

KAYMA NUNGBOR, Relator, v. His Honor, I. VAN
FISKE, Commissioner of Probate, Montserrado County,
Respondent.

APPLICATION FOR ORDER TO THE COMMISSIONER OF PROBATE,
MONTSERRADO COUNTY.

Argued October 30, 1958. Decided December 19, 1958.

1. The administration of a decedent estate must be completed within the statutory period of time.
2. Where letters testamentary have been issued for the administration of a decedent estate, the court may conduct an investigation into such administration.
3. A court has no authority to adopt procedures with respect to an action on the bond of an administrator of a decedent estate, except as provided by statute.
4. The Commissioner of Probate may not properly order real property of a decedent estate to be distributed in lieu of personal property.

The relator obtained a writ of certiorari directed to the respondent from the Chambers of Mr. Justice Pierre, ordering the respondent to perform certain functions respecting the administration of a decedent estate. Subsequently the relator filed a submission with this court complaining that the respondent had failed to execute the mandate contained in the writ of certiorari, and praying that the respondent be ordered the direction previously issued. The *order* applied for was *granted*.

William A. Johns for relator. *His Honor, I. Van Fiske*, respondent, *pro se*.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

In the month of September, 1954, one Sarah Cole-Hayes, died at her home in Kingsville, Montserrado County, and her estate subsequently became a subject of administration in the Monthly and Probate Court, Montserrado County.

Messrs. R. Abdullai Johnson and Henrietta Walker were sworn and received letters testamentary from the said court as administrator and administratrix over the said estate according to law.

According to the records, the administrator and administratrix filed inventory of the real property in the estate in the sum of \$1,060 on January 17, 1956, but made no reference whatever to any personal effects or assets in the estate. On May 28, 1957, they filed the following as their final report:

“ADMINISTRATORS’ OFFICE,
LATE SARAH COLE-HAYES ESTATE,
MONROVIA, LIBERIA,
MAY 28, 1957.

“Before His Honor, I. Van Fiske, Commissioner of Probate, Mo. Co. R.L.

“We your administrator and administratrix, appointed by Your Honor, April Term, 1955, for administration of the Estate of the late Sarah Cole-Hayes, who died on the 17th. day of September, 1954, now make our final report and ask that the said estate be closed, and that the administrator and administratrix be relieved.

“1. All debts and claims presented to us up to May 28, 1957 have been paid up to date.

“2. There being no personal property now available to disburse, no disbursement.

- (1) Seven sheets zinc (used for repairs).
- (2) Four chairs.
- (3) One old table.
- (4) One iron bed.

“Real estate in keeping with Supreme Court ruling has been transferred to Mrs. Henrietta Walker, the late Sarah Cole-Hayes’s adopted daughter.

“Respectfully submitted this 28th day of May, 1957.

[Sgd.] ABDULLAI JOHNSON,
Administrator,

for: HENRIETTA WALKER,
Administratrix,
[Sgd.] E. DOSSEN WALKER,
Attorney in fact."

It does appear, however, that before this report was filed for the closing of the estate, Kayma Nungbor filed objections in the court below in which Henrietta Walker was one of the respondents, and accompanied therewith a list of personal effects, purporting the same to be the property of the decedent, Sarah Cole-Hayes, which she alleged was left in the home of the said decedent up to the period of her demise. This list respondent Commissioner Fiske refused to accept because the same did not form a part of the inventory originally filed by the administrator and administratrix. The records do not go to show the premises of these objections or the ruling made thereon by the Probate Commissioner. Nevertheless, it is shown that the aforesaid objector, Kayma Nungbor, now relator in these proceedings, applied to the Chambers of Mr. Justice Pierre during the October, 1956, term of this Court, for a writ of certiorari, which application was heard by the Justice presiding in Chambers. From the ruling thereupon, which was delivered on February 12, 1957, the following excerpt is taken:

"In view of the certified records in this case, which show no legal reason why this estate should not have been closed before this time, and of the law which we have cited and referred to herein, it is our ruling that all of the documents, papers and deeds belonging to the estate will be immediately turned over to the Commissioner of Probate. The said respondent Commissioner will require a report to be submitted by the administratrix and administrator as to the present status of the estate; that is to say, whether or not the debts have all been paid, and the distribution of the legacies completely made. Since no real property can pass under a noncupative will, deeds of the de-

ceased for land owned by her at death should be turned over to the surviving heir. Any personal property which might have been left by the deceased, and which appears on the inventory, should be disposed of by the administratrix and administrator among relatives of the deceased. The Commissioner of Probate will then proceed to close the estate according to procedure in such cases provided, and will make his returns in our Chambers as to how he had executed our mandate. The clerk of this Court is ordered to send to the Probate Court a mandate commanding the Commissioner therein to execute these orders without further delay."

The administrator and administratrix having tendered what they termed a final report in the estate, His Honor, the Commissioner, still hesitated to execute the mandate handed down from the Chambers of Mr. Justice Pierre, and in direct challenge thereto, gave the following ruling on July 4, 1957:

"Since it has been discovered, and it is a matter of record, that Mrs. Henrietta Walker-Hayes, the adopted daughter of the deceased, and Miss Jenneh, lived in the home of the deceased for about a year prior to the taking of the inventory, they are responsible for the personal property; and since Mrs. Henrietta Walker-Hayes has received all of the real property, she is hereby ordered to issue a deed for a half-lot in fee simple in favor of Kayma Nungbor, sister of the decedent, and only surviving relative yet known to this court; and until this is done, the court will not and cannot close the estate, since the Supreme Court's ruling has not yet been complied with; for it would be contemptuous on the part of this court to permit the administrators to be in possession of the realty, and relatives go without; costs to abide the closing of the estate. And it is hereby so ordered."

Relator, being dissatisfied with this nugatory and unjustifiable ruling of the respondent Commissioner, filed

the below submission before this Court on March 25, 1958:

"Relator most respectfully showeth from your relator's Exhibits '1,' '2,' '3' and '4,' herewith filed and forming a part of her submission, the respondent is shown deliberately to refuse carrying out or putting into absolute effect the mandate sent down to him from this Court in the estate proceeding. Wherefore, in virtue of the foregoing, your relator prays that this situation be promptly remedied to her relief.

"Respectfully submitted,
KAYMA NUNGBOR,
relator, by counsel
[Sgd.] D. C. CARANDA,
Counselor at law."

It is upon the submission quoted, *supra*, that this matter has found its place before us. Our minds have been placed in a quandary to know why the respondent Commissioner has so glaringly refused to obey the mandate of this Court coming from the Chambers of Mr. Justice Pierre. This deliberate act not only renders the respondent Commissioner liable or answerable in contempt before this Court; it also portrays either a wilful disregard or ignorance of the law controlling; and in either of the two cases, he should not escape liability.

The law controlling intestate estates makes it mandatory for all such estates to be closed within a limited period unless foreign claims are involved; and even in that instance, no intestate estate should remain open for more than eighteen months.

Moreover, where letters testamentary have been issued by a court, and persons interested in the estate feel that correct inventory has not been submitted and make formal submission to that effect, it would be right for the Judge, as guardian of intestate estates, to make investigation for the purpose of satisfying himself as to whether there was unlawful interference or not, so that the interest

of persons entitled to benefit therefrom would not suffer.

The proper course to be pursued against persons failing to perform their duties as administrators of intestate estates is prescribed in the 1956 Code, tit. 9, § 24. There is no legal premise that would authorize the Judge of an inferior court to adopt procedures countering the same upon his initiative, and this is the case in the matter now before us.

It cannot be conceded that the respondent Commissioner acted within the scope of law when he arbitrarily ordered the real property of Henrietta Walker-Hayes transferred in fee to relator in lieu of personal property. Answering before this Court on the question of the submission, the respondent Commissioner admitted his act in this respect, but endeavored to justify it under a theory that is without merit.

It is obvious that, if there were any personal effects in the aforesaid intestate estate, according to the mandate of this Court the administrator and administratrix are responsible to produce the same; and, in view of the allegation made by them to the effect that there was none other except those listed in their final report, these items are to be distributed among the heirs in keeping with the mandate previously given by this Court.

It not having been established to our satisfaction that there were other items of personal effects besides those which the respondent Probate Commissioner acknowledged according to the inventory and final report, said respondent Probate Commissioner is hereby ordered to proceed according to law immediately in obeying the orders from this Court previously given through the mandate of His Honor, Mr. Justice Pierre in Chambers. Costs in these proceedings are to be borne by the estate; and it is hereby so ordered.

Order granted.