

**JAMES FLOMO BALLAH, sole executor of the  
Testate Estate of the late FINEBOY LARZALEE,  
Appellant, v. KORZU LARZALEE, et. al., Appellees.**

APPEAL FROM A RULING OF THE MONTHLY AND PROBATE COURT FOR  
MONTSERRADO COUNTY.

Heard: July 16, 1981. Decided: July 29, 1981.

1. Where there is continual disharmony between the sole executor and the heirs and legatees of a testate estate, it is in the best interest of the parties that the estate be closed and the properties be delivered to the owners.
2. In the absence of a trial record this Court cannot consider an issue raised for the first time before it. To do so would violate the appellate powers of this Court.
3. The appearance of a party and his full participation in the hearings by his answer, without objecting to the jurisdiction of the court renders the proceedings acceptable and binding.

Fineboy Larzalee died leaving a will in which he nominated three executors to administer his testate estate but two of them withdrew from administering the estate leaving James Flomo Ballah, appellant herein, as the sole executor of the estate. The will was contested by the heirs and legatees until by judgment and mandate of this Court the Probate court was ordered to have James Flomo Ballah qualified as sole executor. Subsequently, the heirs and legatees filed a complaint in the probate court against appellant for the mismanagement of the estate and requested the court to have him turn over the properties of the estate to them. After a hearing, the probate judge ruled that, (1) appellant immediately surrenders the estate to the heirs and legatees; (2) that a complete audit of the appellant's management of the accounts of the estate be conducted; and (3) that the appellant turn all documents concerning the estate over to the sheriff of the court in order to facilitate the audit. To this ruling counsel for the appellant excepted and announced an appeal to the Supreme Court.

Appellant has contended that: (1) the probate judge committed reversible error by making a ruling without prior investigation into the matter, (2) that the trial judge did not maintain calm

neutrality at the trial as should be characterized by a judge; (3) that he had no notice of the complaint levied against him when the hearing was heard and the ruling made on the said complaint.

The Supreme Court, upon recourse to the records, found that the ruling of the probate judge was based on a hearing, and that the complaint was served upon appellant upon orders of the judge. With respect to the allegation that the judge did not maintain calm neutrality at the trial, the Court said that the records of the investigation show no evidence of an exception made and noted on the records of any inconsistent behavior of the probate judge and that, although appellant's counsel cited several cases against such a behavior in support of his contention, the mere citation of laws without the supporting facts does not render an allegation true. The Court also held that the prayer contained in his brief supported the probate judge's conclusion, that because of the continual disharmony between the sole executor and the heirs and legatees, it was in the interest of the parties that the estate be closed and the properties be delivered to the owners.

Accordingly, the Supreme Court *affirmed* the ruling of the probate court judge with the modification that complete audit and delivery of all documents pertaining to the estate must be done within (7) seven days as of the date of its Opinion.

*S. Raymond Horace* appeared for appellant. *Robert G. W. Azango* appeared for appellees

MR. JUSTICE MABANDE delivered the opinion of the Court.

In the year 1975, Fineboy Larzalee died leaving a will in which he nominated three executors to administer his testate estate but two of them withdrew from administering the estate, leaving James Flomo Ballah as the sole executor of the estate. The will was contested by the heirs and legatees until by judgment and mandate of this Court the probate court was ordered to have James Flomo Ballah qualified as sole executor. Since his qualification and assumption of office continual disharmony had persisted between the sole executor and the heirs and legatees who had always complained against the behavior

and manner of the sole executor in administering the estate.

The heirs and legatees, according to the brief of the appellant, the sole executor, filed a complaint in the probate court, on August 27, A. D. 1980, alleging the mismanagement of the estate of their late father and requested the court to have appellant turn over the properties of the estate to them. On September 1, 1980, the probate court summoned the sole executor to appear before it and give an account of the estate in order that he may bring it to a close. On September 3, 1980, appellant and his counsel, Counsellor S. Raymond Horace, appeared in the probate court; at the court were some of the heirs who had complained against the sole executor. The court proceeded to hear the complaint of the heirs against the sole executor but as the sole executor did not have copy of the complaint the court ordered that a copy be served on him. The judge of the probate court continued the investigation and directed certain questions to the sole executor as to whether he was actually administering the estate in keeping with the will. He replied that he would give definitive answers to the questions at the next sitting of the court on the matter.

On September 9, 1980 in keeping with a notice of assignment, all of the parties concerned appeared in the Probate court. Counsellor S. Raymond Horace counsel for appellant spread on the record of the court answers to the questions earlier propounded by the probate judge to the sole executor. Thereafter, the Probate Judge ruled that, (1) the sole executor immediately surrenders the estate to the heirs and legatees; (2) that a complete audit be made into the accounts of the sole executor's management of the estate; (3) that the sole executor turns all documents pertaining to the estate over to the sheriff of the court in order to facilitate the audit. To this ruling counsel for the sole executor excepted and announced his appeal which is now before us for due consideration.

The issues presented, which we consider determinative of the controversy are: (a) whether the ruling of the probate judge was based upon investigation into the complaint; (b) whether the trial judge showed any conduct of unfairness and partiality at the trial, (c) whether appellant had no notice of the complaint levied against him by the heirs and legatees when hearing was held and the ruling in question made, and (d) whether a party who prays

the court to be relieved of the duty of administering an estate may be compelled by court to continue the administration of same?

Appellant's counsel argued that the probate judge committed reversible error by making a ruling without prior investigation into the matter. Recourse to appellant's own brief and the records of the case, reveal that after the complaint was filed by the heirs and legatees against the sole executor, the court assigned the complaint for hearing on September 3, 1980. In the presence of all the parties in court during the hearing, the trial judge asked appellant questions concerning the administration of the estate. According to appellant's brief, on September 9, 1980 Counsellor S. Raymond Horace, as counsel for the sole executor, placed on record that after studying the complaint given appellant on the 3<sup>rd</sup> of September 1980, he had comprehensively answered the questions. Since the charges levied against the sole executor concerned acts of his mismanagement of the estate, a comprehensive answer to those questions by his counsellor was sufficient to have enabled the probate court to have determined the issues in the complaint. An investigation by a probate court into charges of mismanagement of the estate is summary in nature. Hearing of complaints against an executor is not regarded with the same procedural technicalities as in actions at law. We therefore hold that the ruling of the probate judge was based on a hearing. The prayer of appellant's brief supports the probate judge's conclusion that because of the continual disharmony between the sole executor and the heirs and legatees it was in the interest of the parties that the estate be closed and the properties be delivered to the owners. *Strong v. Williams*, 2 LLR 515 (1925).

Appellant's counsel argued that the trial judge did not maintain calm neutrality at the trial as should be characterized by a judge. The records of the investigation show no evidence of an exception made and noted on the records of any inconsistent behavior of the Probate Judge. Although Appellant's counsel cited several cases against such a behavior in support of his contention, the mere citation of laws without the supporting facts does not render an allegation true. In the absence of a trial record this court cannot consider an issue raised for the first time before it. To do so would be violative of the appellate powers of this court. Civil Procedure Law, Rev. Code 1:51.15.

Appellant's counsel argued that he had no notice of the complaint levied against him when the hearing was had and the ruling made on the said complaint. Recourse to appellant's own brief indicates that on September 3, 1980 at his request, the court ordered that copy of the complaint be served on him in order to have enabled him to answer the court's questions concerning the manner of the sole executor's management of the estate. Furthermore, appellant's own counsel, in his brief, stated that a notice of assignment was served on all of the parties on September 8, 1980 to attend the court on September 9, 1980, which they did and at which time, he spread on the trial records his comprehensive answers to the questions of the court. Appellant's appearance and full participation in the hearing by his answers, without objecting to the jurisdiction, renders the investigation acceptable and binding. Civil Procedure Law, Rev. Code 1:3.63.

In concluding his brief and argument counsel for appellant prayed this Court as follows:

"In view of the foregoing, appellant most humbly prays that Your Honours will reverse the ruling of the trial judge, and order the sole executor to proceed to administer the estate and close same within a reasonable time since, and because of the harassments and embarrassments he has to face and undergo due to no fault of his, he is unable to close said estate within the statutory time allowed."

Because of appellant's own declaration of harassments and embarrassments he had to undergo, coupled with his prayer to be permitted to close the estate within a reasonable time, we are of the opinion that as courts do not impose the duty of administration of estate on a person, the sole executor is hereby ordered relieved of further administration of the testate estate.

The ruling of the probate judge is therefore affirmed with the modification that complete audit and delivery of all documents concerning the estate shall made within (7) seven days as of the date of this judgment. The Clerk of this Court is hereby instructed to send a mandate to the probate judge to resume jurisdiction over this matter and enforce his ruling consistent with this opinion. And it is hereby so ordered.

*Affirmed with modification.*