

GEORGE B. CAINE, VARNEY MANOBALLAH,
LUSINI MANOBALLAH, *et al.*, Appellants, *v.*
A. KINI FREEMAN, *et al.*, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY.

Argued October 18, 1967. Decided January 18, 1968.

1. Where a caveat has been served, indicating intention to object to probate of a written instrument, other than a will, as in the instant case, a deed to real property, ten days must be allowed by the court, from the time of offering to probate of the instrument, for formal objections to be interposed by the caveator, before the probate court can validly accept the instrument for probation and subsequent registration.
2. A caveat may consist of a radiogram, as in the instant case, and can be addressed to the judge of the probate court, as well as to the clerk of that court.

A public land sale deed was offered for probate the day following receipt by the judge of a radiogram from the caveator, requesting him to record objection to the probate. The caveator then applied for cancellation of the probate. On appeal from denial of the application, the *judgment was reversed* and the statutory time ordered allowed to the caveator to file objections to probate.

George Caine for appellants. *Jacob H. Willis* and *Nete Sie Brownell* for appellees.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

The appellants herein have laid claim to an area of land containing two thousand three hundred and twenty-five (2,325) acres situated in the Garula Chiefdom of Grand Cape Mount County. Apparently, the parties herein have been in controversy for a protracted period of time in an endeavor to establish the fee simple ownership to the above-referred-to tract of land. It is further

shown that, predicated upon certain documentary representations, the President of Liberia signed in behalf of appellees a public land sale deed covering the property.

Subsequent to execution of this indenture, the named grantees returned to Grand Cape Mount County, and at Robertsport, the county seat, prepared to offer for admission into probate the aforementioned public land sale deed.

The facts of the case show that on August 11, 1965, a cablegram was dispatched from Monrovia to Robertsport by Attorney George B. Caine and addressed to the assigned Circuit Judge, Lewis K. Free, then presiding over the Fifth Judicial Circuit. Due to the brevity of this radio message, we shall herein quote it.

“His Honor Judge Lewis K. Free Assigned Judge 5th Jud. Cir. Court Cape Mount. If any deed is offered for probation and registration in this present session of court in favor of a Kini Freeman et al of Mani please record my objections to said deed. Kind Regards.”

The records further show that on the following day, meaning thereby August 12, 1965, a public land sale deed for lot No. 1, from the Republic of Liberia to A. Kini Freeman, *et al.*, was offered for probation by attorney Frank A. Skinner. Upon the recordation of this offer for admission into probate, the court ordered the clerk to placard notices for three days, inviting objections to the probation and registration of the said deed, and after the expiration of that time, if there were no such objections, then the deed would be admitted into probate and thereafter ordered registered. The records at this juncture are not completely clear, however, for it is shown that on August 18, 1965, an application entitled, “Application for the withdrawal and cancellation of deed, granted unto A. Kini Freeman, *et al.*, offered for probation and registration” was filed by George B. Caine for himself and members of Kiazolu and Manoballah. At the outset, we

should like to note that the counts of the application and the prayer at the end of same vary in substance from the title as quoted, *supra*.

In the petition, it was substantially alleged that a radiogram expressing intention to object to the probation and registration of the above-referred-to deed had been sent to the judge on August 11, 1965. Additionally, that the deed was offered for probation and registration in the absence of petitioners, in disregard of the notice of intent to object to the probation of the same, and, furthermore, allowing the said petitioners no time within which to file objections, regardless of the fact that they were momentarily without the country. This, the petition contended, contravened Rule 5 of the Probate Court Rule, obviously to the prejudice of the said petitioners.

Predicated upon the above-recited facts, the petition prayed that the probate and registration of the said public land sale deed be canceled and set aside. We want particularly to observe here that the application did not request a cancellation of the deed but, instead, of the act of probation and subsequent registration.

To this application an answer was filed by the appellees herein, containing five counts, wherein it was contended that petitioners had waived their rights in that the probation and registration of the deed had occurred prior to the filing of the application for "the withdrawal and cancellation of said deed." It was additionally contended that the petitioners' radiogram which served as a caveat should have been directed to the clerk of court and not the judge himself, for in so doing the petitioners constituted the judge their agent, thereby disqualifying him from presiding over the case. Continuing their answer, count three thereof held that the deed in question, having been granted by the Government over the signature of the President of Liberia, can only be canceled by the Government through the Attorney General, or the County Attorney for Grand Cape Mount County. The last two

counts made mention of certain administrative procedures that had culminated in a final judgment rendered by the President of Liberia on February 15, 1963, handed down in Robertsport in March 1964.

Ruling was made by the judge on August 30, 1965. In this ruling the judge, first of all, held that the issues involved concerned our property law and savored of a controversy in respect of title rights. It was his further belief that the petition should have been venued in the Equity Division of the court but, instead, the proceedings had been commenced by addressing a radiogram to him containing objections to the probation of any deed offered by A. Kini Freeman, *et al.*, during the said August Term of court. The judge continued by saying that the Civil Procedure Law, 1956 Code, tit. 6, § 254, requires that pleadings be addressed to the clerk and since this was not done, count one of the petition was to be overruled.

With respect to count two of the petition, the judge held that the contention of petitioners to the effect that no time was allowed them to file objections, contradicted their further contention that they were without the jurisdiction. This point was stressed, upon the reasoning that no one can serve notice to file objections and at the same time be out of the jurisdiction of the court. Thereafter, the judge proceeded to cite scanty portions of Rule 5 of the Probate Court Rules. In addition to this, he proceeded to make an array of legal citations which were not germane to the issues.

The Court feels that it is unnecessary to have to concern itself with all of the sham issues that have been raised and were purportedly passed upon. In our view, there are but two main issues here, the first being whether or not the radiogram addressed to the judge constituted a sufficient caveat in the eyes of the law and the second, if such a caveat is legally sufficient, were legal requirements of Rule 5 of the Probate Court Rules complied with in respect to the filing of objections?

Did the radiogram constitute a sufficient caveat? In order to effect a proper resolution of this issue, let us first examine the meaning of "caveat," and then determine to whom notice should be addressed. The word "caveat" is of Latin origin, and is defined literally as "let him beware." In BLACK'S LAW DICTIONARY, the following legal definition is given:

"A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable process, to stay the granting of a patent for lands."

From this quotation it can be seen that the caveat is not a pleading, but constitutes an intimation to file more formal pleadings by way of objections at some subsequent time. The notice to the court of an intention to object may be either oral or in writing, and irrespective of the mode of this notice the rule requires that time should be allowed for written objections to be filed.

The relevant Rule of court reads as follows:

"Rule 5. All instruments, documents and other papers other than Wills, necessary to be probated, shall be offered in open Court and recorded by the clerk in the minutes for the day's sitting; after which it shall be bulletined for at least three (3) days, before being cried by the Sheriff. This order shall only be given in the absence of objections interposed to probation of the document. In case of objections given orally, time will be allowed as in the case of caveats for written objections to be filed. Bulletin of these matters shall be placarded on the door of the Court House for the

required three days, to give public notice of the proferer's intention."

In accordance with existing statutes and the above-cited rule, in the event a caveat is filed in respect to intention to object to the probate of a particular legal instrument, the caveator is, upon presentation of the relevant instrument for probate, apprised of the presentation and given ten days within which to file objections. In the circumstances, the Probate Court is not authorized to admit into probate, or place into operation the machinery to effect probate of an instrument, until the caveator has been allowed the prescribed period for filing objections.

The records in the present case show that less than six days elapsed between the offering of the deed for admission into probate and its subsequent admission in disregard of the prior filing of the caveat. This constituted an erroneous act on the part of the judge. The fact that the radiogram from George Caine was addressed to him in his official capacity and not to the clerk, is of no legal consequence, since the same violates no known law. The reference made by the judge to our Civil Procedure Law, as quoted above, is inapplicable since nowhere in the section is any mention made of the fact that the caveat to be valid must be filed with the clerk of the court and not the judge.

Lastly, we must state that the ruling in respect to averments that the relief sought was for the cancellation of the public land sale deed, is completely without merit. A recourse to the substantive portion of the petition as above recited clearly indicates that the application in effect was for the cancellation of the act of probate and subsequent registration and was not intended to nullify the deed itself, for obviously this could not be effected by a petition in probate.

In view of the foregoing, this Court must hold that the acts of the judge were without legal foundation, and

where an application was timely made to him for appropriate relief, his failure to grant it constituted reversible error. Therefore, a mandate is ordered directed to the judge presiding over the Fifth Judicial Circuit Court, Grand Cape Mount County, declaring the ruling of Judge Free null and void, and ordering that ten days be afforded the caveator to file objections in consonance with the law. Costs in these proceedings are ruled against the appellee. And it is hereby so ordered.

Reversed.