

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA
AT
APRIL TERM, 1941.

SUBEH FREEMAN, Plaintiff-in-Error, *v.* NYON-
NOH TWE, NUGENT H. GIBSON, Commissioner
of Probate, Montserrado County, and POHLMAN J.
BRACEWELL, Sheriff of Montserrado County, De-
fendants-in-Error.

WRIT OF ERROR TO THE COMMISSIONER OF PROBATE.

Argued April 22, 28, 29, 1941. Decided May 2, 1941.

1. A commissioner of probate whose jurisdiction is inferior to that of a judge of a circuit court cannot set aside a ruling of a circuit judge and entertain a petition to quash an execution previously returned before a circuit judge and on which time for payment had been granted by the circuit judge upon the request of the defendant.
2. Final judgment puts an end to a suit unless an appeal is taken. Otherwise jurisdiction cannot be resumed without an order from a higher court.

The Commissioner of Probate set aside a ruling of a circuit court judge in favor of plaintiff, now plaintiff-in-error, and entertained defendant's, now one of the defendants-in-error, petition to quash an execution previously returned before the circuit court judge. Upon hearing on a writ of error, *ruling reversed and remanded.*

C. T. O. King for plaintiff-in-error. *D. C. Caranda* for defendants-in-error.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case originated in the justice of the peace court before T. N. Botoe, a justice of the peace, Montserrado County.

The records in the case show that one Subeh Freeman instituted an action of debt against one Nyonnoh Twe for the recovery of £5:10:8, or \$26.56. After the defendant had been returned summoned, the trial of the case commenced and, after issue had been joined upon the facts of the case, the defendant having denied the facts contained in the plaintiff's complaint, witnesses on both sides were qualified and deposed. Because of the credibility of the witnesses and the effectiveness of their testimony, the justice rendered his final judgment in favor of the plaintiff to the effect that he was entitled to recover from the defendant his debt sued for and all legal costs of the case. Defendant failing to comply with the judgment thus rendered against her, execution was applied for by the plaintiff and was duly issued, served, and returned to a court of record or a judge as commanded in said execution. Before the execution could be complied with, defendant having asked for time for payment and same having been granted by the Judge of the Circuit Court for the First Judicial Circuit, the Legislature created the office of the Commissioner of Probate with exclusive power of disposing of executions issued within the County of Montserrado, whereupon this execution, although time for payment had been prayed for and granted by the judge of the circuit court aforesaid, was transferred to the court of the Commissioner of Probate. Despite this fact of time of payment being granted to defendant upon her request, which in our opinion is a waiver of any defect in the trial of the cause and which, consequently, we regard as a bar to the raising of any issue of law or fact concerning the correctness or legality

of said execution, His Honor the Commissioner of Probate on the first day of April, 1940, ignored said ruling and made the following ruling:

"An execution in favour of one Subeh Freeman against Nyonnoh Twe, defendant amounting to £5:10:8 or \$26.56. As the court was about to rule, information was given by the Clerk of the Court that the will of the late D. D. Freeman the subject of the proceedings is under protest and has been submitted to the Circuit Court for jury trial. The Court says: 'It prefers not to interfere with this execution until the trial by jury should have been disposed of by the Circuit Court. If after the jury trial, the house should fall to Subeh Freeman and his group, then the Court shall carry out the execution to the letter, but if otherwise then Subeh Freeman will lose out.'"

Before the objections to the will of the late D. D. Freeman could be disposed of in the circuit court, the Commissioner of Probate entertained and sustained a petition from the defendant Nyonnoh Twe praying for the quashing of the execution against her. It was to this ruling of the court that the plaintiff's counsel excepted and prayed an appeal to this Court, which the Commissioner of Probate granted and ordered noted. After this request had been granted, the Commissioner of Probate gave further orders that the sheriff should deliver to the defendant Nyonnoh Twe the goods seized by the sheriff from the defendant, notwithstanding said exceptions and notice of appeal of the counsel for Subeh Freeman had been noted upon the records of the Court. The counsel for the plaintiff excepted again and petitioned this Court for a writ of error, that said ruling be reviewed and the errors which in the opinion were committed by His Honor the Commissioner of Probate be corrected by this Court.

The Commissioner of Probate acted extrajudicially when he permitted the Clerk of Court to inform him

confidentially that there was pending a contest of the will of the D. D. Freeman estate, for, if true, evidence of that fact should have been put into this record in the manner prescribed by law. From the inspection of the records of these proceedings certified to us, it is apparent that there are many other irregularities and utter disregard of law governing execution proceedings as prescribed by our statute. We do not see how the Commissioner of Probate, whose jurisdiction is inferior to that of a judge of a circuit court, can set aside a ruling of a judge of the circuit court and entertain a petition of the defendant, Nyonnoh Twe, to quash the execution that had been returned before the circuit court, time for payment against which had been granted by the circuit judge upon request of the defendant, now defendant-in-error in these proceedings. Again, we cannot comprehend how His Honor the Commissioner of Probate could resume jurisdiction in a matter in which he had given his final ruling and said ruling had been excepted to and an appeal had been granted by him. We will therefore proceed to quote the law governing these points to see whether His Honor the Commissioner of Probate's actions in this case are supported.

In *Montgomery v. Zeiser*, 1 L.L.R. 437 (1905), this Court held:

"The proceedings in this case for irregularity and illegality are without a parallel in the history of cases tried in any court in the Republic.

"We mention one more of the irregularities attending the trial below. On the ninth day of January, 1930, the court rendered final judgment, thus putting an end to the suit unless an appeal was taken. Now jurisdiction could not be resumed without an order from a higher court. Yet, on the eleventh, two days after the rendition of the final judgment, the court reopened the case, examined witnesses and rendered a

judgment, although in conformity with the previous judgment.

“For these errors and illegalities attending the trial of this case below, and with a view that justice be done to the litigants, this case is hereby remanded to the court from which it came, for trial *de novo*, costs to follow, until its final settlement. . . .” *Id.* at 439.

In view of the foregoing we have arrived at this conclusion: (1) that the judgment of the Commissioner of Probate is illegal and should be reversed; and (2) that he should be commanded to resume jurisdiction promptly and enforce the execution previously issued in this case; and it is hereby so ordered.

Petition granted.