

In re His Honor D. C. CARANDA, Commissioner of
Probate for Montserrado County, Respondent.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE SHANNON.

Argued December 9, 12, 1946. Decided January 31, 1947.

It is contempt of court for a Commissioner of Probate to appoint administrators for an estate after said commissioner had been served with the notice of the filing of a writ of prohibition in the case.

M. Dukuly and Albert Gemayel as executors of the will of the late L. G. Freeman petitioned in the Chambers of Mr. Justice Shannon for a writ of prohibition against Commissioner of Probate Caranda and T. D. Leigh, Curator of Intestate Estates for Montserrado County. After service upon Commissioner Caranda of a notice of the filing of a petition for said writ of prohibition, the said commissioner appointed T. D. Leigh and Kolli S. Tamba administrators of the estate of L. G. Freeman. On appeal to this Court *en banc* from a decision of Mr. Justice Shannon in Chambers adjudging Commissioner Caranda in contempt, this Court held the said commissioner *guilty of contempt* and modified the ruling of Mr. Justice Shannon by increasing the fine against the said commissioner.

Doughbo Carmo Caranda for himself. *C. D. B. King, J. Auzzel Gittens, and Momolu Dukuly, amici curiae.*

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Doughba Carmo Caranda at the time Commissioner of Probate being dissatisfied and displeased with the ruling of our distinguished colleague, Mr. Justice Shannon, then presiding in Chambers, took exceptions thereto and appealed to the Court *en banc*.

This Court requested Counsellors C. D. B. King, James A. Gittens, and M. Dukuly to act as *amici curiae*, each of whom accepted the appointment.

During the hearing, respondent Caranda saw fit to prepare and file the following submission:

“Respondent—appellant in these proceedings, having heard the observations made by the Hon. C. D. B. King and Counsellor J. A. Gittens, *amici curiae*, in effect suggesting the change of attitude on the whole by appellant, he accordingly answers as follows:—

“1. He abandons insisting his submission to be heard by counsel at this stage of the proceedings for good and sufficient reasons.

“2. He urges most respectfully his submissions contained in the Returns and Answer filed in these proceedings, and particularly where he solemnly pleaded no intent whatsoever at contempting this Honourable Court in his effort to further secure the estate of the late L. G. Freeman which comes ill-fated unto waste contributable to the relator M. Dukuly. That his impression rested solely and wholly upon the position previously taken by this Honourable Court by His Honour Mr. Justice W. V. S. Tubman, when similar proceedings [had been] issued against His Honour E. J. Summerville on the identical estate. The estate at the time of appellant’s action was in a worse condition [regarding] . . . waste than in the instance of Judge Summerville.

“3. That his appeal was the result of not chiefly the fine of \$25.00 and costs, but the recital of the Opinion transmitting a copy of the proceedings to the Executive, an act viewed as designed to affect adversely his judicial career in a matter the facts of which had not been heard even though contested, and had gained wide currency as a wicked propaganda.

- "4. That in submitting the cause to the Full Bench, he craves indulgence under the circumstances to the end of rescinding the fine and costs and imposing a reprimand, preferably.
- "5. That patent evidence of the bent mind of relator M. Dukuly to secure full control of the estate of Freeman unto waste can be seen in his recent act of filing a petition before respondent-appellant seeking the performance of an act in direct contravention to the decision and judgment of this Honourable Court, that of non-interference, since the ruling entered by appellant 20th March 1946, had been by the Supreme Court cancelled and annulled. In point of information exhibit of said petition is respectfully made. And that prior to this daring act, and during the pendency of this appeal, relator Dukuly demanded and received from the tenant of decedent's premises on Carey Street, Monrovia, \$60.00 from the rent accruing therefrom and by order of Judge Summerville impounded at the Bank of Monrovia, Inc.

"That the said relator M. Dukuly has failed to prosecute his appeal announced in the Contempt proceedings before respondent-appellant, closely related to these proceedings. Judicial notice thereof is respectfully craved.

"Respectfully submitted,

DOUGHBA CARMO CARANDA,

Judge etc. respondent-appellant."

The commissioner, now respondent in these proceedings, appears to have been unmindful of the fact when making said submission that during the hearing before Mr. Justice Shannon, then presiding in Chambers, the following record was made:

"Commissioner Caranda in his argument admitted that he did turn over to the Curator and Attorney Kolli S. Tamba certain documents pertaining to

the estate of the late L. G. Freeman *after* he had been served with the Notice of the filing of a petition for a writ of prohibition; but he held that inasmuch as Mr. Dukuly had already appealed to the Supreme Court by remedial process he (Dukuly) had no legal right to interrupt him (Commissioner of Probate) while he was proceeding in the matter in *his* Court; and further that when prohibition proceedings were instituted against Judge Summerville in a former hearing of the same case, Judge Summerville had *after* the service upon him of the Interlocutory Writ of Prohibition proceeded to appoint appraisers to secure the estate and prevent waste, and he was of the opinion that his actions in the premises were analogous to those of Judge Summerville in the previous instance.

“With respect to the other charges of misconduct and misbehaviour made by the relator against the respondent Caranda and alleged to have been committed whilst presiding in court, the Justice presiding in Chambers observed that in his opinion, even though they are grave . . . and serious as affecting a judge, yet they were not germane to the issue of the contempt proceedings before him; but for the purpose of clarification of the facts submitted against respondent Caranda as to their truth or falsehood the court inquired of both relator Dukuly and respondent Caranda if they desired producing evidence, in which case he would enter upon the hearing of said evidence. Whereupon relator Dukuly requested and insisted upon an investigation; but respondent Caranda, in reply to relator Dukuly’s insistence that an investigation be held, said that he was not interested and that he did not want or insist upon an investigation.”

In the face of such a record we are astonished that the respondent should have included count three, *supra*, in his submission filed during the hearing of this appeal,

and we are perplexed as to the state of mind actuating the said respondent at the time of filing of said submission. The ruling to which exceptions were taken and from which an appeal was prayed reads as follows:

“Growing out of a petition for a writ of prohibition applied for before us in Chambers against Judge Caranda and the Curator of Intestate Estates for Montserrado County, M. Dukuly, one of the petitioners, as relator, brought the following to the notice of the Court:—

“Your relator most respectfully begs to bring to Your Honour’s notice that a petition as entitled above has been filed before Your Honour and the Clerk of this Honourable Court both in person and by regular procedure of this Court notified the respondent that the petition in prohibition as aforesaid had been assigned for hearing on April 4th, at the hour of eleven o’clock in the morning, in Your Honour’s Chambers; that even though the notice was served as aforesaid upon D. C. Caranda, Commissioner of Probate, Montserrado County, the said D. C. Caranda has totally ignored Your Honour’s notice and in absolute defiance called T. W. Leigh, Curator of Intestate Estates, Mo. Co., who was made a party respondent to these proceedings and Attorney Kolli S. Tamba and issued Letters of Administration to them, delivering them papers and other documents appertaining to said estate without Your Honour’s hearing and determination of the merits of the Prohibition petition; that this was done by the said Probate Commissioner whilst relator was engaged in a conference with the Honourable the Attorney General of Liberia in a very important matter of State; that at the conclusion of this conference your relator, M. Dukuly, one of the petitioners in the above entitled proceedings found in the Probate Court that the Commissioner had

willfully disregarded the functions, honour and dignity of the Honourable the Supreme Court of Liberia, by administering the oaths to both Messrs. T. W. D. Leigh and K. S. Tamba as administrators of the tested [*sic*] estate of the late L. G. Freeman; Your relator then and there spread upon the records of Court our exceptions to his illegal and defiant acts; that he permitted your relator to dictate said exceptions in a formal way; that immediately upon spreading relator's exceptions on the record, D. C. Caranda, Probate Commissioner, adjudged relator guilty of contempt of court to be committed to the Central Jail of Montserrado County; that your relator further took exceptions to this judgment and prayed an appeal to the Honourable the Supreme Court of Liberia which announcement unjustly irritated the Probate Commissioner into blind madness and caused him to have issued a commitment to the Sheriff of Montserrado County to incarcerate your relator to [*sic*] jail until the Probate Commissioner took a pleasure trip in the hinterland of Liberia and returned.'

"Although counts two and three of the submission carry matters which are not strictly germane to the subject of the alleged contempt, yet they are otherwise of such grave and serious import and nature as affecting a judge of one of our courts of record in his *bona fides* and deportment, that I have decided to also quote them here:—

"That your relator is giving this information unto Your Honour as a sworn Counsellor-at-law of this Honourable Court that the said D. C. Caranda, Probate Commissioner, during yesterday's session committed gross dishonour upon the judiciary of this country in several ways, to wit: 1) In the first place, D. C. Caranda, Probate Commissioner, presided yesterday over the Probate Court in shirt

sleeves, opened down to his chest, without any collar or coat. 2) That during the session he desecrated the Bench by purchasing a bottle of cane juice and holding it in his hands and at other times resting it in the window where he constantly took a drink as the proceedings were going on, each time leaving the Honourable Bench and walking to the bottle of cane juice; and in the meantime, giving the Clerk dictation or instructions. 3) That during the same yesterday's session, he in his defiant attitude to the Supreme Court's notice in this matter, in that, as he was delivering certain documents to Messrs. Leigh and Tamba the Commissioner of Probate burst into tears, telling the bar and Court visitors that the late L. G. Freeman was standing in court looking at him. 4) That during the same session of yesterday (April 2nd 1946) he once more burst into tears saying that Carmo Tiffa, late of Tawar Section, Grand Cape Mount County, was also standing in the court looking at him.

“That in view of these facts, relator does not hesitate to say that D. C. Caranda, Probate Commissioner, is fast approaching insanity if he is not already insane, for, no judge of sound mind can ever dare to demean himself in the manner herein outlined. As relator has pledged his honour to the veracity of this information, he gives as witnesses present in court during yesterday's sitting the following persons: Attorney Carney Johnson, Attorney J. D. Beysolow, Attorney T. W. D. Leigh, Attorney K. S. Tamba, Mr. Charles Coleman, typist, the Sheriff, and a good number of visitors whose names relator cannot now recall.’

“With respect to the other charges of misconduct of relator Dukuly and against the Commissioner of Probate, the following record was made at the hearing:

“With respect to the other charges of misconduct and misbehaviour made by the relator against the respondent Caranda and alleged to have been committed whilst presiding in court, the Justice presiding in Chambers observed that in his opinion, even though they are grave . . . and serious as affecting a judge, yet they were not germane to the issue of the contempt proceedings before him; but for the purpose of clarification of the facts submitted against respondent Caranda as to their truth or falsehood the court inquired of both relator Dukuly and respondent Caranda if they desired producing evidence, in which case he would enter upon the hearing of said evidence. Whereupon relator Dukuly requested and insisted upon an investigation; but respondent Caranda, in reply to relator Dukuly’s insistence that an investigation be held, said that he was not interested and that he did not want or insist upon an investigation.’

“Because of the record thus made in respect to these two counts, no investigation was ever had as to the merit or demerit of the information therein contained; but the Clerk of this Court is hereby instructed to furnish the Executive Government with a copy of the Information; the Answer; the Minutes of this Court in Chambers, April 9, 1946, and the ruling this day given, and this without failure or unnecessary delay, so that the Chief Executive may be informed of the present alleged situation in the Probate Court for Montserrado County.

“The Answer of the respondent (D. C. Caranda, Commissioner of Probate) does not at all deny the information given by relator to the effect that, after the service upon him of notice of the filing of a petition for a writ of prohibition against him which notice required him to appear on a day named to show cause why the said writ should not be granted, the said re-

spondent D. C. Caranda, as such Commissioner of Probate, in absolute defiance, proceeded with further judicial functions in the administration of said estate by qualifying his nominated administrators, giving them Letters of Administration as well as other documents and instructions necessary to their functions; but seeks to justify his said actions by claiming to have followed a similar position taken by His Honour Judge Summerville in the said estate some years ago and which was approved by this Court. In this respect, the following record was made:—

“ ‘Commissioner Caranda in his argument admitted that he did turn over to the Curator and Attorney Kolli S. Tamba certain documents pertaining to the estate of the late L. G. Freeman *after* he had been served with the Notice of the filing of a petition for a writ of prohibition; but he held that inasmuch as Mr. Dukuly had already appealed to the Supreme Court by remedial process he (Dukuly) had no legal right to interrupt him (Commissioner of Probate) while he was proceeding in the matter in *his* Court; and further that when prohibition proceedings were instituted against Judge Summerville in a former hearing of the same case, Judge Summerville had *after* the service upon him of the Interlocutory Writ of Prohibition proceeded to appoint appraisers to secure the estate and prevent waste, and he was of the opinion that his actions in the premises were analogous to those of Judge Summerville in the previous instance.’

“We are unwilling to agree with Commissioner Caranda in this submission made in that there is a wide difference between his actions and those of Judge Summerville’s: for, in Judge Summerville’s case, he, the said judge, simply appointed appraisers to appraise the estate with a view of securing same and preventing waste, with a definite understanding

against administration of same in any shape or form whatsoever pending the determination of the prohibition proceedings then pending (see Judge Summer-ville's ruling as quoted by Commissioner Caranda). Whilst, in the present case, Commissioner Caranda, after the service of the Notice upon him, actually qualified *administrators* (not appraisers), gave them Letters of Administration, with other documents and instructions with respect to their functions. What else could have been properly and correctly considered in the way of their functioning as such administrators after their qualification and receiving their Letters of Administration?

"To say the least, this act of the Probate Commissioner is in actual contravention of the meaning, force and effect of a writ of prohibition and cannot therefore but be considered contemptuous; and it is therefore so declared.

"That said Probate Commissioner is fined in the sum of twenty five dollars (\$25.00) with the entire costs of these proceedings against him; AND IT IS HEREBY SO ORDERED."

From the record before us we have no hesitancy in refusing entirely to disturb the opinion and ruling of the Justice presiding in Chambers and hence have decided to sustain same with the exception of the last and concluding paragraph which we have seen fit, under the circumstances, to amend and augment to read that the said Doughba Carmo Caranda, respondent in these proceedings, is fined the sum of fifty dollars with the entire costs of these proceedings against him; said fine and costs to be paid within thirty days from the date of the judgment with respect thereto; and it is hereby so ordered.

Guilty of contempt.