

JAMES FLOMO BALLAH, sole Executor of the
Estate of the late FINEBOY LARZALEE, Informant,
v. HIS HONOUR NAPOLEON B. THORPE, Acting
Judge, People's Probate Court for Montserrado
County, Republic of Liberia, Respondent.

INFORMATION PROCEEDINGS

Heard: July 13, 1981. Decided: July 31, 1981.

1. When an appeal has been announced and the bill of exceptions filed within statutory time, the trial court loses jurisdiction over the cause and, where a party is otherwise affected, he has a remedy by way of information
2. Where an appeal serves as a supersedeas, it is a contempt of court for any person to interfere with or adversely affect it.
3. Where an appeal has been announced and the bill of executions filed within statutory time, the trial court loses jurisdiction over the cause, and any act or conduct on its part tending to interfere or adversely affect the cause is *ultra vires* and contemptuous

From a ruling of the Acting Judge of the Monthly and Probate Court for Montserrado County, ordering the informant, sole executor, heir and legatee of Fineboy Larzalee, to immediately surrender the estate to the heirs of the late Fineboy Larzalee and the legatee under the will, informant announced an appeal to the Supreme Court. While the appeal was still pending, the judge of the probate court ordered the clerk to instruct all tenants to pay rent to the sheriff of the probate court. The probate court judge also instructed the purchasing manager of the Firestone Plantations Company to forward all checks issued and those he might have in his possession in favor of informant, to the sheriff of the probate court. The judge also instructed all banks not to permit informant to operate the account(s) of the estate. Growing out of these developments, informant filed a bill of information to the Supreme Court, asserting that by filing the bill of exceptions, the probate court judge lost jurisdiction over the matter and therefore his orders issued subsequent to the appeal, were illegal.

The Supreme Court held that the probate judge acted *ultra*

vires, since he no longer had jurisdiction over the case by virtue of the appeal, and declared his orders null and void. The Supreme Court also adjudged the probate judge guilty of contempt and fined him \$50.00.

S. Raymond Horace appeared for informant. *Robert G. W. Azango* appeared for respondents

MR. JUSTICE MORRIS delivered the opinion of the Court.

The informant is the sole executor of the Estate of the late Fineboy Larzalee, of the City of Monrovia, by virtue of the Last Will and Testament of the aforesaid Decedent Fineboy Larzalee, duly probated and registered. During the administration of the estate, Acting Probate Judge Napoleon Thorpe allegedly had several investigations relating to the administration of the estate. On February 3, 1980, the acting probate judge, after investigating the petition before him with respect to one John Baysahwala for withholding properties of the estate, asked the sole executor whether he was carrying out certain instructions in respect of the estate of Fineboy Larzalee according to the will, such as providing for the widow and heirs of the testator. That is, a dwelling house which the widow was to occupy during her life time, and clause nine of the will, which provides that the deceased's daughters should remain on the properties situated in Lorma Community on Camp Johnson Road, Monrovia. Counsel for the sole executor promised to give a definite answer to this question on the ensuing Friday, September 5, 1980. When the court met on September 5, 1980, counsel for the widow and some of the children, made a two-count submission to court, requesting for the surrender of the estate to the children in order to bring about peace and harmony among the family.

According to the submission, it is contended that the children have reached their maturity, and were capable of managing their father's properties. Counsel intimated that the children waived the request for making a report if their request was granted. This submission was resisted by counsel for informant, arguments on both sides entertained, and the court denied the submission on the ground that the sole executor should work in strict conformity

with the Last Will and Testament of the late Fineboy Larzalee. On February 9, 1980, the respondent judge requested the sole executor to answer the question posed to him on February 3, 1980. Informant's counsel answered the question indicating that the widow, Krubo Larzalee, was in possession of the house unmolested and that she had decided to rent same out. He also informed the court that he had been obstructed by some of the family members in his attempt to carry out the wishes of the testator as contained in the will. He further requested court to assist him by way of intervention so as to avoid any disturbance with the relatives because he had been on the premises in conformity with clause 9 of the will but did not get the cooperation of the family. The acting probate judge then ruled that since peace and harmony did not exist between the sole executor and the heirs and legatees of the late Fineboy Larzalee, the executor should immediately surrender the estate over to the heirs of the late Fineboy Larzalee and the legatees under the will. He also ordered a complete audit of the stewardship of James Flomo Ballah on his operation of the estate entrusted to his care.

The court was to appoint auditors later but, according to said ruling, the estate was to be turned over immediately to the heirs of the late Fineboy Larzalee and informant James Flomo Ballah was to turn over all documents in his possession to the sheriff of the probate court for effective use of the auditors in auditing the accounts of the estate. To this ruling counsel for informant excepted, and appealed therefrom to the People's Supreme Tribunal. On the 18th day of February, nine days after the announcement of the appeal, the informant filed his bill of exceptions which was approved on the same day by the respondent judge. On the same 18th day of February 1980, the respondent judge ordered his clerk to write Mr. Joseph Jallah and Mrs. Eugenia Street, both of Sinkor, Old Road, instructing them to pay all rents to Sheriff John T. Woods of the People's Monthly and Probate Court of Montserrado County. The clerk also wrote, upon instruction of the court, to the purchasing manager of the Firestone Plantations Company requesting him to forward all checks issued and those he may have in his possession in favour of Mr. James F. Ballah for the sale of rubber to the People's Monthly and Probate Court for Montserrado County. The banks,

which carried the accounts of the estate, were also instructed not to permit Mr. James F. Ballah to operate the accounts. The informant had filed this information because he contended that the action of the respondent judge with respect to the letters which he ordered his clerk to write to the tenants, the purchasing manager of Firestone Plantations Company and the banks which carry the accounts of the estate is *ultra vires* and contemptuous, because the respondent judge, having approved the bill of exceptions, had lost jurisdiction over the case and could not therefore legally perform any act touching said case. This Court should therefore declare null and void the respondent judge's *ultra vires* act.

The allegations contained in the seven-count bill of information were admitted by the respondent judge in count one of the returns which we quote word for word:

"1. That whilst it is time, that the averments contained in the petition are true and correct, respondent holds that after our several rulings we were moved to arrest the sole executor from receiving monies from the estate of the late Fineboy Larzalee, because as we were told, the said sole executor was in the habit of collecting the monies from the estate and converting them to his own use and benefit."

The respondent in count 2 of the returns maintains that shortly after his ruling the heirs and legatees informed him that the executor was in the habit of using proceeds of the estate to his own use and benefit. He also argued in the same count that the information reached him prior to the informant filing his bill of exceptions, which is the first step towards the perfection of the appeal. In count three, he contended that the action taken against the informant, by communicating with the purchasers of the rubber from the executor and the payment of rents, were done before the filing of informant's bill of exceptions. In arguing before us, counsel for informant strongly contended that the informant having announced an appeal the respondent judge had no more jurisdiction to act upon the case, except when the informant had failed to file his bill of exceptions within 10 days. The informant maintained that in the instant case, the bill of exceptions was filed on the 9th day after the date of the court's judgment and therefore the act of the respondent judge was *ultra*

vires and should be declared null and void. Our statute provides "every person against whom any final judgment is rendered shall have the right to appeal from said judgment of the court except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final. Civil Procedure Law, Rev. Code 1: 51.2. It is also provided by our statute that a bill of exceptions shall be presented to the trial Judge for his approval within 10 days. *Ibid.*, 1: 51.7.

It is our opinion that when an appeal is announced and the bill of exceptions filed within statutory time, the trial court loses jurisdiction over the cause and where a party is otherwise affected, he has remedy by appealing to the appellate court by way of information. In the case *Smallwood et. al. respondents*, 8 LLR 3 (1942), this Court held that "it is a contempt of court where an appeal serves as a supersedeas and any person interferes with or adversely affects it."

The announcement of an appeal by a party acts as a supersedeas or a stay of a proceeding of the trial court. There is however an exception in the case where the appellant refuses to file a bill of exceptions within ten days, in which case the trial court may dismiss the appeal for failure to proceed upon motion by the opposite party. Civil Procedure Law, Rev. Code 1:51.6. An appeal acts as a *supersedeas* or a stay of the proceedings of the trial court. Counts 2 and 3 of the returns have crumbled and therefore cannot be sustained.

Count four of the returns simply states that whatever action the respondent judge took in preventing the informant from his further operation of the estate was done in the interest of the heirs and legatees of the late Fineboy Larzalee.

The information filed by the informant being sound in law is hereby sustained as against the respondents' returns and therefore the returns is overruled.

In view of the foregoing facts and the laws cited, it is our opinion that the respondent judge acted *ultra vires* since he no longer had jurisdiction over the case, same being on appeal, and his act was also contemptuous when he usurped the province of this Court. The respondent judge is hereby adjudged guilty of contempt of this Court and fined in the sum of fifty (\$50.00) dollars to be paid within 48 hours. His ruling in the premises as

mentioned *supra* is hereby declared null and void. And it is so ordered.

Information granted; ruling reversed.