

Peter Bonner Jallah Jr Vs Rev Ola JallahMazzahJallah Justine Jallah and Beatrice Jallah

In the Honorable Supreme Court of the Republic of Liberia

Sitting in its October Term, A.D. 2015

Present: His Honor: Francis S. Korkpor, SrChief Justice

Present: His Honor: Kabineh M. Ja'nehAssociate Justice

Present: Her Honor: Jamesetta H. WolokolieAssociate Justice

Present: His Honor: Philip A. Z. Banks, IIIAssociate Justice

Present: Her Honor: Sie-A-Nyene G. YuohAssociate Justice

Peter Bonner Jallah, Jr. also of the city of Monrovia, Liberia.....APPELLANT/ RESPONDENT APPEAL

Versus

Rev. Ola Jallah,MazzahJallah, Justine JallahAnd Beatrice Jallah of the City of Monrovia, Liberia
..... APPELLEES/.PETITIONERS

Appeal from the Monthly and Probate CourtforMontserradoCounty.

Heard: January 6,2014. Decided: December 19, 2015.

Counsellors A. W. Octavius Obey, Sr. of the Yonah, Obey & Associates Law Firm and Cooper W.

Kruah, Sr. of Henries Law Firm appeared for the appellant. Counsellor YamieQuiquiGbeisay,

Sr. of Tiala Law Associates, Inc., appeared for the appellees.

MR. JUSTICE JA'NEH delivered the opinion of the Court.

Peter Bonner Jallah Sr. of sainted memory served the Government andpeople of Liberia for several years. In the late 1950's, Peter Bonner Jallah Sr. served as Associate Magistrate and later late became Stipendiary Magistrate of the Monrovia City Court for a period spanning over thirteen (13) years. His Honour Peter Bonner Jallah died in office on January 13, A. D. 1972. He has been recorded as one of the longest uninterrupted serving magistrates in our judicial history. The estate of which he died seized is the subject of controversy in these appeal proceedings.

The following constitutes the relevant facts culled from the records certified to this Court under the seal of the Monthly & Probate Court for Montserrado County: that Peter Bonner Jallah, Sr. died leaving no Will; that he died married to Zondell Brooks Jallah; that their holy matrimony was blessed with four

children, three boys, the oldest child, Peter Bonner Jallah, Jr., Phillip Jallah and Peter Bonner Jallah, III and one girl, called Zondell Jallah; that at the time of his demise on January 13, 1972, Peter Bonner Jallah Sr. was seized of several pieces of properties, both real and personal.

According to the records before us, Peter Bonner Jallah, Sr., was also blessed with children not of wedlock. Patricia Jallah and Patrick Jallah were two of the deceased children begotten without holy union. The parties in these proceedings don't disagree that the late Magistrate Jallah, Sr. in fact took both Patricia and Patrick to his matrimonial home where these two children were raised by him and his wife, Zondell Brooks Jallah. It is also worth mentioning that Peter Bonner Jallah, Jr., the late Magistrate Jallah's oldest son of wedlock, resided in the United Kingdom (U.K.) during most of the time between 1962 and 1972.

In 1972 following the demise of Stipendiary Magistrate Peter Bonner Jallah, Sr., it would appear that his widow, Zondell Brooks Jallah and oldest son, Peter Bonner Jallah, Jr., were appointed by the Monthly & Probate Court for Montserrado County as administratrix and administrator of the Decedent Estate of Peter Bonner Jallah, Sr. It further appears that pursuant to a petition filed by Administratrix Zondell Brooks Jallah and Administrator Peter Bonner Jallah Jr., the Probate Court, on December 20, A. D. 1974, issued a "DECREE" ordering the closure of the Intestate Estate of said Peter Bonner Jallah Sr. From a cursory examination of the "Decree" issued reveals that His Honour G. C. N. Tehquah, then Probate Judge, duly closed the Peter Bonner Sr.'s Estate on December 20, A. D. 1974. The records are devoid of any evidence of the taking and submission of any inventory or distribution thereof under the gavel of Probate G. C. N. Tehquah. Because of its material relevance to the disposition of these appeal proceedings, we shall comment later in this Opinion on the December 20, A.D. 1974 "DECREE".

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For now, suffice it to remark that it is mandatory in this jurisdiction for decedent estates to be closed within a limited time period of twelve (12) months, exception being those involving foreign claims. Even in such cases, no intestate estate should remain open for more than eighteen (18) months. *Nungbor v. Fiske*, 13 LLR 304, 308 (1958); *Know/den v. Johnson et al.*, 39 LLR 345, 364 (1999); RULE 11 of the Rules for the Governance of the Monthly & Probate Court, With this background, we now consider the facts from which the appeal before us originates. We find from the certified records that on August 7, A. D. 2006, Reverend Dr. Ola Jallah, addressed the following letter to the Judge of the Monthly and Probate Court for Montserrado County, His Honour J. Vinton Holder. The communication, over Reverend Dr. Ola Jallah's signature, substantially reads thus:

"This instrument is an effort to kindly appeal to this Honourable Court and your Honour to communicate with the National Archives/Ministry of Foreign Affairs, to produce certified copies of deeds belonging to the Intestate Estate of the late Peter Bonner Jallah, Sr."

The Probate Judge, on the strength of this communication, addressed a letter to the Deputy Minister/Legal Affairs of the Ministry of Foreign Affairs. We herewith quote said communication:

"Honourable Deputy Minister:

We wish to extend our compliments and to request your Ministry to furnish the Monthly and Probate Court for Montserrat County, Temple of Justice, with certified copy of any and all deeds of the late Peter Bonner Jallah, Sr., upon the receipt of this communication.

We anticipate your cooperation.

Kind regards.

Very truly Yours, S. PeterDoe-Kpar Clerk of Court. Approved:

J. Vinton Holder

Judge/Monthly and Probate Court, Montserrat County, R. L"

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We also find in the records that Reverend Dr. Ola Jallah, MazzahJallah and Beatrice Jallah, on August 18, A. D. 2006, filed a petition before the Monthly and Probate Court for Montserrat County. The petition prayed the court to appoint a curator to oversee "the intestate estate" of Peter Bonner Jallah, Sr.

The four count-petition seeking appointment of a curator averred as follows:

"1. That they are legitimate children and heirs of the late Peter Bonner Jallah as evidenced by their respective names.

2. That from the death of their late father who died intestate in July 1972, about thirty-four (34) years ago, there have been no Letters of Administration granted to the family to administer the huge estate left behind for their benefit. See attached a Clerk's certificate to the effect, marked pp/1 to form a material part of the Petition.

3. That because some of them were under age, that is to say, in their minority, some of their brothers and sisters have conducted [the affairs of the intestate estate] unilaterally and exclusively without benefit to the Petitioners.

4 That as a consequence of the above, the income of the estate has been personalized or wasted contrary to the intent of the late Peter Bonner Jallah..."

As can be seen, the material averments contained in the petition were that no Letters of Administration had, heretofore, been issued to manage the affairs of the intestate estate of the late Peter Bonner Jallah, Sr. Seeking to substantiate these grave averments, the Petitioners, Reverend Ola Jallah, MazzahJallah and Beatrice Jallah annexed to their petition a Clerk's Certificate, signed by S. Peter Doe-Kpar, dated August 17, A. D. 2006. In support of the grave averments made in the petition that no Letters of Administration was, heretofore, issued to manage the late Peter Bonner Jallah, Sr.'s intestate estate the Petitioners, Reverend Ola Jallah, MazzahJallah and Beatrice Jallah, annexed to their petition the following Clerk's Certificate, dated August 17, A. D. 2006:

"JUDICIAL BRANCH JUDGE'S CHAMBERS

MONTHLY & PROBATE COURT REPUBLIC OF LIBERIA MONTSERRADO COUNTY, R. L.

IN RE: THE INTESTATE ESTATE OF THE LATE PETER BONNER JALLAH, SR. CLERK'S CERTIFICATE

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THIS IS TO CERTIFY THAT FROM A CAREFUL PERUSAL OF THE RECORDS IN THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA, REVEALS THAT THERE IS NO PETITION FILED BEFORE THIS COURT FOR LETTERS OF ADMINISTRATION TO ANY INDIVIDUAL TO ADMINISTER THE INTESTATE ESTATE OF THE LATE PETER BONNER JALLAH, SR., UP TO AND INCLUDING THE DATE OF ISSUANCE OF THIS CERTIFICATE.

HENCE, THIS CERTIFICATE GIVEN UNDER MY HAND AND SEAL OF COURT THIS 17TH DAY OF AUGUST A.D. 2006. [SIGNATURE]

S. PETER DOE-KPAR CLERK OF COURT"

Peter Bonner Jallah, Jr., the appellant, filed returns to the Petition, along with a motion to dismiss the Petitioners' Petition. We have also quoted hereunder the five count-returns filed by Respondent Peter Bonner Jallah, Jr.:

"(1) Respondent prays Court to deny and dismiss counts (1) and (2) of the said Petition because Petitioners are without capacity to file this

Petition without any showing in said Counts that they are legitimate children of the Late Peter Bonner Jallah Sr., begotten of him and his wife during their lifetime, or that they were born out of wedlock, and being illegitimate children they became legitimate through the process provided for in the New Domestic Relations Law of Liberia and Decedents Estates Law of Liberia.

(2) Further to Count (2) of Petitioners' Petition, Respondent prays Court to deny same because:

(a) The Late Peter Bonner Jallah Sr. died on January 13, 1972 and not in July 1972 as is erroneously served in said Petition;

(b) That the Certificate proffered as PP/1 to form part of the Petition is false, as the said Intestacy was closed by Decree of Court evident by copy of said Court's Decree herewith profited and marked R/1 to form part of these Returns. Wherefore Count (2) of the said Petition should be denied.

(3) That Counts (3) and (4) of the Petition should be denied and dismissed for legal and factual reasons stated in Count (1) hereinabove.

(4) Respondent also says that the Petition should be denied because it violates the stamp Act in that the Original Petition was filed as well as the Affidavit in support thereof do not bear Revenue Stamps as filed since the 18th day of August A.D. 2006 which renders said Pleadings a nullity and a fit subject for dismissal.

(5) Ultimately, Respondent strongly says and contends that Your Honour is without jurisdiction to review the Ruling of your colleague or predecessor (another Commissioner of Probate) in keeping with a

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Long time settled Principle of the Honourable Supreme Court of Liberia... "We need to state at this juncture that we have found in the records before us a "Decree" annexed to the petition filed by Petitioner Reverend Ola Jallah, MazzahJallah and Beatrice Jallah, as the pivotal basis to request the appointment of a curator. This Court has found from perusal of the records before us copy of a "DECREE" issued on December 20, A. D. 1974, over the signature of G. C. N. Tehquah, Probate Judge, Monthly & Probate Court for Montserrado County. On its face, the referenced instrument was attested by Susanna E. Williams, Clerk of the Monthly & Probate Court, Montserrado County. We have also deemed it appropriate, for reason of its evidentiary relevance to appellant's claim that Peter Bonner Jallah, Sr.'s Intestate Estate was closed since 1974, to reproduce the "Decree" verbatim:

"JUDICIAL BRANCH MONTHLY& PROBATE COURT MONTSERRADO COUNTY, R. L.

COMMISSIONER'S CHAMBERS TEMPLE OF JUSTICE MONRO VIA. REPUBLIC OF LIBERIA) IN THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY) MONTSERRADO COUNTY, SITTING IN ITS PROBATE DIVISION, DECEMBER TERM, A. D. 1974.

IN RE: THE PETITION OF ZONDELL B. JALLAH AND PETER B. JALLAH JR. ADMINISTRATRIX AND ADMINISTRATOR OF THE INTESTATE ESTATE OF THE LATE PETER B. JALLAH, SR., PRAYING THIS HONOURABLE COURT FOR THE CLOSING OF THE AFORESAID INTESTATE ESTATE:

COURT'S DECREE DECLARING THE SAID ESTATE CLOSED.

WHEREAS, Zondell B. Jallah and Peter B. Jallah, Jr. Administratrix and Administrator of the Intestate Estate of the Late Peter B. Jallah, Sr., deceased of the City of Monrovia, Montserrado Country, Republic of Liberia, having filed a Petition praying the Court therein for a DECREE declaring the aforesaid closed since in deed and in truth they have administered the said Estate in keeping with Law, and after due consideration, THEREFORE:

IT IS HEREBY ORDERED AND DECREED: That the Estate of the Late Peter B. Jallah, Sr., is hereby closed as from the date of this DECREE and said Estate shall be regarded as such both in Law and in Equity.

IT IS HEREBY FURTHER ORDERED AND DECREED: That the said Administratrix and Administrator of the aforesaid Estate are hereby relieved of all responsibilities as such Administratrix and Administrator in keeping with Law.

IT IS HEREBY ORDERED AND DECREED.- That this DECREE be recorded in the Office of the Registrar of Deeds for Montserrado County, Republic of Liberia, with ONE (1.00) DOLLAR Revenue stamp affixed on

the original copy given under my official signature and Seal of Court, this 2nd day of December, A.D. 1974.

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[SIGNATURE]

G. C. N. Tehquah JUDGE, MONTHLY AND PROBATE COURT MONTSERRADO COUNTY, R. L.

ATTESTED [SIGNATURE] Susanna E. Williams, CLERK, MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY, R. L.

Revenue Stamp Affixed

REGISTERED IN VOL. 312-79 PAGE 125-127 [SIGNATURE]

REGISTRAR

MONTSERRADO COUNTY, LIBERIA."

It is worth mentioning that except for the caption, the motion

Appellant/Respondent Jallah filed was strangely word for word same and identical to the returns he also filed in resistance to petitioners' petition. The primary contentions raised in the "motion to dismiss" were, (1) that "Petitioners are without capacity to file this petition [to appoint a curator] without any showing... that they are legitimate children of the late Peter Bonner Jallah, Sr., begotten of him and his wife (Zondell Brooks-Jallah) during their life time, or that they were born out of wedlock, and being illegitimate children, they became legitimate through the process provided for in the New Domestic Relations Law of Liberia and Decedents Estates Law of Liberia; and (2) that Judge J. Vinton

Holder was without jurisdiction "to review the Ruling of your colleague or predecessor (another commissioner of probate) in keeping with a long time settled principle of the Honourable Supreme Court of Liberia."

The transcribed records are void of any showing that the Probate Court thereafter conducted any regular proceeding in this matter. What we discovered from the records was a petition by Reverend Dr. Ola Jallah, Mazzah Jallah, Justin Jallah and Beatrice Jallah, filed on October 25, A. D. 2006. The Petition of Rev. Dr. Ola Jallah, et al., requested the court to re-open the Intestate Estate of Peter Bonner Jallah, Sr.

In their petition for the re-opening of the estate, petitioners, now

appellees, claimed substantially as stated: that they are legal and natural born children of the late Peter Bonner Jallah, Sr.; that some of the petitioners were legitimized and the others recognized by the late Peter Bonner Jallah, Sr. as his children, thereby vesting them with inheritable blood; that these facts notwithstanding, Peter Bonner Jallah, Jr. and his mother, the late Zondell Brooks Jallah "surreptitiously, without notice to the petitioners who were minor then"

closed the intestate estate of Peter Bonner Jallah, Sr., to the material detriment of petitioners' legal interests. In support of their claim of being legal heirs of Peter Bonner Jallah, Sr., petitioners attached certified copies of legitimization instruments said to have been issued by the appropriate statutory institutions.

Therefore, appellees/petitioners were petitioning and praying the Monthly and Probate Court for Montserrado County to re-open the said estate. This is because the conduct exhibited by Peter Bonner Jallah, Jr. and his late Mother, Zondell Brooks Jallah, acting in concert as administrators of the Peter Bonner Jallah Sr.'s intestate estate, constitutes sufficient factual and legal grounds, to direct the conduct of a full scale investigation into the propriety of the closure of the estate and to further determine whether any inventory of the estate was submitted to the Probate court, as the law requires, before the reported closure of said estate on December 20, A. D. 1974.

The said petition containing eight (8) counts is quoted hereunder in its substance for the benefit of this Opinion:

"1. That the petitioners are legal and natural born children of the late Peter Bonner Jallah, Sr.;

2. That prior to the demise of the Late Peter Bonner Jallah, Sr. and he being legal minded he legitimized the above named Petitioners so as to give them inheritable blood. Hereto attached is a certified copy of said legitimization document marked P/1 in bulk to form a cogent part of this petition;

3. That following the death of the Late Peter Bonner Jallah, Sr. in January 1972, petitioners' brother Peter Bonner Jallah, Jr. and his mother the late Zondell Jallah surreptitiously without notice to the petitioners who were minor then petitioned the Probate Court and obtained a letter of Administration and closed the Intestate Estate of the Late Peter Bonner Jallah, Sr. in 1974;

4. That considering that the late Peter Bonner Jallah left behind other living children including the petitioners all of whom were known when the Late Peter Bonner Jallah, Sr. was alive by all his family and relatives, a letter of Administration and decree of closure clandestinely obtained by the so-called married woman and her son, was illegal and improper for which we pray for the estate to be reopened;

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5. That in addition to the legitimization, the petitioners were acknowledged and recognized by their father while he was alive, in that he brought some of them in his home and they lived there with him openly bearing their respective last names of Jallah. In addition, the late Peter Bonner Jallah, Sr., introduced the petitioners to all his family including Peter Bonner Jallah, Jr. and relatives to the extent that some of the petitioners lived with the Late Peter Bonner Jallah, Sr.'s brother and sisters while he was alive and even after his demise;

6. That the respondent, Peter Bonner Jallah, Jr. recognized the petitioners as brothers and sisters and has made introduction in public and private places referring to them as brothers and sisters. Petitioners give notice to prove these at trial;

7 Petitioners say the co-respondent Peter Bonner Jallah, Jr. is their brother who has recognized and acquiesced in their sanguinity in the following manners:

(a) He introduced all of them as brothers and sisters publicly and privately;

(b) Participated and signed the wedding certificates of co-petitioners Ola Jallah and MazzahJallah. Hereto attached are said copies to form a material part of their petition;

(c) Participated and spoke on behalf of the Jallah 's family as the earliest and head (father) of the family during the co-petitionerswedding ceremonies;

(d) That the petitioners and all the children were named in the life sketch as brothers and sisters of the Late ZondellJallah Tap/in.

Hereto is the cassette marked P/3;

(e) that petitioners stood with co-respondent Peter Bonner Jallah, Jr. during his nasty motor accident in the 80s while he was at the Catholic hospital for months and also identified with him when he was in jail for political problem with ECOMOG during the civil crisis;

(l) That the petitioners and the respondent participated drove together and decorated the grave of their Late Father PeterBonner Jallah, Sr.;

8. That the respondent has excluded the petitioners from the proceedsof the huge Intestate Estate and have secretly began to issue deeds to one another without reference to the other legitimate children of theLate Peter Bonner Jallah Sr.;

WHEREFORE and in view of the foregoing, the petitioners most respectfully pray this Honourable court to reopen the Intestate Estate of the Late Peter Bonner Jallah, Sr., conduct an investigation into thelegality of the children, conduct an inventory and legallyclose theEstate and further grant unto the petitioner's any and all reliefdeemed legal, just and equitable... "

Appellant/Respondent filed a seven count returns to appellees' petition asreferenced above, along with a motion to dismiss said petition. The principal points vigorously contended in the motion were (1) that the appellees/petitioners lacked legal standing to institute proceedings seeking to re-open the intestate estate of Peter Bonner Jallah, Sr. for reason that petitioners were not legal children of the deceased; and (2) that the instruments appellees/petitioners attached to their petition, purporting to have been issued by the Ministry of Foreign Affairs and by the Bureau of Archives, were the product of fraud.

Being also equally appropriate to reproduce the returns filed byappellant/respondent, we quote the substance thereof as follows:

"1. Respondent prays court to deny and dismiss petitioners' petition in its entirety, because it violates a cardinal principle of pleading in that on the 18th day of August, A.D. 2006, petitioners filed a petition before this Honourable Court for the appointment of a curator over the Intestate Estate of the Late Peter Bonner Jallah, Sr., copy of which was served on respondent and to which respondent responded on the 2nd Day of August, A.D. 2006 and simultaneously filed a motion to dismiss; that on the 25th day of October, A. D. 2006, petitioners by and through their counsels filed a notice of withdrawal of the aforesaid petition with the reserved right to re-file. Respondent also says that the Affidavit to the petition to which Respondent now responds, confirms that this petition to re-open the Estate of the Late Peter Bonner Jallah, Sr. is an AMENDED Pleading, and before the filing of same, petitioners should have complied with the provision of 1 LCLR Sec. 9.10 (b). Respondent strongly maintains that failure to comply therewith renders the substituted amended pleading dismissible, and respondent so prays. Respondent proffers these pleadings marked inbulk as Exhibit R/1.

2. As to Counts 1 and 2 of petitioners' petition, respondent says that petitioners are not the legal and natural children of the Late Peter Bonner Jallah, Sr. Respondent gives notice that if necessary at the trial, he will produce witnesses from the very Ministry of Foreign Affairs, Bureau of Archives to prove that the documents P/1 are tainted with FRAUD and do not represent the documents they purport to be. Respondent therefore prays court to deny and dismiss the same.

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3. As to Counts three and four of petitioners' petition, respondent says that his mother the Late ZondellJallah was the lawful wife of his late father Peter Bonner Jallah, Sr, consequently respondent and his mother ZondellJallah did not surreptitiously obtain Letters of Administration for the Estate of the Late Peter Bonner Jallah, Sr. Respondent says that he and his late mother ZondellJallah had no obligation to inform petitioners that they were petitioning the Probate Court for Letters of Administration to administer the Intestate Estate of the Late Peter Bonner Jallah, Sr. Assuming but not admitting that petitioners were minor children of Peter Bonner Jallah, Sr. at the time of his demise in 1972, would respondent and his mother have been duty bound to inform them as minor children that they were petitioning the Probate Court for Letters of Administration? The reply is negative. Respondent says that further responding to Count four (4) of the petition, he strongly resents the assertion that he and his mother (the so-called married woman) obtain Letters of Administration clandestinely and closed the Estate of late Peter Bonner Jallah, Sr. The late ZondellJallah was the lawful wife of Peter Bonner Jallah, Sr. and the Letters of Administration to administer the subject Estate was legally obtained and the Estate was legally closed. Respondent therefore prays court to dismiss and deny counts 3 and 4 of the petition.

4. As to Counts 5, 6, and 7 of petitioners' petition, respondent says that all of the averments therein contained cannot establish that they are children of the Late Peter Bonner Jallah, Sr, and thereby sustain any relationship to respondent; whereupon the said Counts 5, 6, and 7 of petitioners' petition should crumble and be dismissed.

5. As to Count 8 of petitioners' petition, respondent says that same is ambiguous and uncertain as far as the same states inter alia..."That the respondent have excluded the petitioners from the proceeds of the huge Intestate Estate and have secretly began to issue deeds to one another without reference to the other legitimate children of the late Peter Bonner Jallah, Sr." For such ambiguity and uncertainty, respondent prays court to dismiss and deny count 8 of said petition for surely it is not explicit as to who is referred to as one another.

6. Respondent says and contends that Your Honour is without jurisdiction to re-open an Estate which has been closed by Your Colleague (predecessor - another Commissioner of Probate); therefore the petition in its entirety should be dismissed and respondent so prays.

7 Respondent denies all and singular the allegations of both law and facts contained in petitioners' petition not herein made a subject of special traverse..."

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Following several months of legal bickering, and by a final judgment dated July 9, A. D. 2007, Probate Judge J. Vinton Holder granted the application to reopen Peter Bonner Jallah, Sr.'s estate. We have quoted the substance of Judge Holder's final judgment thus:

"This matter before this court in summary is the request by a group of individuals who claimed to be children of the late Peter Bonner Jallah, Sr. to reopen their father's estate and conduct investigation, [take] inventory and to have the said estate legally closed; that is to say, the properties distributed in keeping with Law. They argued that the Estate was allegedly closed without their knowledge and that they are not benefitting from the proceeds of the huge Estate.

The respondent primary contention is that the petitioners are illegitimate who have no inheritable blood. In the mind of this court, the capacity of the petitioners needed to be determined before the determination of the issue of whether or not to re-open the estate based on grounds set on petitioners' petition. The petitioners, having exhibited at least two (2) Court's Decree of Legitimization in favor of DiJallah and MazzahJallah and several other pieces of documentary evidence to the effect that they are legitimate children of the late Peter B. Jallah, Sr. by virtue of the Decrees of Legitimization; and also by virtue of the fact that the other petitioners who apparently were not legitimized were [also] acknowledged by both their father and the respondent in these proceedings to the extent that they were given houses belonging to their father to live in, it was incumbent upon the respondent in these proceedings to take the witness stand and challenge the testimonies and documentary evidence brought before court.

Considering that the Petitioners took the witness stand and produced three (3) witnesses and testified and the court admitted into evidence these species, made it imperative for the respondent to have equally taken the witness stand to challenge and refute these testimonies in line with the adversary system. This is what due process is all about. Under our law, the burden of proof rests on the party who alleges the existence of the facts. In the instant case, Petitioners who alleged that they are legitimate children of

The Late Peter Bonner Jallah, Sr., established the facts as stated earlier by the documentary evidence and production of oral testimonies by these witnesses. Our Law says in 1 LLR, Section 25.2 Subsection 2 CAPTIONED. QUANTUM OF EVIDENCE "IT IS SUFFICIENT IF THE PARTY WHO HAS THE BURDEN OF PROOF ESTABLISHES HIS ALLEGATION BY THE PREPONDERANCE OF EVIDENCE"

In the Mind of this court, this requirement of law had been met by the petitioners. The Respondent neglected to challenge and refutes these facts; it is an admission under our law, in that under Liberian Law, there is a maxim "WHAT IS NOT DENIED IS DEEM ADMITTED."

The petitioners having established by preponderance [of the evidence] that they are Peter Bonner Jallah, Sr. legitimate children and the respondent having refused to challenge this allegation, this court has no alternative but to take the petitioners version as truth. This court also agrees with the argument of the petitioners that one who keeps silent when he ought to speak is deemed to have conceded.

The duty of the court is to evaluate the credibility of the evidence duly placed before it. But in the instant case, only the Petitioners placed evidence both oral and documentary before this court the court is not expected to do for party litigants what they ought to do for themselves.

Therefore, the respondent's failure should be considered as an admission and same is hereby considered an admission that the petitioners are indeed legitimate children of the late Peter Bonner Jallah, Sr. and that they are not benefiting from their late Father's Estate..."

"WHEREFORE, AND IN VIEW OF THE FOREGOING, it is the Final Judgment of this Court that the Petitioners' petition is hereby granted and that the Intestate Estate of the Late Peter Bonner Jallah, Sr., having not been closed legally with the knowledge of all the heirs of the late Peter Bonner Jallah, Sr., same is hereby ordered re-opened. Mr. Peter Bonner Jallah, Jr. the respondent in these proceedings, Rev. Dr. Ola Jallah, one of the Petitioners are hereby appointed as Administrators of the Estate to work in close

Consultation with the Curator of this court to conduct an inventory of the Estate and file same with the court in sixty (60) days. AND IT IS HEREBY SO ORDERED."

It was to this final ruling Peter Bonner Jallah, Jr. accepted and announced an appeal to this Court of last resort. Appellant's discontent with this final judgment is encapsulated in his six count bill of exceptions which His Honour J. Vinton Holder, as required by law, approved on July 19, A. D. 2007. Counts 1 (one), 4 (four), 5 (five) and 6 (six), which we have determined worthy of our review, are quoted hereunder:

"1. Appellant says that prior to the filing of this Petition to reopen the Intestate Estate of the Late Peter Bonner Ja/lah, Sr., Petitioners filed a Petition for appointment of a curator to administer the Intestate Estate of the Late Peter Bonner Jallah which petition was resisted and a motion for dismissal filed and the petition was later withdrawn.

Respondent also says that thereafter, Appellees filed an AMENDED PETITION FOR APPOINTMENT OF CURATOR over the same Intestate

Estate of Peter Bonner Jallah which was resisted by Appellant and later withdrawn by Appellees; thereafter, Appellees herein elected to File a petition to Re-open the Intestate Estate of the self-same Late Peter Bonner Jallah Sr. without the payment of ACCRUED COSTS. Respondent Appellant filed appropriate RETURNS to the said Petition and simultaneously a motion to dismiss the Petition to Reopen. Appellant here contends, that Your Honour heard the Motion to Dismiss, with all

of the statutory and Common Laws to support said motion, yet Your Honour committed a reversible error when on the 15th day of December, A.D. 2006, you denied RESPONDENT APPELLANT'S MOTION TO DISMISS THE PETITION OF APPELLEES (Petitioners thereunder for lack of Jurisdiction over the Subject matter and Person of Appellant). To which ruling Appellant there and then accepted."

"4. Respondent Appellant further says that Your Honour also committed reversible error when you denied Appellant's Motion for the reasons stated in count three above, considering the elements of EXTRINSIC FRAUD permeated in every count of PETITIONERS' PETITION, which the Law makes mandatory for the Petition to be heard by a Court of Record with the aid of a Jury, nevertheless, Your Honour elected to exercise jurisdiction over said Matter and Person of Appellant. To which

Appellant accepted"

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"5. Respondent also says that Your Honour also committed a reversible error when at the close of the evidence on the side of Petitioners/ Appellees, Your Honour denied Respondent/Appellant's Motion for Judgment During Trial, when IPSO FACTO, all of the evidence adduced by Petitioners Appellees did not reveal a Scintilla of evidence of Fraud Perpetrated against Petitioners/Appellees by Appellant. To which ruling Appellant's counsel promptly accepted."

"6. Respondent Appellant says that beside other adverse Interlocutory rulings and pronouncements to which Appellant excepted, Your Honour ultimately committed a reversible error when on the 9th day of July, A.D. 2007 Your Honour J. Vinton Holder, Judge, Monthly & Probate Court, Montserrado Court, entered a FINAL RULING, setting aside all LEGAL DEFENSES of Appellant, granting Petitioners' Petition to Reopen the Intestate Estate of Late Peter Bonner Jallah Sr, to which final ruling Respondent Appellant excepted and announced an appeal to the Honourable, the Supreme Court of the Republic of Liberia, sitting in its October Term, A.D. 2007

WHEREFORE, AND IN VIEW OF THE FOREGOING LAW, facts and circumstances, Respondent submit the following as its Bill of Exceptions for Your Honor's approval to afford the Honourable Supreme Court of Liberia the opportunity to review the records in this case, and arrive at final determination/jurisdiction thereof.."

As can be seen, the bill of exceptions raises a number of important issues which also essentially reflect major questions contained in the pleadings filed by both the appellant and the appellees. But as the

Supreme Court of Liberia has held in a litany of Opinions, this Court has no duty to address every issue of contention presented in the bill of exceptions or counsels outline in the legal briefs filed before us. It is the exclusive domain of the Supreme Court to determine and pass upon only those issues it deems germane and meritorious to the resolution of the controversy. *Scanship (Liberia) Inc./LMSC v. Flomo*, 41 LLR 181, 190 (2002); *Lamco J.V. Operating Company v. Verdier*, 26 LLR 445, 448 (1978); *Trokon International et al. v. Reeves, Johnson et al.*, 39 LLR 626, 631 (1999); *Knuckles v. The Liberian Trading and Development Bank Ltd. (TRADEVCO)*, 40 LLR 49, 53 (2000); *Mathies and Fima Capita/ Corporation Ltd. v. Alpha International Investment, Ltd.*, 40 LLR 561, 573 (2001).

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Consonant with this law in vogue, we will mainly deal with a primary question. In our opinion, the germane and dispositive issue of this appeal is whether the Probate Court, amidst traded allegations of fraud, properly proceeded to grant appellee/petitioners' petition to re-open the Intestate Estate of Peter Bonner Jallah, Sr., without judicial investigation into fraud allegations?

A review of the records shows that the appellees/petitioners, to support

their petition to re-open the decedent estate of Peter Bonner Jallah, Sr., on the one hand, have set forth a torrent of allegations of fraud which they claimed were perpetrated by Appellant/Respondent Peter Bonner Jallah, Jr., against their legitimate interest in the decedent estate of Peter Bonner Jallah, Sr. The appellees have gravely alleged that the closure of the estate of Peter Bonner Jallah, Sr., their late father, if in fact were ever closed, could and must have been done only through misrepresentation, concealment and fraud perpetrated at the instance of Appellant Peter Bonner Jallah, Jr. This is because, according to the appellees, Appellant Peter Bonner Jallah, Jr., whom they claim to be their brother, had continuously admonished his siblings here in Liberia to await the return from the diaspora of the rest of the other siblings at which time they, jointly and working as a team, would proceed to close and distribute the decedent estate of their father. We note from the records that although the appellees fell short of expressly terming the "DECREE" ordering the closure of the intestate estate of Peter Bonner Jallah, Sr. as fake and one not duly issued by the Monthly and Probate Court for Montserrado County, they nonetheless have strenuously argued that said "DECREE" could have been obtained only under circumstances of deception, falsehood and suppression of the truth by their brother, Peter Bonner Jallah, Jr., in material breach of appellant's legal and equitable duty to the appellees as legal beneficiaries. The appellees have maintained that this act of cunning deception and artifice has resulted to Appellant Peter Bonner Jallah, Jr.'s substantial advantage over the appellees, quite in contravention of the laws controlling. Under these facts and circumstances, and it being settled law in this jurisdiction that fraud vitiates everything, appellees prayed the court to grant their application to re-open the decedent estate of Peter Bonner Jallah, Sr. as a matter of law.

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We must note here that showing of standing is fundamental requirement for a party plaintiff maintaining a suit in this jurisdiction. Mr. Justice Greaves speaking for a unanimous Court on what standing is stated in the case *Morgan v. Barclay* as follows:

"The standing to Sue Doctrine means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. "Standing" is a concept utilized to determine if a party is sufficiently affected so as to ensure that the justiciable controversy is presented to the court. The requirement of "standing" is satisfied if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation."42LLR 259,269-70(2004).

In an effort to satisfy this legal requirement, appellees/petitioners, in their petition to re-open the decedent estate of Peter Bonner Jallah, Sr., claimed to be children and persons of legitimate interest in the decedent estate. In support of this claim, appellees attached certain certified copies of instruments of legitimization reportedly issued in favour of some of the appellees. The instruments attached were said to have been issued by authorized personnel of the Ministry of Foreign Affairs/National Archives. As for the other appellees, they have clearly conceded that notwithstanding being children of Peter Bonner Jallah, Sr., begotten out of wedlock and were not formally legitimized, the late Peter Bonner Jallah, Sr., during his life time, recognized them as his issues. They have maintained that the late Peter Bonner Jallah, Sr. took them into his home, and along with his wife, Appellant Peter Bonner Jallah, Jr.'s mother, raised them, schooled them and unfailingly took care of them as his children. Hence, they qualified as children of inheritable blood to enjoy the rights and privileges as the appellant, Peter Bonner Jallah, Jr., as a matter of law.

On the other hand, the appellant vigorously contended that appellees are not legitimate children of the late Peter Bonner Jallah, Sr., and therefore have no standing to institute these proceedings. Appellant asserted that the instruments of legitimization relied upon by appellees and annexed to their application as evidence of being legitimate children, were all products of fraudulent procurement. Appellant insisted that no such legitimization instruments were ever issued by the Ministry of Foreign Affairs/National Archives. As to the otherset of appellees, claiming to have been recognized by Peter Bonner Jallah, Sr. as his children, appellant maintained that legitimization in this jurisdiction is regulated by the statute controlling. In order for a child born out of wedlock to qualify as a beneficiary, appellant argued, the alleged father, as in the instant case, must have strictly complied with the controlling statute. This was not the case here in this case. In view of these circumstances, the appellant questioned the legal propriety of the Probate Court proceeding to entertain and to dispose of the petition to re-open the Intestate Estate of Peter Bonner Jallah, Sr., when allegations of fraud have been raised and pleaded by the appellant, Peter Bonner Jallah, Jr. The Probate Court is without jurisdiction to entertain and dispose of the facts constituting the fraud, appellant contended, and the Probate Judge, committed reversible error by his failure to first refer the case to the Civil Law Court, Sixth Judicial Circuit Court for Montserrado County, with the aid of an empaneled jury, to entertain and dispose of the factual issues of fraud as alleged by the parties. Only after the conduct of a jury trial to examine and pass on the legal authenticity or otherwise of the instruments appellees presented as the evidence of their standing, could the Probate Court properly entertain an application to re-open the intestate of Peter Bonner Jallah, Sr.

Because counts four (4) and five (five) of the bill of exceptions succinctly capture appellant's contention, we have decided to quote them:

"4. Respondent Appellant further says that Your Honour also committed reversible error when you denied Appellant's Motion for the reasons

stated in count three above, considering the elements of EXTRINSIC FRAUD permeated in every count of PETITIONERS' PETITION, which the Law makes mandatory for the Petition to be heard by a Court of Record with the aid of a Jury, nevertheless, Your Honour elected to exercise jurisdiction over said Matter and Person of Appellant. To which Appellant accepted.

"5. Respondent also says that Your Honour also committed a reversible error when at the close of the evidence on the side of Petitioners Appellees, Your Honour denied Respondent Appellants Motion for Judgment during Trial, when IPSO FACTO, all of evidence adduced by Petitioners Appellees did not reveal a Scintilla of evidence of Fraud Perpetrated against Petitioners Appellees by Appellant. To which ruling Appellant's counsel promptly accepted."

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In the face of this judgment, we must now examine the pivotal issue whether Judge Holder correctly entertained and disposed of the petition to reopen a decedent estate, amidst traded allegations of fraud, without judicial investigation into the fraud allegations? In dealing with this key question, it is well to first state what constitutes fraud. The Supreme Court embraced a common law definition of fraud in the case, *Wilson v. Firestone Plantations Company and the Board of General Appeals*, 34 LLR 134, (1986). Mr. Justice Biddle, speaking for the Court, stated:

"Fraud is a generic term which embraces all the multifarious means which human ingenuity can desire and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions and concealment involving a breach of legal or equitable duty and resulting to damage to another. Fraud has also been defined as any cunning deception or artifice used to circumvent, cheat or deceive another. "Id., 143.

As a general rule, it is a party alleging fraud in this jurisdiction that is required to raise it with particularity and specificity. *Fayad v. Dennis*, 39 LLR 587, 595 (1999); *Multinational Gas Petrol chemical Company v. Chrystal Steamship Corporation, S.A.*, 27 LLR 198 (1978); *Monrovia Construction Corporation v. Uazami*, 23 LLR 57 (1974).

However, allegations of fraud made under certain peculiar facts and circumstances, would warrant judicial investigation, though not having been raised with specificity, as exception to the general rigid requirement. Under those exceptional circumstances, as held by the Supreme Court in the case, *National Port Authority v. Wilson and the Board of General Appeals*, fraud could also be presumed from the prevailing circumstances presented, in which case, "...fraud will be inferred or reasonably presumed from the surrounding circumstances": *Id.*, 34 LLR 52, 58 (1986),

As we earlier stated, the Probate Judge concluded his final judgment by granting the appellees' petition. In said ruling, the Probate Court decreed the reopening of the Intestate Estate of Peter Bonner Jallah, Sr.

and appointed the appellant, Peter Bonner Jallah, Jr. and Co-petitioner/Co-appellee, Rev. Dr. Ola Jallah, as administrators of the said estate.

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The probate judge further ordered that the newly appointed administrators work closely with the curator of the Probate Court to take inventory of all properties of the estate and file report thereof with the Probate Court in sixty (60) days, counting from the date the judgment was entered.

We find ourselves placed in a quandary both as to the procedure adopted by Judge Holder in this case as well as the law upon which he based his final judgment to dispose of the petition seeking re-opening of a decedent estate. The records in this case abundantly illustrate that the evidentiary instruments presented by the parties have been attacked by each and the opposite party as being tainted with, or procured through means of misrepresentation, concealment and outright fraud. Where a case is riddled with traded allegations of fraud, as the instance, every species of evidence tending to establish the facts of allegations should be put at trial. It is the province of the empaneled jury to pass upon those facts and to determine the sources, origins and authenticity of the various instruments the parties would have presented and relied upon.

No doubt, allegations that the evidentiary instruments presented by both the appellees and the appellant are fraudulent is at the core of the controversy in the case at bar. This being the case, one must wonder which case could have been better qualified for transfer to the Civil Law Court for jury trial, consistent with Section 105.3, subsection 3 of the Decedents Estates Law. This section provides:

"Upon the motion of any party or on the court's own initiative, the court may submit any controverted issue of fact required to be decided by the court to any advisory jury by transferring the proceeding and, where necessary, the papers and other records therein, to the trial term part of the circuit court within the county in which the probate court sits, for trial by jury. The order directing such action shall specify the issues to be tried.... "

The cited provision is also the law of general application in this jurisdiction as it is recognized that fraud is essentially factual in character; hence, must be referred to a panel of jurors as the judges of fact.

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For instance, in *Beysolow v. Coleman*, 9 LLR 156 (1946), the appellant in that ejectment case alleged that a mortgage agreement was fraudulently removed from a warranty deed. Therefore, the appellant made an application to the trial court to have submitted to trial the issue of fraudulent detachment of the mortgage agreement from the warranty deed. The trial judge denied the application. Again the appellant subsequently, during trial, attempted to present evidence tending to establish that the mortgage deed was indeed fraudulently removed. Upon objection interposed by Appellee M. D. Coleman to the admission of this evidence, for reason that the issue of fraud had not been ordered to trial, His Honour T. Gyibli Collins presiding, agreed and sustained appellee's objection, stating in his ruling thus:

'...The question of plaintiff's said title being as a mortgage to secure payment of debt not having been sufficiently alleged and clearly shown, the Answer is therefore defeated, and the case is ordered to trial on the question of which of the titles is valid and genuine; AND IT IS HEREBY SO ORDERED.'

The Supreme Court disagreed with Judge T. Gyibli Collins' and reversed his final judgment and ordered the case remanded with instructions that the parties re-plead. This is what Mr. Justice Russell, speaking for the Supreme Court, said:

"[As] it will be clearly seen that whether or not an agreement was executed and attached to the warranty deed from William H. Johnson to David S. Carter is a question of fact and not one of law, and hence ought rightly to be submitted to a jury for determination. The ruling of his Honour Judge Collins having denied the defendant the right to have the jury pass over the evidence in support of the allegation of fraud in his answer, we are of the opinion that the judge erred..." id. 159-160

The case, *Nah v. Nagbe and Richards*, reported in 16 LLR, 89 (1964), is even more to the point. In that case, Appellant Gabriel Nah claimed to have purchased a piece of property from Rachel R. Banks. The title instrument was executed on April 1, A. D. 1954, but probated and registered on December 13th of the same year. That is to say, the registration was done eight (8) months after execution of the said deed, in clear contravention of the law extant.

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Appellant Gabriel W. Nah objected to the probate of another deed for the same track of land executed by W. D. Richards et al., in favor of Joseph W. Nagbe. Gabriel W. Nah objected to the probate of Nagbe's deed issued by W. D. Richards for reason that he, Gabriel W. Nah, had already acquired title to the said property. He also contended that the warranty deed of Joseph W. Nagbe, being the subject of fraud, ought to vitiate and make void the transaction.

Responding to the objection, Joseph W. Nagbe and W. D. Richards, in their defense, maintained that the property in dispute was not the bona fide property of the objecting, Gabriel W. Nah, as the said property was jointly owned by Rachel R. Banks, objecting's grantor, and W. D. Richards. As such, Rachel R. Banks was legally without authority to convey title thereto, in her individual and personal capacity as title to the property in question was vested in two persons, Rachel R. Banks and W. D. Richards. It was contended that Appellant Nah's title instrument was illegal as Rachel R. Banks could not, in her own right, part with title to a third party without the co-owner, W. D. Richards also signing the said instrument of conveyance.

It turned out that W. D. Richards had made the allegation that he did not attach his signature to the deed in favor of the appellant, notwithstanding that copy thereof obtained from the archives of the State Department clearly showed W. D. Richards' signature on the said instrument.

In dealing with this issue on appeal from the Probate Court, the Supreme Court, speaking through Mr. Justice Mitchell, said:

"Our law is not silent on this point but makes it imperative that "when fraud is alleged, a jury must pass upon the evidence in support of the allegation.

We are shocked at the probate Commissioner's failure to recognize that, since fraud was alleged in the Respondents' answer, the facts in connection with the proof thereof had to be heard and disposed of by a jury. He should have known that he was without legal right to make a ruling on the facts because his competence only extends to disposing of law issues brought before him, and other matters concerning estates; and equity was the proper forum to give relief

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Upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial. Evidence could not have been taken in the probate court to prove fraud because such facts had to be passed upon by a jury, and the probate court is not authorized to empanel a jury who are sole judges of the facts in any given case. id.93.

Given the facts in this case and considering the laws applicable in the disposition of the appeal before us, it is safe to conclude that by proceeding to entertain the petition to re-open the intestate estate of Peter Bonner Jallah, Sr., without same being referred to the Civil Law Court, the court with the competence to dispose of issues bordering on fraud, Judge Vinton Holder acted without authority. We are further perplexed how Judge Holder could have referenced the instruments the parties herein claimed to be product of fraud, as the foundation of his final judgment, and on the basis of which he decreed the intestate estate of Peter Bonner Jallah, Sr. to be re-opened forthwith. We are at a loss on what basis Judge Holder made the conclusion that the closure of the decedent estate of Peter Bonner Jallah, Sr. in 1974 was without the pale of the law when the evidentiary instruments before the Probate Court were being questioned as products of fraud. In our opinion, such a conclusion as made by Judge Holder was utterly erroneous as no such conclusion could be judicially made without the jury first passing on the facts establishing the allegations of misrepresentation, concealment, artifice and outright fraud. Consequently, Judge Holder's final judgment granting the petition to re-open the intestate of Peter Bonner Jallah, Sr. for all intents and purposes, must be declared as a legal nullity, And so we hold.

Before concluding this Opinion, it is important to refer to one other point in further illumination of the issue of fraud. One point of concern which also has led us to taking the position we have taken in this case is to ensure justice. We have discovered in the records a communication from the Ministry of Foreign Affairs. The referenced communication was in response to an earlier letter from the Probate Court ordering the Foreign Ministry to transmit forthwith all "certified copy or any and all deeds of the late Peter Bonner Jallah, Sr."

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The Ministry responded by transmitting what it termed as a "second batch" of 12 land deeds executed in favour of Peter Bonner Jallah. The submitted title instruments, this Court has observed, carried neither the word junior nor the word senior. For the benefit of this opinion, the communication from the Foreign Ministry is also herein reproduced:

"REPUBLIC OF LIBERIA

MINISTRY OF FOREIGN AFFAIRS MONROVIA, LIBERIA.

October 12 2006

Your Honour:

By directive of the Deputy Minister/Legal Counsellor, Ministry of Foreign Affairs, I have the Honour to present my compliments and to submit herewith, as per Your Honor's order, the second batch of twelve (12) certified copies of land deeds in favor of Peter Bonner Jallah (and not Peter Bonner Jallah, Sr.).

We will make available additional copies subsequently as we find and process same.

Kind regards.

Respectfully yours,

[SIGNATURE]

Jackson K Purser

DIRECTOR OF ARCHIVES

J. Vinton Holder

Judge, Monthly & Probate Court Montserrado County R.L.

LIST OF WARRANTY DEEDS IN FAVOR OF PETER BONNER JALLAH

(1) From. Victoria & Charles R. Johnson

TO: Peter Bonner Jallah

Vol.: 88-D Pages 497-498 Location: Monrovia

(2) From. James H. Deshied et-al

TO: Peter Bonner Jallah

Vol.: 71-K, Pages 4065-4066 Location: Fair Ground Road, Monrovia.

(3) From. William R. Davies

To: Peter Bonner Jallah

Vol.: 88-N, Page 87 Location: Sinkor

(4) From. To:

Vol.:

(5) From. To:

Vol.: Location:

Charles R. Johnson Peter Bonner Jallah 87-C, Page 406 Victoria Johnson Peter Bonner Jallah 83-B, Page 472 Monrovia.

(6) From. L.B. Jacobs & Wife J.R. Jacobs

To: Peter Bonner Jallah

Vol.: 83, Page 565-566 Location: Bushrod Island

(7) From. William R. Davies

To: Peter Bonner Jallah

Vol.: 88-N, Pages 88-89

Location: Sinkor

(8) From. William D. Jallah

To: Peter Bonner Jallah

Vol.: 89-D, Pages 338-339

Location: Bushrod Island

(9) From. Henry Anderson

To: Peter Bonner Jallah

Vol.: 86-D, Pages 233-234

Location: Monrovia.

(10) From. James K. Cooper

To: Peter Bonner Jallah

Vol.: 71-K, Pages 1050-1051

Location: Monrovia.

(11) From. Haritio S.N. Nimely

To: Peter Bonner Jallah

Vol.: 89-G, Pages 248-249

Location: Monrovia (Around Barrack)

(12) From. Henry V. Logan

To: Peter Bonner Jallah

Vol.: 66, Pages 47-48 Location: Bushrod Island

Received by

Name: S. Peter Doe Kpar Date: October 17, 2006."

It is appropriate to remark here that the letter of August 7, A. D. 2006, aforementioned, as well the Judge Holder's action thereon requesting the

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Ministry of Foreign Affairs to submit all deeds in the name of Peter Bonner Jallah, Sr., was recklessly irregular. It cannot be a subject of any rational debate that the probate Court, as any tribunal of justice in this country, could properly acquire jurisdiction over the case and the parties of interest on the strength of a mere communication, such as the August 7, A. D. 2006 communication Co-appellee Rev. Dr. Ola Jallah addressed to Judge J. Vinton Holder. It is settled law in this jurisdiction that a court of law assumes jurisdiction over the case and the parties only by the formal issuance and service of a writ of summons. *Duncan v. Cornomia*, 42 LLR 309, 316 (2004); *Emmanuel v. Hilton and Lewis*, 32 LLR 277, 282-3 (1984); *Societa Lavori Porto Della Torre v. Hilton and Goe*, 32 LLR 444, 446-7 (1984); *Thomas v. Dennis*, 5 LLR 92, 102 (1936).

One must therefore ponder how and by what legal authority Judge Holder proceeded to assume jurisdiction over this matter leading to formally ordering the submission of all deeds of the decedent estate to his court. We have diligently searched but found no law to support both the conduct and procedure Judge Holder adopted in this matter. Indeed, the proceedings had in the trial court left a ton of questions unanswered to enable this Court of final arbiter to make a final, just and equitable determination of the case at this point.

Further, though a "Decree" ordering the closure of the decedent estate of Peter Bonner Jallah, Sr. was found in the records, it must be stated here that there were also communication over the signature of Peter Bonner Jallah, Jr. dated September 3, A. D. 2002 and February 20, A. D. 2004. A careful perusal of both communications reveals that they appear to have been duly signed by "Peter B. Jallah, Jr., Counsel/or-At-Law/Administrator of the Intestate Estate of the Late Peter B. Jallah, Sr."

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The communication of February 20, A. D. 2004, reads in substance as follows:

"TO ALL TO WHOM IT MAY CONCERN, GREETINGS:

I, the undersigned, Peter B. Jallah, Jr, Counsellor-At-Law and administrator of the Intestate Estate of the late Peter B. Jallah, Sr., do hereby authorize and empower Mr. Joseph Momoh to be caretaker of the sixty (60) acres of land, situated and lying in Virginia, Montserrado County, Republic of Liberia, behind the Ricks Institute, to take care of, stop any encroachment whatsoever and to take action on my behalf against any person or persons who will enter said property" And for so doing, this shall constitute his authority. Done in the City of Monrovia, Montserrado County, R. L., this 20th Day of February, A. D. 2004." This instrument was duly signed by "Peter B. Jallah, Jr., Counsellor-At-Law/Administrator of the Intestate Estate of the Late Peter B Jallah, Sr"

Such communications, to the mind of this Court, tend to generate the legitimate question in a reasonable mind whether the estate of Peter Bonner Jallah, sr., was in fact duly closed in 1974, as the "Decree" Appellant Peter Bonner Jallah, Jr. attached to his pleadings would seem to evidence.

Because of the position we have taken to remand this case for new trial, with the instructions that the issue of fraud be first forwarded to the Civil Law Court, to be thoroughly evaluated by a jury, we will refrain at this point from addressing the other issues raised.

Notwithstanding, this Court of final arbiter of justice cannot reasonably disregard the fact that this matter has lingered in court's corridors for many years without disposition. The long delay in final disposition of this matter by no means would seem to contribute to the conservation of the decedent estate of Peter Bonner Jallah, Sr. For the purpose of conserving the decedent estate, and to save it from loss and waste, the current state of affairs makes it imperative to appoint a person charged with the duty of temporary administration of the estate, as in keeping with the spirit of section 8:110.3 (10) of the Decedents Estate Law.

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Accordingly, and in the light of the facts of this case, IT IS HEREBY SO ORDERED as follows:

(1). the case is remanded for new trial with instruction that same be forwarded first to the Civil Law Court for jury trial to pass on all the issues of fraud.

(2). The Probate Judge, working closely with the Marshall of the Supreme Court, shall have the curator of the Monthly and Probate Court for

Montserrado County, immediately take temporary supervision, administration and management of the decedent estate of Peter Bonner Jallah, Sr., pending the disposition of this case on its merits. Costs are to abide final determination. IT IS SO ORDERED.

CASE REMANDED.

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