

JARTU, Appellant, v. The Estate of the Late FAMBLE  
KONNEH, alias FARMUDU, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR  
MONTSERRADO COUNTY.

Argued March 29, April 11, 1950. Decided June 8, 1950.

1. Our statutes provide that the courts of this Republic shall take notice of and administer the native customary laws of the particular tribe or tribes interested in the dispute.
2. Marriage by native custom is considered a legal union for Mohammedans and pagans.
3. A Commissioner of Probate cannot review a ruling of his colleague and predecessor, another Commissioner of Probate.

Appellant is one of the widows of the intestate whose estate is appellee herein. Commissioner of Probate Horace approved the recommendations of the first report of the Curator of Intestate Estates and granted dower. Commissioner of Probate Dukuly succeeded Commissioner Horace, and denied dower to all of decedent's six wives. On appeal to this Court, *ruling reversed* on the ground that a commissioner of probate cannot reverse the ruling of his predecessor.

*S. C. M. Watkins* for appellant. *R. A. Henries* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

This is a case concerning the estate of one Farmudu alias Famble Konneh who died intestate in the city of Monrovia a few years ago. Deceased was a mandingo native from the French side who came to Liberia and became a naturalized citizen, but still adhered to the native customary law with reference to marriage.

Upon his death in the city of Monrovia, the decedent's

intestate estate was administered by the Curator of Intestate Estates of Montserrado County. After some time this officer filed a report, Number 1, in the Monthly and Probate Court for Montserrado County presided over at that time by Commissioner of Probate S. Raymond Horace who, upon recommendations made by the said curator in his said report, ruled as follows:

“As regards the prayer of the Curator for the payment of Government real estate tax by the said intestacy, funeral expenses and the Curator’s commission, same granted; widows’ dower of the wives of the deceased on a pro rata basis of both personal and real estate is hereby ordered admeasured, and upon the Curator being satisfied with the genuineness of claims against said estate in the amount of \$435.75 same are ordered paid. The other items of the report not specifically ruled upon supra together with the attached inventory are approved, and the Curator is hereby further directed to proceed with the further administration of said estate, closing same at an early date. And the Clerk of this court is hereby instructed to furnish the Curator with a copy of today’s minutes relating to this Ruling under seal of court.”

It appears from the bill of exceptions that predicated on the above ruling appellant had by the curator been admeasured her portion of the personal estate of decedent, her husband, and that whilst awaiting the issuance of and execution of a curator’s deed in her favor for a portion of the several lots owned by her late husband, she was on May 7, 1948 notified through her counsel to appear at court to receive another ruling by the commissioner in said probate, M. Dukuly, who had succeeded the former commissioner in same office. This ruling, which was lengthy and exhaustive, touched on every point set out in report Number 2 filed by the curator dated March 29, 1948.

The relevant item mentioned in the said report Number

2, which seems to be responsible for this appeal, is item six:

“6. CLAIMS: The following claims are due to be paid by this intestacy—IN WIDOWS’ DOWER:

1. The other three widows of the deceased, namely,
  - a) Madam Jacanabah, b) Madam Janefema and c) Madam Janeekpenah (See Minutes, investigation, 875/FK/-9/47 of September 9, 1947 and filed in the Probate Court 22nd September 1947).”

It is this item which brought forth in the ruling of Commissioner of Probate Dukuly the following:

“Famble Konneh died nearly three years ago intestate and under the Statute laws of this country his estate was handed over to the Curator by order of court for administration who has submitted Reports No. 1 and No. 2. Report No. 1 has been already approved by court. Report No. 2 was filed and the court reserved action on it for careful perusal which it has done. The Curator doubtless faced many obstacles in his work as he had to combine two systems of administration to arrive at the desired end, saving the estate from waste and conserving it for the benefit of the heirs. The systems were:—

1. The administration of the Intestate estate under the Statute laws of Liberia, and
2. By application of certain fundamental principles of the Native Customary Laws of the Mohammedan tribes which were not inconsistent with the National Law governing the administration of estates, except in one important particular.”

The records further reveal that the Mohammedan chieftain and elders were often consulted before measures for the preservation of the estate were taken by the curator. In several instances he permitted their opinion to prevail. It should be observed that Famble Konneh was a native naturalized citizen of Liberia of French origin who came

to Liberia some years ago, renounced his French citizenship, and swore allegiance to the Republic of Liberia. He married four or more wives under the customary law governing native marriages and acquired a sizeable estate, both real and personal. This nation as well as other highly civilized governments recognize the customs of their natives and adjudicate issues by application of the customs in relation to the points that may be at issue.

For reliance we quote the following:

"A system of native law prevailing among the Mohammedans in India, and administered there by the British government." 2 Bouvier, Law Dictionary 2237 (Rawle's 3d rev. 1914).

"Any person taking a native girl for wife after the native custom must pay the dowry required by native customary law to the family, or to the last husband of the woman so taken. It shall be unlawful for any person to take a native girl or woman to wife, who is already the wife of a native man, provided, however, that should the said native husband give his consent and require the usual dowry to be paid, the wife may be taken by the party paying the dowry. In no case shall any native female be forced to marry any man against her consent, even upon the payment of the dowry, and if any native female shall refuse to remain with a civilized married man, no dowry shall be recoverable from a subsequent husband by said civilized married man." 1 Rev. Stat. § 6.

Continuing, the Commissioner said:

"This law has, however, been modified in several respects, but no modification has yet allowed one-third ( $\frac{1}{3}$ ) dowry to wives in their husband's estate."

After dealing with receipts and expenditures the Commissioner in his ruling continued as follows:

"There is one point in the Curator's Report No. 2 which the Court has not reconciled itself to, namely; the admeasurement of the widow's dower to the four

or five women he recommended and which Judge Horace seemed to have verbally acquiesced in. But as certain chattels properties and money were paid to Jartu, the head-wife, and as nothing else has been paid, the Court is now taking the following position: As it has already been observed that the deceased was a moslem and had married four wives allowed under his religion and usage, and who have no property rights in their husband's estate in the Anglo-Saxon sense, the Court is disapproving the recommendation of the Curator, for to approve it, would not only be a measure which may disturb an immemorial custom coeval with native social life, but it also [would] be depriving heirs of their father's estate when four or more wives may successfully contend for admeasurement of  $\frac{1}{3}$ rd each of their husband's estate, both real and personal. The custom in this matter is that the wives are permanent members of their deceased husband's household, and as long as they remained in the family, the next head of the family is bound to look after their support and welfare. They usually marry members of the family whom they may find love for, but can never be forced to marry otherwise. And again the Court upon further inquiry discovered that instead of four lawful wives, the late Famble Konneh married two additional wives, Sally and Madam Desu, in whose house, Mr. Konneh was removed when he became seriously ill, from which illness he never recovered.

"It would still be of interest to record that the Court in deeply studying the question of dower right, which Jartu alone raised through her counsel, the Court had investigated the present relation of the wives to the family of the deceased and found as follows—

1. Jacanabah is the mother of Famble Konneh's two children, a boy and a girl, namely Mamadoo Konneh and Dusu Konneh respectively. How-

ever, the lady is no longer with the family, but with another man without the consent of her late husband's family.

2. Janefema likewise is married to another man or is living in amorous relation with one. Similarly Janefema has acted without the consent of her husband's family.
3. Madam Jartu, who alone raised the question of dower through her counsel, and who is insisting on receiving same is said never to have been the lawful wife of Mr. Konneh. The Court has come to find out that the late Famble loved this woman more than he did the rest and confided in her all things. That the short time before he died, he had intrusted to the keeping of this woman a certain sum of money about £600.0.0. which amount Jartu has declared she never received. The Curator again wisely reported this matter to the moslem Chieftains in Monrovia, who in turn assembled a Council of Elders to investigate the report. The investigation concluded that Jartu should swear that she did not receive the amount. She brought to a close [*sic*]. It is significant to note that not too long after the futile attempt of the Curator to recover this amount for the benefit of the heirs, Jartu started the erection of a Concrete house, which she is progressively pushing forward. Aside from these circumstances and facts as have been brought to the Court's attention Jartu is ceremoniously married to Chief Fayangah of Kakata. Sally too is with another man, and so is Madam Dusu.

"The Court has taken pains to investigate this important issue as raised by Jartu, so that judicial opinion and decision thereunder may be given to it for the future guidance as similar issues are bound to come

forward in view of the absorbing effort of the laws which are given by the state."

On this subject the Commissioner concludes:

"It is therefore our legal opinion that in upholding the Native Customs we find justification in disallowing the admeasurement of dower to the six wives of the deceased, since the custom does not permit it, especially so, since they have all left their late husband's family and have either married or are living with strangers."

It is contended by appellant that this ruling was adverse to the ruling made by Commissioner Horace and affected her interests since by this she was with the other widows denied dower.

Our statutes provide that the courts of this Republic shall take notice of and administer the native customary laws of the particular tribe or tribes interested in the dispute, and this has been done in several cases heretofore. In the Hinterland Regulations Art. 80, section 7, we find it provided that marriage by native custom is considered a legal union for Mohammedans and pagans.

Hence whilst we are in accord with the position taken by Commissioner Dukuly in denying admeasurement of dower under native customary law, yet in this particular case we are unable to support him because of the fact that he could not legally review and reverse a ruling of his colleague and predecessor, although apparently this was done unwittingly. Consequently we are reversing the ruling of Commissioner Dukuly and upholding the ruling of Commissioner Horace, with costs against the estate; and it is hereby so ordered.

*Reversed.*