

HOWAH DORUM, Appellant, v. RICHARD F. D.
SMALLWOOD, Appellee.

PETITION FOR REVOCATION OF GUARDIANSHIP.

Argued October 30, 1947. Decided December 12, 1947.

Where the interests, rights, welfare, and education of a minor child bereft of both father and mother are involved, one should not resort to legal technicalities.

Petitioner-appellant, mother of the child and co-guardian, petitioned the probate court for revocation of the decree of guardianship, obtained at petitioner's request, of respondent-appellee. The court denied the petition, added a mother superior as a guardian, and ordered a report on his guardianship from, and posting of a bond by, appellee. After completion of the appeal appellant died. On appeal, *case remanded* with instructions.

No appearance for appellant. *Richard F. D. Smallwood* for himself.

MR. JUSTICE SHANNON delivered the opinion of the Court.

One Thomas Dorum of this city died between September, 1937 and March, 1938, leaving a widow named Howah, now deceased, and a daughter by the name of Rachel Marsah. At the time of Thomas Dorum's death his daughter Rachel Marsah was a minor of about three years. In testator's last will and testament, which was duly probated and registered, in addition to nominating Charles Campbell as the executor, he named Momo Gray and the widow Howah as guardians of his said daughter Rachel Marsah and made ample provisions within the

- (2) His Honor Mr. Justice Shannon whilst presiding in Chambers confirmed the acts of the probate commissioner continuing appellee as guardian and requiring him to give a bond,
- (3) According to the records certified to this Court, no regular announcement of appeal to this Court was made in the court below so as to give this Court jurisdiction over said appeal, and
- (4) Appellant left no estate which would enable the curator, executor, or administrator to apply to this Court for substitution of parties and to comply with the jurisdiction of this Court in the event said judgment is rendered against her, since the only property that was hers was a life estate under the will of her husband Thomas Dorum.

Counsellor Abraham B. Ricks, who had all the time been representing the interest of the appellant, did not file a resistance to this motion and when he was called into Court to ascertain his position in the matter, that is, whether or not he would resist or defend, he informed the Court that he had no further interest in the case because of the facts set out in the motion of appellee, which he conceded.

It is readily apparent to us that the case has been and is being loosely and indifferently handled on the side of the deceased appellant. The Revised Rules of this Court, adopted and approved in 1913, are clear and precise on the point of the death of parties:

“In the case of the death of either party, the name of the executor, or administrator may be substituted and the cause pending be proceeded with. Either party may submit a motion for such substitution and the same shall be disposed of as justice and equity may require.

“If no representative of a deceased party shall appear with a motion for substitution *for two terms after*

the death of the party, the cause may be stricken from the calendar upon the motion of the opposite party." Rules of Sup. Ct., VI, 2 L.L.R. 665. (Emphasis added.)

The anxiety of the appellee in filing this motion to dismiss the appeal so soon after the death of appellant is, under the circumstances, inexplicable, and the indifferent attitude of Counsellor Ricks is even more puzzling.

It is to be strongly urged that in this case the interests, rights, welfare, nurture, and education of a child around the age of twelve years who has been bereft of both father and mother in her minority are involved. It is a solemn and weighty duty to judicially handle the matter and, in doing so, it should be conscientiously conceded that legal technicalities should not be resorted to and encouraged. We are unwilling to assume that this infant child is without any interested relative who can come up to seek the protection of her said interests, rights, etc. Again, we are unwilling to brush off this petition of Howah Dorum, the mother of the child, just because she is dead, without a direction that a thorough inquiry be made. Consequently, we have decided to remand the case to the Probate Court for Montserrado County with instructions to the commissioner of probate:

- (1) To resume jurisdiction over the case and have it redocketed for such inquiry and investigation as will be necessary under the circumstances.
- (2) To call in the near relatives of the said infant child, if any there be, to ascertain their wishes as to the best interest, welfare, care, education, and training of said child and to further ascertain whether or not said wishes are in harmony with those of the deceased mother.
- (3) To require the appellee, as guardian of the infant child, whose appointment as such guardian is now

sought to be canceled, to promptly report upon every phase of his activities in connection with and since his appointment in 1941.

- (4) To cancel the appointment of the said guardian, appellee in these proceedings, should said inquiry or investigation disclose an unsatisfactory state of management of the affairs entrusted to him as such guardian.
- (5) To see that whatever person who, as a result of the inquiry and investigation, is either continued as guardian or so appointed, will give sufficient bond for the faithful discharge and performance of his duties as are legally required of him, one hundred dollars being considered an inadequate bond for the control of an infant's property which includes realty.
- (6) To do all such things as will, in his sound judicial discretion, be necessary for the conservation and protection of the interests and rights of the said infant child.

The case is hereby remanded with the above instructions to the court below; and it is hereby so ordered.

Remanded.