, the points contained in the bills of exceptions do not warrant the separate attention of this Court, although they will be alluded to in passing in our analysis and resolution of the issues stated above.

With the above clarification, we now proceed to address the first issue relative whether the jurisdiction of the Monthly and Probate Court for Montserrado County has the jurisdictional authority to entertain summary proceedings against a magistrate in a matter that involves an action of summary proceedings to recover the possession of real property. Counsel for the appellant, Modu Peh Cole, contends that the Probate Judge committed an error in determining that the Monthly and Probate Court for Montserrado County lacked jurisdiction to entertain summary proceedings against the magistrate. The counsel argues that even though the action of which the petitioner complained involved a decision made by the magistrate in an action of summary proceedings to recover possession of real property, and that while ordinarily the Monthly and Probate Court would lack jurisdiction to entertain the summary proceedings, in the instant case the property involved is property of an estate over which only the Monthly and Probate Court has jurisdiction, that the eviction decision of the magistrate related to a person who, under the Decedents Estates Law, is an heir entitled to inherit from the estate, and who therefore has the right of occupancy of the property of which she is an heir.

We do not dispute that the Monthly and Probate Court is statutorily vested with jurisdiction over matters involving and the affairs of decedents estates, whether it involves a testate estate or an intestate estate. Judiciary Law, Rev. Code 17:52. However, the subject matter of the litigation is ejectment or summary proceedings to recover the possession of real property, it is the circuit courts, the magisterial courts, and justices of the peace courts, not the monthly and probate courts, that are statutorily vested with jurisdiction over such proceedings. Judiciary Law, Rev. Code 17:3.3, 7.3(a)(2), 8.3 (a)(1). And where the matter of summary proceedings to recover possession of real property originates in the magisterial court or justice of the peace court, whether it involves a natural person, a corporate or institutional entity, or an estate (testate or intestate), the statute

makes it unmistakably clear that it is the circuit courts that have jurisdiction over summary proceedings to review the acts of the magistrate or justice of the peace in those real property matters. Section 3.3 of the Judiciary Law states that The circuit judges shall have the power, authority and jurisdiction, exclusively, to issue or order the issuance of writs of injunction, and writs of summary proceedings in the nature of prohibition addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them. Judiciary Law, Rev. Code 17:3.3. The only exception to this statutory rule is in regard to Provisional Monthly and Probate Courts, including that for the District of Careysburg and for Bopolu Statutory District, all of which are also granted the statutory "powers, authority and jurisdiction, exclusively, to issue or order the issuance of writs of summary proceedings addressed to inferior courts not of record and their officers in exercise, or aid of the respective appellate jurisdictions of each Provisional Monthly and Probate Court. Judiciary Law, Rev. Code 17:54. See also section 3.4 of the Judiciary Law.

The Judge of the Monthly and Probate Court for Montserrado County was therefore correct in determining that the court was without the required jurisdiction to entertain the action of summary proceedings brought against the magistrate growing out of his ruling that the petitioner be evicted from the property of the estate. It was of no consequence that the petitioner was an heir or was entitled, by inheritance, to a part or the whole of the property. The action was one of summary proceedings to recover the possession of real property, over which only the Circuit Court for the Sixth Judicial Circuit, Montserrado County, had appellate jurisdiction over the magistrate in respect of any decision growing out of such matter. See Judiciary Law, Rev. Code 17:3.4. The petitioner should therefore have brought her summary proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, just as the judge of the Monthly and Probate Court for Montserrado County had correctly determined. Indeed, had the Probate Court Judge determined otherwise, his action would have been tantamount to usurping or attempting to usurp the statutory power and jurisdiction of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, and would therefore have been illegal and void ab initio. The Liberian Constitution clearly sets out that it is the Legislature that has the power and the authority, in establishing from time to time any courts in the Republic, to determine the jurisdictional powers of such courts. It is therefore not for or within the purview of the courts established by the legislature to determine the powers or authority exercisable by them. LIB.CONST.,ART.34 (e) (1986).

The Supreme Court has decided over and again that 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. *Lamin et al. v Save The Children Fund (UK)*, 40 LLR 96 (2000); *Roberts v. Kaba et al.*, 42 LLR 228 (2004); *M/M Liberia Corp. v. Toweh*, 30 LLR 611 (1983); *Scanship (Liberia) Ltd. v. Flomo*, 41LLR 181(2002). The 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. Civil Procedure Law, Rev. Code 1:11.2(a)(b)(c).

In the instant case, the subject matter of the proceedings was clearly one for the Circuit Court for the Sixth Judicial Circuit, Montserrado County, not the Monthly and Probate Court for Montserrado County. Indeed, the records show that upon the rendition of the judgment by the magisterial court, the petitioner noted exceptions thereto and announced an appeal therefrom. Why, we wonder, was the appeal not pursued, as it should have been, in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, where the entire matter would have been investigated *de novo* or anew, including the resubmission of the claim, the presentation of evidence deemed appropriate by both parties in defense of their various positions, rather than, as was done by the petitioner/ appellant, the abandonment of that legal course and seeking instead the intervention of the Monthly and Probate Court for Montserrado County, by a completely different and illegal course. We should emphasize that although property may belong to an estate, where there is allegation of encroachment or illegal occupation, and the estate determines the need to evict or eject the illegal occupant or prevent the further encroachment upon the property of the estate, it is not within the purview of the monthly and probate court to eject or evict a party. Such authority is for and is vested in the circuit court, either in an original capacity or in an appellate capacity, and the fact that an estate is involved or an heir to the estate is involved does not thereby divest the circuit court of its statutory jurisdiction. We therefore reject the contention of the appellant, Modu Peh Cole, in that regard, and sustain and uphold the decision of the probate court judge.

This brings us to the second issue which we are called upon to resolve. The issue seeks our determination as to whether the Judge of the Monthly and Probate Court, after a full hearing on the motion to revoke the letters of administration of Modu Peh Cole, erred in reappointing Modu Peh Cole as co-administer, along with William C. A. Cole, the intestate of the late William C. A. Cole, Sr., who is alleged to have been the biological father of the contesting parties? The probate judge, upon receipt of the motion, had suspended the letters of administration of both Modu Peh Cole and William C. A. Cole, Jr., pending a hearing of the motion

and resolution of the issues raised therein, especially the issue as to whether in fact Modu Peh Cole was the biological child of the late William C. A. Cole, Sr.

In the motion to revoke the letters of administration issued by the probate court, William C. A. Cole, Jr. contended that when his lawyer had received copy of the petition filed by Modu Peh Cole for the issuance of letters of administration to co-administer the property of the Intestate Estate of the late William C. A. Cole, Sr., he had filed returns raising objections thereto, but that the trial judge had ignored the objections and had issued the requested letters of administration to Modu Peh Cole without a hearing having been convened and as if no objections had ever been filed with the court. We agree with the appellee, William C. A. Cole, Jr. that the probate judge was in error in granting the letters of administration to Modu Peh Cole without first conducting a hearing in which the objections were considered. This is the law and the probate judge was under a duty to obey and comply with same. *Ross Mines Ltd. v. Kellen et al.*, 41LLR 165 (2002).

However, we believe that the error was cured when, upon the receipt of the appellee's motion for revocation of the letters of administration the judge ordered the suspension of the letters of administration of Modu Peh Cole as well as that of William C. A. Cole, Jr. pending a determination of the motion after a full investigation at which all of the parties were permitted to produce evidence in regard to their respective positions. We therefore do not believe that we need to address the issue further since the opportunity was provided the appellee, William C. A. Cole, Jr., to produce a preponderance of satisfactory evidence to warrant the revocation of the letters of administration issued in favour of Modu Peh Cole.

With regard to the substance of the motion, we note that the major contention of the appellee, William C. A. Cole, Jr. is that Modu Peh Cole was not the biological daughter of the late William C. A. Cole, Sr., and that therefore she was not his sister; that in accordance with the Decedents Estates Law, she, Modu Peh Cole was not entitled to appointment as administrator of his late father's estate; that he was already an administrator of the estate, duly appointed by the Monthly and Probate Court for Montserrado County; and that there was no complaint brought against him in the said Monthly and Probate Court to warrant his removal from that position, which he interpreted the appointment of Modu Peh Cole to mean; and that the Probate Court judge therefore was in error in appointing Modu Peh Cole as administratrix of the intestate Estate of the late William C. A. Cole, Sr.

For her part, Modu Peh Cole contended, both in her arguments before the lower court and the Supreme Court, and in the brief filed before the Supreme Court, that

not only was she the biological daughter of the late William C. A. Cole, Sr., and therefore entitled to inherit, but also that William C. A. Cole, Jr., being also born out of wedlock, the same as she was, is not clothed with the standing or legal authority to question whether she has inheritable rights or not, especially since he has been enjoying the property of the estate left behind by the late William C. A. Cole, Sr.

We are in full agreement with the latter contention asserted by appellant Modu Peh Cole. The records clearly established, and the appellee, William C. A. Cole, Jr., produced no evidence to the contrary, that the late William C. A. Cole, Sr., who died intestate, never married during his entire lifetime. All of the children had by him, by various mothers, were therefore born out of wedlock. William C. A. Cole, Jr. is therefore in no position and has no legal standing or status to question any of the other children born out of wedlock to William C. A. Cole, Sr. He has no greater inheritable right than any of his siblings to the intestate left by the late William C. A. Cole, Sr. This is what the relevant provisions of the Decedents Estates Law says with regards to the line of inheritance in regard to intestate succession, meaning where the decedent dies without leaving a will and therefore rendering his estate as an intestate estate:

The property of a decedent not disposed of by will or otherwise, after the payment of administration and funeral expenses, debts and taxes, shall descend and be distributed in the following manner.

(b) If the decedent leaves surviving one or more lineal descendants but no spouse, the entire estate to the children and to the issue of any deceased child in accordance with the provisions of section 3.4. Decedents Estates Law, Rev. Code 8:3.2(b).

Section 3.4, referenced in section 3.2, states:

If the distributees entitled to share in an estate under the provisions of section 3.2 are all of equal degree of kinship to the decedent, they shall take equal share. Decedents Estate Law, Rev. Code 8:3.4.

The provisions of the Decedents Estates Law, quoted above, however, presupposes that the children are born into wedlock, or not being born in wedlock have been legitimized, or have been adopted by the father, or have been acknowledged in writing by the father as his children before a justice of the peace or notary public and the instrument has been duly probated and registered, or the parents have married subsequent to the birth of the children, or the paternity of the children have been adjudicated by a court of appropriate jurisdiction. Decedents Estates Law, Rev. Code 8:3.5 (a)-(e).

In the instant case, the facts established at the trial revealed that the late William C. A. Cole, Sr. was never married to any of the mothers of his children and that all of them were born out of wedlock. William C. A. Cole, Jr., whose paternity to the late William C. A. Cole, Sr. had never been questioned by anyone had decided to challenge the paternity of his sister, also born out of wedlock. And while there were testimonies at the trial in the Monthly and Probate Court seeking to have the court revoke the letters of administration issued in favour of Modu Peh Cole, which showed that the decedent, William C. A. Cole, Sr. may have had as many as six children, all of them born out of wedlock, none of the evidence adduced at the trial showed that any of the steps required by the statute to give the children, including William C. A. Cole, Jr., legitimate inheritable status with regards to property owned by the decedent were ever taken by him. Yet, the Probate Court, upon the application or petition of William C. A. Cole, Jr., under claim that he was a biological and legitimate child of the decedent, William C. A. Cole, Sr., ordered issued in the petitioner's favour letters of administration to administer the intestate estate of his late father. And given that the application or petition filed by William C. A. Cole, Jr., for letters of administration to administer the intestate estate of his late father was never questioned by any person claiming entitlement to such administration of the intestate estate of the late William C. A. Cole, Sr., we do not believe that there is any basis for us to disturb such the letters of administration.

However, given the status of William C. A. Cole, Jr. to William C. A. Cole, Sr., the former having been born out of wedlock, we do not believe that he is in the position to question the right of any of the other children of William C. A. Cole, Sr. to co-administer the estate of their late father. The Supreme Court has consistently subscribed to the legal maxim that he who comes to equity must come with clean hands. *Ellis v. Johnson*, 40 LLR 474 (2001); *Liberia Fisheries Inc. v. Badio*, 36 LLR 277 (1989). William C. A. Cole, Jr., himself born out of wedlock, has no greater right or authority to the administration of the property of the late William C. A. Cole, Sr. than any of the other children; nor is he vested with any authority granted under the letters of administration to accord any such greater right to the enjoyment of the decedent property or to engage in any act or conduct that has the effect of depriving any of his siblings, similarly situated, of rights of enjoyment to the property left by their late father or of right to co-administer the said property. Any such attempt would have the effect of also depriving him of any right to administer or enjoy the property of the estate. He was and continues to remain under a legal obligation to have the property of the intestate estate of the late William C. A. Cole, Sr. enjoyed by his other brothers and sisters similarly situated, and he cannot deprive any of them of the right merely because he serves as administrator. Hence, the sole question

is whether Modu Peh Cole established sufficiently, by a preponderance of the evidence, that she is indeed the daughter of the late William C. A. Cole, Sr.

Our review of the evidence presented at the trial has led us to the conclusion, the same as did the judge of the Monthly and Probate Court for Montserrado County that Modu Peh Cole did establish that she was the biological daughter of the late William C. A. Cole, Sr. and that he did recognize her and took care of her as his daughter, the same as he had recognized and take care of the other of his children, including William C. A. Cole, Jr.; and while William C. A. Cole, Jr. presented evidence which he hoped would have shown that Modu Peh Cole was not the daughter of his late father, William C. A. Cole, Sr., we do not believe that the evidence he presented sufficiently established that claim.

William C. A. Cole, Jr. took the stand and testified that he had never in his early life had any encounter with Modu Peh Cole, stating that while he knew Modu Peh Cole and her mother to be living in Logan Town in the 1970s, his father had never told him that Modu Peh Cole was his (the father's) daughter or that she was sister to him, William C. A. Cole, Jr. that he had only later met her when she had shown up at the house of the estate in 1996 to seek refuge during the 1996 uprising; that it was only out of pity for them and the condition in which they were that he allowed her to live in the house; and that it was only after he had sued them in the magisterial court to have them ejected and evicted from the premises, due to their destruction of the rooms in which they were residing, that the mother of Modu Peh Cole had claimed that she was the daughter of the late William C. A. Cole, Sr. He denied that he and Modu Peh Cole had attended the Catholic Cathedral together or that she ever lived in the same house in which he and his brother, Eddie, lived with their father, William C. A. Cole, Sr.

The movant thereafter produced one Theresa Nebo, a second witness, to confirm that Modu Peh Cole was not the daughter of William C. A. Cole, Sr. This witness testified that to the best of her knowledge, William C. A. Cole, Sr. had only two children, William Jr. and Eddie Cole, and that she knew this because at times when William C. A. Cole, Sr. traveled out of Monrovia, he would bring William Jr. and Eddie to her house with her husband, to be taken care of pending his return to the Monrovia. These were the only two children that Cole, Sr. had ever brought to her house and had spoken to her about.

The third witness for the movant, in the person of Eddie Cole, testified that he was the younger brother of William C. A. Cole, Jr., that their father had five children, and that he only got to know Modu Peh Cole during the April 6, 1996 civil crisis when his brother, William C. A. Cole, Jr. offered her shelter. He denied that Modu

Peh Cole lived at the premises in Logan Town where they were living with their late father.

This was the evidence produced by the movant, and upon which, after he had rested evidence, he sought to have the court revoke the letters of administration issued in favour of Modu Peh Cole. We should note, before proceeding to analyze the testimony of the witnesses for the respondent that the variance in the testimonies of the movant's witnesses diminished their worth and credibility. Variance, the Supreme Court has said, is the disagreement between allegations and proof; it denotes some difference or disagreement between two parts of the same proceeding which ought to agree. *Saar v. Republic*, 29 LLR 35 (1981). We find such to be the situation in the instant case. Although the movant and his brother, Eddie Cole, testified that their father had five children, witness Theresa Nebo testified that William C. A. Cole, Sr. had only two children, William Jr. and Eddie. The sole basis upon which she drew the conclusion, she said, was that William C. A. Cole, Sr. took only the two named children to be cared for by her husband while William C. A. Cole, Sr. was away from the City of Monrovia.

Moreover, even assuming that the testimony of Theresa Nebo is true, that is, with regard to the late William C. A. Cole, Sr. taking the two boys to the Nebo's home for care when William C. A. Cole, Sr. was travelling out of Monrovia, it is insufficient, in and of itself, to meet the expected quantum of evidence to establish that the late William C. A. Cole, Sr. had only two children, and that therefore Modu Peh Cole could not be his child, especially in the face of the contradictory testimony given by both the movant and his younger brother Eddie that they were five children. The testimony of Theresa Nebo is therefore of no value to establishing whether Modu Peh Cole is or is not the biological daughter of the late William C. A. Cole, Sr.

With regards to the testimony of Eddie Cole, to the effect that he did not know Modu Peh Cole or know of her until 1996 when the Liberian civil conflict reignited into violence again, and that Modu was therefore not his blood sister, this testimony was contradicted by Eddie Cole's biological mother. Elizabeth Kloteh Page not only testified that the late William C. A. Cole, Sr. had six children during his life time, all of whom survived him, but that the deceased had personally introduced Modu Peh Cole to her as his daughter. Here was the question asked of the witness and her response thereto:

Q. At the time Mr. Cole, the late, was living in Logan Town, and later on Vai Town. Do you remember this, and if so, name the children who were living with him while in Logan Town and in Vai Town?

A. In Logan Town, only William, Jr. and my son Francis lived with him there. And at Vai Town, it was William Jr. and Francis, but on the two occasions or three occasions that I visited the home I once met Modu Cole and when I asked the decedent whose daughter is this, he said she is mine but he is not living here. She lives with her mother but she come to spend time.

Q. Please refresh your memory and tell us what year was that?

A. I do not remember the year.

Q. Madam Witness, it was brought out by one of the witnesses of the respondent that Modu lived with William C. A. Cole, Sr. in Vai Town and attended school together with his children. Now you are telling us that the late William C. A. Cole, Sr. introduced Modu to you as his daughter but said she was not living with him but her mother. Is that correct?

A. Yes, she only came to spend time.

Q. Madam Witness, you said that the late William C. A. Cole, Sr. introduced Modu Cole to you as his daughter; please say who was present at that time [and] where was the late Cole living and in what year?

A. He was living in Vai Town but I don't remember the year. I think his girlfriend that was there and we were sitting talking one thing to another. [See Minutes of Court, 17th day's session, Wednesday, November 24, 1999, sheets 7 and 8]

Again the witness testified that she learned that prior to the death of William C. A. Cole, Sr., Modu, who lived with her mother, visited her father from time to time, and further that upon the death of William C. A. Cole, Sr., Modu Peh Cole and her mother were invited by the family of the deceased, along with the other girlfriends who had children for the decedent, where the property of the decedent was purportedly divided amongst the children. She stated that at the said meeting, her son Eddie, along with Modu and William, were each given a room in the house where the decedent lived. [See Minutes of Court, 17th day's session, Wednesday, November 24, 1999, sheets 6 and 7]. No further

A. I talked that if you know the late Cole and look at Modu Cole, they are the same. And also the late William C. A. Cole, Sr. said it. And the time the late William C. A. Cole said that the respondent was his daughter she had come from Freetown and he carried her around to the neighbors that she is his daughter. We lived very close by each other in the Varmuyan Corneh yard when he was living there.

The above was the evidence presented by the respondent, all of which we believe was damaging to the movant's case. We believe that in the face of such damaging

testimonies, it was not sufficient to merely question the witnesses to see if you could get them to change their testimonies, or to seek to entrap them, or to seek to impugn their credibility, especially where there was no success in that endeavour. The movant was under a legal obligation to bring in rebutting witnesses or other rebutting evidence, who could testify to the truthfulness or falsity of the statements made by the witnesses. The Supreme Court has held in many cases that when statements are made or evidence presented, in the pleading or by witnesses on the stand, which are damaging to a party and needs to be rebutted, and the party fails to produce rebutting witnesses or other evidence, the evidence presented will be deemed to be true. In *Wien et al. v. Republic*, 30 LLR 71 (1982), this Court said that the failure to deny [or rebut] a material fact within [one's] knowledge previously testified to against him warrants the inference that it was true. See also *Jackley v. Siaffa*, 42 LLR 3 (2004); *Davies v. Republic*, 40 LLR 659 (2001). This case presents one such situation, and we must therefore hold that in the face of the evidence shown in the records, the movant failed to meet the test and standard of a preponderance of the evidence to give the probate court a sufficient basis to revoke the letters of administration issued in favor of the appellant Modu Peh Cole.

We hold further that the evidence presented by Modu Peh Cole sufficiently showed that the late William C. A. Cole, Sr. recognized her as his daughter, albeit that she was born out of wedlock, the same as all of his other five children acknowledged by the movant and his brother, Eddie Cole. As such, she is qualified under the law, absent any challenge to her on account of her status as an illegitimate child in the statutory line of descent, inheritance and order for letters of administration, to be granted letters of administration to administer the property of the late William C. A. Cole, Sr., the same as William C. A. Cole, Jr., who holds a similar status. We accordingly uphold the ruling of the judge of the Monthly and Probate Court for Montserrado County denying the motion to revoke the letters of administration issued in favor of Modu Peh Cole and reinstating the said Modu Peh Cole as co-administrator of the Intestate Estate of the late William C. A. Cole, Sr., to co-administer the said estate along with William C. A. Cole, Jr., same being sound in law and supported by the facts and the evidence in the case.

It seems that William C. A. Cole, Jr. completely misunderstood or misinterpreted the probate court's ruling. The ruling is clear and we can see no other interpretation than that Modu Peh Cole was being appointed as co-administrator; not as a replacement for William C. A. Cole, Jr. but to work with him in the administration of the estate. Hence, the claim that William C. A. Cole was ousted or removed, not being supported by the records, is rejected and dismissed. The Court is quite aware of the conditions for the removal of an

administrator of an estate. Decedents Estates Law, Rev. Code 8:107. 10 and 107.13. None of those grounds appear in the *case*, none was advanced and no application was made for his removal. The judge therefore acted legally in appointing Modu Peh Cole, under the circumstances of this *case*, as co-administrator to administer the affairs of the estate, along with her brother.

We also reject the further contention advanced by William C. A. Cole, Jr. that the appointment of Modu Peh Cole should not have been done since he had already been appointed as administrator of the Intestate Estate of the late William C. A. Cole, Sr. and no complaint had been filed against him accusing him of any wrongdoing or illegal conduct against the estate to warrant the additional appointment. While it is true that an administrator of an estate may be removed from office because of conduct adverse to the estate or wrongdoing or other acts of illegality, there is nothing in the Jaw that requires the existence of one or more of those conditions before a co-administrator or an additional administrator can be appointed to administer an estate. Decedents Estates Law, 8:111.1(2)(a), wherein it is stated that where there are eligible distributees equally entitled to administer the *estate*, the court may grant letters of administration to one or more such persons. [Emphasis ours] Indeed, the need to protect both an estate and the manifold interests of beneficiaries of such estate is good and sufficient reason to justify the appointment of more than one administrator of an estate, so that the representation is widely spread across the various interests of the diverse beneficiaries.

We also see nothing in the law that prevents the appointment of one or more additional administrators, where there already exist one administrator and where no complaints have been filed accusing the administrator of any misconduct or illegal acts; and unless the administrator can justify why a second appointment should not be made, which justification we do not find in the instant case, the probate court is not prohibited or inhibited from appointing a second administrators as was done in this case. The judge therefore committed no error in appointing Modu Peh Cole as co-administrator, along with William C. A. Cole, Jr., to administer the intestate estate of their late father.

Wherefore and in view of the facts narrated herein and the laws cited and relied upon, the Court herewith confirms and affirms the rulings of the Judge of the Monthly and Probate Court, firstly, dismissing the summary proceedings brought by Modu Peh Cole, for reason that the lower court lacked subject matter jurisdiction over the proceedings, and secondly, in appointing and reaffirming the appointment of Modu Peh Cole as co-administrator, along with William C. A. Cole, Jr., to administer the intestate estate of their late father.

The Clerk of Court is hereby ordered to have a mandate sent down to the lower court directing the judge presiding therein to resume jurisdiction over these proceedings and to give effect to this decision. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the appellant. Counsellor M. Kron Yangbe appeared for the appellee.