

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC  
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2016.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE  
BEFORE HIS HONOR: KABINEH M. JA'NEH .....ASSOCIATE JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE  
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Eleanor Harriet Taylor-Cooper  
And Ada Ann Taylor-Clarke,  
Surviving heirs of the late Maude  
Elizabeth Pennoh of the  
City of Monrovia, Liberia  
Montserrado County, Republic  
Of Liberia.....Appellants

Appeal

Versus

J. Nyema Baker, et al., of the City  
Of Monrovia, Montserrado County  
.....Appellee

Growing out of the case:

Eleanor Harriet Taylor-Cooper  
And Ada Ann Taylor-Clarke,  
Surviving heirs of the late Maude  
Elizabeth Pennoh of the  
City of Monrovia, Liberia  
Montserrado County, Republic  
Of Liberia.....OBJECTORS

Appeal

Versus

J. Nyema Baker, et al., of the City  
Of Monrovia, Montserrado County  
.....RESPONDENT

HEARD: March 21, 2016

DECIDED: July 14, 2016

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On April 28, 2010, Maude Elizabeth Pennoh, departed this earthly abode and took upon immortality. Twenty (20) days thereafter, that is on May 18, 2010, Counsellor J. Nyema Baker, the appellee herein and son-in law of the deceased, filed a petition before the Monthly and Probate Court for Montserrado County, praying the court to admit into probate a purported Last Will and Testament of Maude Elizabeth Pennoh. The legitimacy of the Will being the crux of these proceedings, we quote herein below the said instrument to wit:

*"LAST WILL AND TESTAMENT OF MAUDE ELIZABETH PENOH*

I, MAUDE ELIZABETH PENNOH, a citizen of the Republic of Liberia, born in the City of Greenville, Sinoe County, Republic of Liberia, presently residing in the City of New York, State of New York, United States of America, do hereby make, publish and declare this document to be my LAST WILL and Testament, revoking any other promises, wills, or codicils I may have made in the past.

I declare and wish it to be unequivocally understood, that at the time of making this my Last Will and Testament, I am mentally competent to execute same, being fully aware that I am executing my Last Will and Testament, that I fully understand the extend of my real and personal property and where they are located, and fully aware of all of my children, individually and collectively, to whom I am bequeathing my property, namely, Pearl Etna Burnette-Baker, Eleanor Harriet Taylor-Cooper, and Adah Ann Taylor-Clark.

Firstly: I direct that all of my just debts, taxes, and funeral expenses be paid out of my estate as soon after my death as is practicable.

Secondly: I give and bequeath to my oldest child, Pearl Etna Burnette-Baker, who exercised an untiring effort, love, and concern for me during the twilight days of my life, my three (3) bedroom residence located on Mamba Point, directly behind SAC Tower, within my compound together with the two (2) small dwelling apartments attached to the structure, each of the small apartment having one (1) bedroom, to have and to hold the premises in FEE SIMPLE. However, if Pearl does not survive me, I bequeath this property to her two children, Nyemade and Marplehas Joint Tenants.

Thirdly: I give and bequeath to my second child, Eleanor Harriet Taylor-Cooper, the two (2) story apartment building located on Mamba Point immediately situated at the entrance to my compound. This apartment building I bequeath to Eleanor in FEE SIMPLE. However, if she does not survive me, I bequeath this building to all of her surviving children as Tenants in common.

Fourth: I give and bequeath to my third child, Ada Ann Taylor-Clark, the other two (2) story apartment building located on Mamba Point within my compound. This apartment building can be more specifically identified as the building which my sister-in-law Theresa Pennoh lived in for many years, and is adjacent to my residence which I have bequeathed to Pearl. However, if Adah does not survive me, I bequeath this building to all of her children as Tenants in common.

Fifth: I own two (2) buildings at the corner of Benson and Center Streets in the City of Monrvia, Republic of Liberia. Building "A" faces Benson Street and has a two-bedroom apartment building [and] can be more specifically identified as the Building lease to Kerlin Essa for many years. The other, Building "B" faces Center Street and

has a one bedroom apartment on the upper level, and a two-door store on the lower level, more specifically identified as the building once leased to "Fantastic" and now being operated by my son-in-law, Nyema Baker.

(A) I give and bequeath all of my ownership interest in Building "A" to my two children, Eleanor and Adah, as Joint Tenants.

(B) I give and bequeath all of my ownership interest in Building "B" to my oldest Child, Pearl.

Sixth: I own a one acre parcel of land on the highway leading to the New Georgia Housing Estate on which I constructed a small building containing two rooms, however, this building was destroyed during the civil unrest of 1990. This parcel of land can be identified by my son-in-law, Nyema Baker and/or Jerry, the boy who live with me for many years.

(A) I will and bequeath three lots of this property to my nephew Harry Pennoh who lives in Piscataway, New Jersey, U.S.A., and one lot to my niece, Koffa Pennoh Sheriff.

Seventh: After paying all of my just debts, funeral expenses and taxes, I direct that an amount equivalent to 100 United States Dollars be given to Jerry, the boy who served me so well many years ago.

Eight: I wish to mention and express in this my Last Will and Testament my deepest thanks, appreciation and gratitude for the untiring love, generosity, faithfulness, assistance, and concern which my beloved son-in-law, J. Nyema Baker showered on me from the day he married my daughter, Pearl, up to my demise. Not only did he so generously and kindly take me on international trips at his own expense, including Europe and the USA, but he was always there to give me moral, physical, and financial assistance whenever I needed someone to "Hold my hand". As a token of my appreciation for his kindness, I will and bequeath to my son-in-law, J. Nyema Baker the one-half (1/2) lot which I own located on Mamba Point in the vicinity of Cerue Henderson's property. This parcel of land can be identified as the property which my late sister, Gertrude, and I owned, and on which Gertrude built on her half (1/2) lot portion a concrete structure.

Nineth: I hereby, nominate, constitute and appoint my good and faithful Son-in-Law, James Nyema Baker to serve as Executor of my Last Will and Testament, to serve without bond or surety, giving him the fullest power in all matters, including the power to sell or convey real or personal property or any interest therein in keeping with the Laws of Liberia.

IN WITNESS WHEREOF, I have signed and published this my last Will and Testament the 21<sup>st</sup> day of August, 1997, in the City of New York, U.S.A.

#### A T E S T A T I O N

*We the undersigned persons, of lawful age, have on this 21<sup>st</sup> day of August, 1997, at the request of Mrs. MAUDE ELIZABETH PENNOH, witnessed her signature to the foregoing Will in the presence of each of us and we have, at the same time and in her presence and in the presence of each other, subscribed our names hereto as attesting witnesses."*

On July 8, 2010, the surviving heirs and daughters of the deceased, Eleanor Harriet Taylor-Cooper and Ada Ann Taylor-Clarke, the appellants herein filed a motion for enlargement of time on grounds that they were not served with the petition for the probation of the purported Will of their mother and as such the statutory period be enlarged to enable them to file the appropriate responsive pleadings.

On July 14, 2010, at the hearing of the motion for enlargement of time, the appellee having interposed no objection, the trial court granted the motion and ordered the appellants to file their objections on or before August 14, 2010.

On August 10, 2010, the appellants filed a sixteen (16) count objections to the probation of the Will, alleging that as the deceased suffered from Alzheimer disease she was mentally incapacitated to execute a Will. The appellants then prayed the Probate Court to dismiss the petition and declare the purported Will null and void on of grounds fraud and undue influence. We quote herein below the sixteen (16) count objections, which read thus:

#### "OBJECTORS' OBJECTIONS

*AND NOW COME Eleanor Harriet Taylor-Cooper and Ada Ann Taylor-Clarke, surviving heirs of the late Maude Elizabeth Pennoh, Objectors in the above entitled proceedings, and most respectfully pray this Honourable Court to deny and dismiss the Petition to Offer the Last Will and Testament of the Late Maude Elizabeth Pennoh into probate, and for legal and factual reasons, showeth the following, to wit:*

- 1. That your humble Objectors are the surviving daughters of the late Maude Elizabeth Pennoh, who died in the peace of God on April 28, 2010 in the City of Monrovia, Liberia.*
- 2. That on the 10<sup>th</sup> day of June, A.D. 2010, a document, purporting to be the Last Will and Testament of the Late Maude Elizabeth Pennoh, was presented before the Monthly & Probate Court for Montserrado County for probate.*
- 3. That upon examination of the said purported Will, and the signature which appears thereon, Objectors say that same is a product of fraud as the late Maude Elizabeth Pennoh always signed or wrote her name Maude Pennoh and never Maude E. Pennoh. Copies of several documents executed by the late Maude Elizabeth Pennoh are hereto attached in bulk,*

including her Passport, Medical Records, Social Security Card, etc., and marked Objectors' **EXHIBIT "O/1"**.

4. That beginning 1995, the late Maude Elizabeth Pennoh showed signs of amnesia, loss of memory, illness, weakness and feebleness; Objectors have certain knowledge of this fact because their mother, the Late Maude Elizabeth Pennoh, rotated her stay and lodging among her three (3) daughters in the United States of America, namely the Objectors Eleanor Harriet Taylor-Cooper, Ada Taylor-Clarke and Pearl Burnett-Baker, wife of James Nyema Baker, up to the year 2005 when she returned to Liberia. Objectors give notice that at the trial, they shall produce evidence/testimony in substantiation of the averment(s) herein contained.

5. That by 1998, due to her state of amnesia, the Late Maude Elizabeth could not be left alone in the house; she was, therefore, given "Home Care" or "Home Attendant Services" by the City of New York. Copy of the Certificate, issued by the Human Resource Administration of the City of New York, in substantiation of the averments herein contained, is hereto attached and marked Objectors' **EXHIBIT "O/2"**.

6. Objectors say that it is amid this situation that the Son-in-Law of the Late Maude Elizabeth Pennoh, James Nyema Baker, husband of the Late Pearl Burnett-Baker, prepared the purported Will, which was neither signed by the late Maude Elizabeth Pennoh nor an expression of her last Will and Testament.

7. Objectors say that our Law stipulates that "every person eighteen years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property". **Decedents Estates Law, L.C.L. Rev., tit. 8, section 2.1. (1972).**

8. Objectors say that in August 1997, the late Maude Elizabeth Pennoh was neither of sound mind nor disposing memory and did not have the capacity to execute a Will; and this was her condition up to her death on April 28, 2010. Copies of the medical records of the late Maude Elizabeth Pennoh are hereto attached in bulk and marked Objectors' **EXHIBIT "O/3"**.

9. Objectors say that in 2008, this Court appointed one of the Objectors herein named above, in the person of Eleanor Cooper, daughter of the late Maude Elizabeth Pennoh as her Legal Guardian. Copy of the Decree of Guardianship is hereto attached and marked Objectors' **EXHIBIT "O/4"**

10. Objectors say that the document cannot be considered the Last Will and Testament of the late Maude Elizabeth Pennoh as it gives Mr. James Nyemah Baker, named therein as Executor, the right "to sell or convey real or personal property or any interest therein", out of properties apportioned under the purported Will. As there is no residual clause, the Executor is empowered under the purported Will to dispose of by sale, properties already reportedly devised.

11. Objectors say that the paragraph under **Attestation** contained falsehood as it says referring to the Witnesses, "we, the undersigned

persons, of lawful age, have on this 21<sup>st</sup> day of August, A.D. 1997, at the request of Mrs. Maude Elizabeth Pennoh, witnessed her signature to the foregoing Will in the presence of each other and we have, at the same time and in her presence and the presence of each other, subscribed our names hereto as attesting" (emphasis ours).

12. Further to count eleven (11) herein above, Objectors say that a notarized statement issued by the first (1<sup>st</sup>) listed alleged Witness, in the person of Famatta Rose Osode and an Affidavit executed by the third (3<sup>rd</sup>) listed alleged Witness, in the person of Dr. Emmet Dennis, categorically contradict the postulations (1) that they were requested by the late Maude Elizabeth Pennoh to sign the purported document; (2) that they signed in the presence of the Late Maude Elizabeth Pennoh; (3) that they signed in the presence of each other; and (4) that they saw Maude Elizabeth Pennoh signed the purported document. Copy each of the Notarized Statement executed by Famatta Rose Osode and the Affidavit executed by Dr. Emmet Dennis are hereto attached and marked Objectors' EXHIBIT "O/5".

13. Further to count twelve (12) herein above, Objectors say that the second (2<sup>nd</sup>) listed alleged Witness, in the person of Nadia Khoury-King, in a notarized statement, clearly described the circumstances under which she signed, she having being told by the named Executor, Mr. Nyema Baker and his wife, Pearl Burnett-Baker, that "they were getting Ma Maud's papers together and this was a document to allow them to take care of Ma Maud"(emphasis ours). Copy of the Notarized Statement by Nadia Khoury-King is hereto attached and marked Objectors' EXHIBIT "O/6".

14. Further to thirteen (13) herein above, Objectors say that most definitely the Late Maude Elizabeth Pennoh did not ask the individuals whose names now appear on the Document as alleged Witnesses, namely Famatta Tose Odode, Nadia Khoury-King and Dr. Emmet Dennis, to sign the purported Will; that they did not sign in the presence of the late Maude Elizabeth Pennoh; that they did not see the Late Maude Elizabeth Pennoh signed the purported Will; and that they did not exhibit their signatures to the Late Maude Elizabeth Pennoh and acknowledge the said signatures to be theirs.

15. Further to count fourteen (14) herein above, Objectors say that the second (2<sup>nd</sup>) alleged Witness made reference to the manipulation by James Nyema Baker, thus, "I read only a little of what on the page I signed and it stated something about taking care of Ma Maude and taking her on trips with them. I signed the document I left for my appointment" (emphasis ours). Please see copy of the Notarized Statement by Nadia Khoury-King, hereto attached and marked Objectors' EXHIBIT "O/6".

16. Objectors' say the purported Will is a product of manipulation, undue influence, fraud, forgery, misrepresentation, falsehood and does not represent the Last Will and Testament of the Late Maude Elizabeth Pennoh as same was not executed by her.

**WHEREFORE AND IN VIEW OF THE FOREGOING**, Objectors pray Your Honour and this Honourable Court to deny and dismiss the Petition which presents the purported Will for probate, declare the purported Will

*null and void as it is neither the expression of the Last Will and Testament of the late Maude Elizabeth Pennoh, nor was it prepared by the said Late Maude Elizabeth Pennoh, order the Estate to remain an Intestate, as it is indeed and in fact an Intestate Estate; and grant unto your humble Objectors any other and further relief as justice and equity demand."*

On August 18, 2010, the appellee filed a fifteen count (15) resistance, denying the averments contained in the appellants' objections, stating, among other things, that the deceased throughout her entire life was never mentally incapacitated and that the appellants had failed to specifically plead the elements of fraud or undue influence as regard the preparation of the Will. The appellee then prayed that the Will having been prepared by the deceased in her sound memory, same should be probated and registered. We quote herein below the appellee's fifteen (15) count resistance which reads as follow:

*"AND NOW COME, Respondents in the above captioned cause and most respectfully praying this Honorable Court to dismiss Objectors' Objection and order the subject Will read and executed, showeth reasons therefore, to wit:*

- 1. That the Objection in its entirety presents a bad plea – confession and avoidance, in that, notwithstanding Objectors' contention in count three that their mother's signature was forged, said Objectors are contradictorily asserting in count four that their mother was insane at the time the Will was executed; the latter of which, of-course, suggests that she executed the subject Will when she was not of sound mind. Respondents submit that both defenses of "forgery" and "insanity" are inconsistent; in that, the former constitutes "denial" while the latter interposes a "justification."*
- 2. That further as to count three (3), Respondents aver that the contention that the initial "E" appears in the signature between the first and last name of Maude Elizabeth Pennoh, and therefore renders the entire Will fraudulent, is indeed preposterous and cannot legally vitiate the authenticity and efficacy of the subject Will: in that, the late Maude E. Pennoh intermittently and selectively executed and signed several legal instruments with or without the insertion and interlineations of her initial "E", as will evidentially appear from photocopies of the following documents, some of which are witnessed and attested to by Co-Objectors Eleanor Harriet Taylor-Cooper and Ada Ann Taylor-Clarke:*
  - a) Lease Agreement dated January 8, 1987, witnessed by Eleanor Harriet Taylor-Cooper;*
  - b) Cancellation Agreement, dated May 18, 1981*
  - c) Cancellation of Lease Agreement, dated January 2, 1973*
  - d) Agreement of Lease dated August 1, 1981, witnessed by Co-Objector Ada Ann Taylor-Clarke, hereto appended as Exhibits "A,B,C, & d", forming a cogent part thereof.*
- 3. That further as to count three (3), Respondents aver that Objectors have not pleaded with certainty, any element of fraud, especially when*

*null and void as it is neither the expression of the Last Will and Testament of the late Maude Elizabeth Pennoh, nor was it prepared by the said Late Maude Elizabeth Pennoh, order the Estate to remain an Intestate, as it is indeed and in fact an Intestate Estate; and grant unto your humble Objectors any other and further relief as justice and equity demand."*

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  - d) Agreement of Lease dated August 1, 1981, witnessed by Co-Objector Ada Ann Taylor-Clarke, hereto appended as Exhibits "A,B,C, & d", forming a cogent part thereof.*
- 3. That further as to count three (3), Respondents aver that Objectors have not pleaded with certainty, any element of fraud, especially when*

- the signature bearing on Objectors' Exhibit 0/1 is exactly the same as the one on the subject Will. Respondents submit further that Maude Elizabeth Pennoh's election to write her initial "E", thus representing her middle name "Elizabeth", does not, ipso facto, invalidate any instrument, including the Will at issue, executed by her during her life time.
4. That as to count four (4) of the Objection, Respondent, Nyema Baker, denies truth of the allegation contained therein to the effect that objectors' mother became insane in 1995; in that, at no time did this woman of decency ever become insane and rendered incapable of reasoning, especially at the time she executed and signed the Will, same being the year 1997. Respondents submit that it is not only illegal but morally abominable and appalling for the children. Objectors herein, to impugn and impute insanity to their mother who labored and brought them forth unto Mother Earth for the mere sake of "property" or material things, which are temporal.
  5. That as to count five (5), Respondent Nyema Baker, asserts that objectors' Exhibit 0/1 is not only spurious but void of any information supportive of the allegation of insanity. Respondents submit that assuming without admitting that Maude E. Pennoh became ill in 1998, such illness could not have vitiated any or all instruments executed by her prior to the alleged sickness.
  6. That as to count six (6), Respondents aver that at no time did he prepare and sign any will or to say the least, any least instrument or instruments for the late Maude E. Pennoh; nor did he ever commit any forgery of her signature for any reason whatsoever.
  7. That as to count seven (7) and eight (8) of the objection, same are false and bear no resemblance of truth, as the late Maude E. Pennoh was sound when she made and signed the subject Will.
  8. That as to count nine (9), Respondents disclaim knowledge of the said Decree of Guardianship and asserts that same is preposterous as far as the Will is concerned.
  9. That further as to count eight (8), the Exhibit 0/3 annexed to objectors' objection cannot constitute Medical Certificate to establish the mental incapacitation of the deceased.
  10. That as to count ten (10) of the objector's objection, the Respondent, Nyema Baker says that the clause referred to in the Will, which gives Respondent authority, does not in any manner and form vitiate the validity of the subject Will; in that, it is not one of those grounds under which a Will can be canceled. Hence, count 10 of the objection must be denied and dismissed.
  11. That as to counts eleven (11) and twelve (12) of the objection, the Respondents, Nyema Baker further avers that Exhibit "0/5" annexed

to the objection bears no truth, as it has been purposely and intentionally prepared to contradict earlier attestation made by the two witnesses in full view of the testator, Respondents further assert that the two witnesses described in Exhibit "0/5": Famatta Rose Osode and Dr. Emmet Dennis, are two individuals of sound educational background and intelligence. For Dr. Emmet Dennis to assert that he signed such a legal instrument based on confidence he had in the Respondent, when, in fact, he is quite aware that the ultimate purpose of one attesting to an instrument is to confirm its existence and contents. Respondent avers further that the so-called Affidavits signed by Dr. Dennis and Famatta Rose Osode tend to disclaim and repudiate their own act, which constitutes nothing more than a perjury, thus subjecting them to criminal prosecution for perjury.

12. That as to count thirteen (13) of the objection, Respondent, Nyema Baker says that the averment contained in Exhibit "0/6" attributed to one of the Witnesses to the Will is false and totally untrue; in that, the witness is educated and she knew what she was signing. The fact that she admitted signing the Will in the presence of the Testator but claim that she did not know what she was signing, clearly points to the falsity of her statement. The court should not take same serious. Again she has committed perjury for lying under oath, since, indeed, as an educated person of sound mind; she cannot say she did not know what she was signing.
13. That as to count fourteen (14) through sixteen (16) of the objection, Respondent vehemently resists all of the averments contained therein; in that, there is no iota of truth; and that the allegation of manipulation, undue influence, fraud, forgery, misrepresentation, falsehood were never perpetrated by Respondent, Nyema Baker as is being alleged by the objectors. Respondent, Nyema Baker, further submits that it was not possible for him to have manipulated and unduly influenced the testator; in that the deceased had so much confidence in him to the extent that she executed a General Power of Attorney in his favor, thus giving him full Power of Attorney to administer all of her properties while she was still alive. Appended hereto is a photo copy of the subject "General Power of Attorney" marked as Exhibit "E" hereof.
14. That Respondent further asserts that the Affidavit written by Madam Nadia Khoury-King Constitutes a blatant violation of her diplomatic code of ethics, which of course, warrants her immediate removal and sanction; in that, she did not only sign the subject instrument as a mere witness but as a Diplomatic Officer who affixed the stamp of her Office on same as evidence of its veracity and authenticity. Hence, her disclaimer is a breach of her diplomatic oath etiquette; for which she must be removed. Respondent hereby gives notice that he reserves the right to refer the said undiplomatic act of Madam Nadia Khoury-King to the appropriate Agency of Government for the sanction commensurate with the gravity of such offense.

15. That Respondent hereby denies every and singular the allegations of fact contained in the Objection and made note the subject of a special traverse.”

On September 20, 2010, the Probate Court, upon hearing the issues of law, ruled that the case be transmitted to the Sixth Judicial Circuit Court Montserrado County for determination on the issues of fraud and undue influence. By the law controlling in this jurisdiction, issues of fraud and undue influence being issues of fact not cognizable before the Probate Court, same must be forwarded to a circuit court to be heard and determined by a jury. Decedents Estates Law, Rev Code 8:105.1(4); Rule 19 of the Probate Court; *Roberts v. Roberts* 7LLR 358 (1942); *Nah v. Richards* 16LLR 89, 93 (1964); *Kromah v. Pearson* 33LLR 42, 45 (1985); *Tarr v. Wright*, Supreme Court Opinion, March Term, A.D. 2015. Accordingly, on March 11, 2011, the records under the seal of the clerk of the Probate Court, were forwarded to the Sixth Judicial Circuit Court for a jury trial.

On September 27, 2013, the appellants filed a motion for newly discovered evidence before the Sixth Judicial Circuit Court wherein they attempted to introduce a medical report to establish that the deceased suffered from Alzheimer disease and, as a consequence thereof, was mentally incapacitated when the Will was allegedly prepared.

On January 15, 2014, the appellee filed his resistance contending that the appellants had sufficient knowledge of the alleged medical condition of the deceased and the medical report attached to the motion. Hence, the motion should be denied because it did not meet the statutory requirement of section 9.11 of the Civil Procedure Law regarding newly discovered evidence.

On March 14, 2014, the Sixth Judicial Circuit Court rendered its ruling on the motion and the resistance thereto wherein it denied the appellants' motion on grounds that the motion was not within the pale of section 9.11 of the Civil Procedure Law. The trial court premised its ruling on the fact that the appellants had sufficient knowledge of the deceased medical condition and that the appellants knew or should have known about the medical report and same was not an after-thought. Hence, the medical report did not suffice as a newly discovered evidence as contemplated by section 9.11 of the Civil Procedure Law.

The Civil Procedure and case laws law provide thus:

“at any time before submission of the case to the court or jury, the court may, on motion with notice, grant to a party permission to introduce new evidence in addition to the allegation of his pleading. A motion under this section shall be granted only if the moving party shows to the satisfaction of the court by affidavit that at the time of service of the pleading he did not know and could not with reasonable diligence have known of the facts as to which such evidence is offered. If the motion is granted, the former pleading shall be withdrawn and a new one filed which shall conform to the evidence introduced.” The Civil Procedure Law, Rev Code 1:9.11; *Stubblefield*

deceased suffered Alzheimer disease. This Court has held that “the testimony of a medical doctor is qualified to determine the mental competency of a person.” *Dun v. Republic*, 1LLR 401 (1903); *Tunning v. Greene et al*, 15LLR 137, 144 (1963); *Tubman v. Republic*, 23LLR 301, 318 (1974); *Republic v. Wright*, 38LLR 110, 125-126(1995); *Massaquoi v. Republic*, Supreme Court Opinion, October Term A.D. 2013. *The Management of Comium v. Flomo*, Supreme Court Opinion, October Term A.D. 2014.

Also, the burden to prove a testator’s insanity or mental incapacity rests on the shoulders of the objector(s) to the Will. The presumption that a testator was mentally capacitated during the preparation of a Will places the onus on the objector(s) to prove the converse, that is, mental incapacity. *Greaves v. McCritty*, Supreme Court Opinion, March Term, A.D. 2012. We confirm and affirm these principles of law and hold that the trial court having disallowed the admission of the medical report on legal grounds, no medical report was placed into evidence, thus the issue of Alzheimer disease was never proven.

The appellants introduced into evidence three affidavits signed by witnesses to the purported Will. Although two of the said affiants disavowed signing in the presence of the other attesting witnesses, they did not appear in court to authenticate that indeed they were the persons who executed the affidavits, thus rendering the said documents inadmissible. However, one of attesting witnesses in person of Dr. Emmett Dennis did take the stand and testified that he did not sign the purported Will in the presence of the deceased or the two other attesting witnesses and that the appellee personally took the Will to him and based upon his trust in the appellee he signed same.

The Decedents Estates Law provides that

“the attesting witnesses shall set forth their names in full when affixing their signatures and need not sign in the presence of the testator nor of each other, **but if any of them do not sign in the presence of the testator the one or ones not so signing shall exhibit his or her signature or signatures to the testator and acknowledge same to him.**” Decedent Estates Law, Rev Code 8:2.11(b). [Emphasis Ours]

We hold that the attestation of the Will was irregular and contrary to the requisite provision of the Decedents Estates Law quoted *supra* as the attesting witnesses although not signing in the presence of the testator never subsequently exhibited his or signature to the testator.

At the conclusion of the appellants’ testimonial evidence, the appellee introduced three (3) witnesses, inclusive of the appellee. The appellee’s witnesses, Alvin G. Boley and Minty P. Montlouis, testified similarly that the deceased never suffered any memory loss or Alzheimer disease and that during the course of the deceased life, the appellee provided her with extensive care and support. The appellee, Counsellor J. Nyema Baker, testified that from 1961 up to the demise of the deceased he had played a pivotal role in her life by providing care and support for the deceased to the extent that he sponsored the education of her children and had even enhanced the living standard of the deceased; that he married the deceased

oldest daughter, the late Pearl Baker; that he and his late wife typed and prepared the Will for the deceased; that the Will was signed by the deceased and attested to by three (3) witnesses who signed in the presence of the deceased; and that subsequently the Will was turned over to his late wife who also left same in his possession upon her death.

On July 8, 2014, the jury deliberated and returned a verdict in favor of the appellee. Thereafter, on July 11, 2014, the appellants filed a motion for new trial on grounds that the verdict was contrary to the weight of evidence and maintained in their allegation that the deceased suffered from Alzheimer disease and was mentally incapacitated to prepare a Will, thus the Will, being a product of fraud and undue influence should be set aside.

On July 17, 2014, the appellee filed his resistance, stating that the appellants had failed to prove their allegations; that they neglected to specify with particularity the evidence that was contrary to the verdict; and that the jury as sole judges of the weight and credibility of the evidence adduced, having believed the appellee as against the appellants, the verdict should not be disturbed.

On July 24, 2014, the Sixth Judicial Circuit Court rendered its ruling on the motion and the resistance thereto, denying the motion and entered final judgment in favor of the appellee and ordered the records be transmitted to the Monthly and Probate Court.

Thereafter, on August 12, 2014, the Assistant clerk of the Sixth Judicial Circuit Court transmitted the records to the Monthly and Probate Court, and which on August 22, 2014, resumed jurisdiction over the matter and proceeded to enforce the judgment of the Sixth Judicial Circuit Court. On the self-same date, the appellants spread on the minutes of the court objection to the verdict from the Sixth Judicial Circuit Court and requested that the Monthly and Probate Court order a new trial on grounds that the verdict was contrary to the weight of the evidence.

On September 8, 2014 the appellee filed his resistance to the submission, praying its denial on the basis that the appellants had failed to prove the allegations contained in their objection to the probate of the Will and that the jury's findings in favor of the appellee were conclusive.

On September 30, 2016, the presiding judge ruled denying the appellants' submission on grounds that the Monthly and Probate Court lacked jurisdiction to set aside the jury verdict and the final judgment from the Sixth Judicial Circuit Court.

The Decedents Estates Law provides thus:

“the verdict if not set aside by the circuit court before which it was tried, shall be conclusive **except upon appeal** (our emphasis) and after being entered in the minutes shall be certified to the probate court by the clerk of the court in which the trial took place, whereupon the

probate court shall enter a final decree accordingly.” Decedent Estates Law, Rev Code 8:105.2(2).

This Court says that pursuant to the above quoted law, the verdict from the Sixth Judicial Circuit Court cannot be reversed by a judge of the Monthly and Probate Court, and is conclusive, until same is reviewed by this Court of last appellate resort. Decedent Estates Law, Rev Code 8:105.2(2); *Jartu v. The Estate of Famble Konneh*, 10LLR 318(1950); *In re: The Intestate Estate of the Late Fineboy Larzalee et al.*, 28LLR 99, 104 (1979). We therefore hold that the probate judge committed no error in denying the appellants’ submission as doing the contrary, would be *ultra vires*.

On September 30, 2016, the Monthly and Probate Court confirmed the verdict from the Sixth Judicial Circuit Court and entered final judgment against the appellants. The trial court stated that the appellants failed to prove that the testator’s Will was a product of fraud and undue influence, and as such same should be probated and registered. The appellants excepted to this judgment and announced an appeal to the Supreme Court. On October 7, 2014, the appellants filed a fourteen (14) count bill of exceptions which we quote hereunder:

“BILL OF EXCEPTIONS

*Eleanor Harriet Taylor-Cooper and Ada Ann Taylor-Clarke, surviving heirs of the late Maude Elizabeth Pennoh, of the City of Monrovia, Liberia, Appellants in the above- entitled proceedings, most respectfully inform Your Honour that on the 3<sup>rd</sup> Day of October, A.D. 2014, Your Honour rendered Final Judgment/Ruling against Appellants; from which Final Judgment/Ruling of Your Honour, Appellants excepted and announced an appeal to the Honourable Supreme Court of the Republic of Liberia, sitting in its October Term, A.D. 2014, and, therefore, hereby submit this Bill of Exceptions for Your Honour’s approval, as follows, to wit:*

1. *Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the Ruling of the Supreme Court which states: “fraud is the employment of trick, artifice of duress by one person to influence another to enter into an agreement or contract in which he could not have participated in the absence of the misrepresentation, concealment of material facts or undue influence”. Scaf et al. v. Ricketts, 28LLR 261 (1979). Therefore, Objectors/Appellants excepted.*

2: *Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the Ruling of the Supreme Court, which states: “Fraud and undue influence in the execution of a will may be deduced from all the facts and circumstances surrounding its execution, including the physical and mental state of the testator, the relationship between the testator and those alleged to have committed*

the fraud or unduly influenced the testator, and the reasonableness and fairness of the testamentary provisions". *Weeks vs. Dennis, 11LLR 82 (1951)*. Therefore, Objectors/Appellants excepted.

3. Objectors/Appellants say and aver that your Honor inadvertently erred when, during your Ruling/Final Judgment, denying the Motion for New Trial, you refused and failed to consider that the verdict of the empaneled Jury was contrary to the weight of the evidence adduced at the Trial, especially the medical evidence and the testimonies of witnesses produced by Objectors/Appellants which established that the late Maude Elizabeth Pennoh was not mentally sound, alert and of good physical strength when she was alleged to have executed the purported will in 1997. Notwithstanding this evidence, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; and you entered final Judgment on the said verdict. Therefore, Objectors/Appellants excepted.

4. Objectors/Appellants say and aver that Your Honour inadvertently erred when, in your Ruling/Final Judgment on the Motion for New Trial, you refused and failed to consider the Medical Evidence and testimonies of witnesses, including Ada Ann Taylor-Clark and Adelaide P. Gardiner, admitted into evidence, especially line eight (8) of the Medical Report, as found on the first page of the said Report, which indicates that **"the late Maude Elizabeth Pennoh's agitation as regards her loss of memory and hallucination started about five (5) years prior to 2001", meaning in 1996.** As the will is alleged to have been made in 1997, indeed and in fact, Maude Elizabeth Pennoh could not have been of sound mind and disposing memory. Notwithstanding this evidence, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; and Your Honour refused to set aside the verdict, as recorded, and grant a new trial. Therefore, Objectors/Appellants excepted.

5. Objectors/Appellants say and aver that Your Honour inadvertently erred when, in your Ruling/Final Judgment on the Motion for New Trial, you refused and failed to consider the testimony of witness Ada Taylor-Clarke, daughter of the Testator, placed on record that in 1995 she took her son to a program in America and when she came home, observed that her mother was standing outside without shoes. She said "I rushed home and when I got home, I met Mama standing outside without shoes, confused; I went in the house all of the stoves were on. From that day, I can't tell which month it was in 1995.....". "From that day, any time Mama came to me she was never left alone because for me everybody got their own experience but for me from that day I knew Mama was not alright".  
**PLEASE SEE MINUTES OF COURT, 13<sup>TH</sup> DAY'S JURY**

*SITTING, JUNE 30, 2014, PAGE 7. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.*

6. *Objectors/Appellants say and aver that Your Honour inadvertently erred when, in your Ruling/Final Judgment on the Motion for New Trial, you refused and failed to consider the testimony of witness Ada Taylor-Clarke who testified that the State of New York provided public assistance to the Testator by assigning a health care worker to her for twelve (12) hours daily because she could not be left alone. PLEASE SEE MINUTES OF COURT, 13<sup>TH</sup> DAY'S JURY SITTING, JUNE 30, 2014, PAGE 8. Witness Ada Taylor-Clarke further testified thus "Like I said before I noticed it in 1995 and from then on, it got worse; she would see people in the mirror; she was just confused; she couldn't sleep, she was very irritable and she was overall just confused. She couldn't recognize people, she didn't know things that she was doing; she would take the soap, like I said before 1995 Mama used to cook for us, you could leave her and she would do everything else and she used - my sister said she used the dish washing soap to fry chicken; she was confused, she wasn't well". PLEASE SEE MINUTES OF COURT, 13<sup>TH</sup> DAY JURY'S SITTING, JUNE 30, 2014, PAGE 10. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.*

7. *Objectors/Appellants say and aver that Your Honour inadvertently erred when, in your Ruling/Final Judgment on the Motion for New Trial, you refused and failed to consider the testimonies of witnesses Mrs. Eleanor Harriett Taylor-Cooper and Adelaide P. Gardiner to the effect that the Testator suffered from Alzheimer, amnesia, loss of memory weakness and feebleness. Notwithstanding their testimonies, which were never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.*

8. *Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the law which states "And evidence in a will contest that the testator was of weak mind, though not sufficiently weak to destroy testamentary capacity, and that power had been exercised over him by a party standing in a confidential relation to him who received considerable portion of his estate, raises a*

presumption of fraud which required more to rebut it than mere proof of the formal execution of the will in the presence of two witnesses; there must also be evidence that the deposition was the exercise of the testator's free will. *Weeks vs. Dennis, 11LLR 82 (1951), text at page 91.* Dr. Emmet Dennis testified that Mr. J. Nyema Baker, Respondent/Appellee, invited and presented him with the will to sign as a witness and that the Testator, Maude Elizabeth Pennoh, was not present in the room. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.

9. Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the Affidavit executed by one of the individuals who witnessed the will, in the person of Famatta Rose Osode, which Affidavit was admitted into evidence. In her Affidavit, Mrs. Osode confirmed that it was Mr. J. Nyema Baker, Respondent/Appellant, who presented her with the will to sign and not the Testator; and that only Mr. J. Nyema Baker, Respondent/Appellee and his wife were present. The Testator was not present in the room. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.

10. Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the Affidavit executed by Mrs. Nadia Khoury-King, who also witnessed the will, to the effect that Mr. Baker, Respondent/Appellee, presented her with the will and both Mr. Baker and his wife pointed out that they were "getting Ma Maude's papers together" and this was a document to allow them to take care of Ma Maude. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.

11. Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the testimony of Mr. J. Nyema Baker, Respondent/Appellee who, while on the stand, indicated that the will was given to his wife, Pearl Burnett-Baker, to keep; that his wife died in 2008; that upon the death of his wife in 2008, he returned his mother-in-law, Maude E. Pennoh, the Testator, to her other two (2)

daughters, Eleanor-Harriet Taylor-Cooper and Ada Ann Taylor-Clarke, Objectors/Appellants; but yet he kept the will. As the will was not given to him to keep, he should have returned it to the Testator when his wife to whom it was allegedly given to keep died. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.

12. Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final judgment on the Motion for New Trial, you inadvertently ignored the testimony of Mr. J. Nyema Baker, Respondent/Appellee who, while on the stand, told the Court that the will was typed by his wife, in his presence. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.

13. Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the testimony of Mr. J. Nyema Baker, Respondent/Appellee who, while on the stand, placed on record the extensive influence he had over the Testator, when he said: "I knew Maude E. Pennoh until her death in the year 2010. If I will go further, Sir, I will tell you that when I met Maude E. Pennoh, Maude E. Pennoh depended on me for everything; I was her mentor, her provider and I even assisted her with the education of her children. I provided for Maude E. Pennoh; I took Maude E. Pennoh around the world. I gave Maude E. Pennoh her first car; I took Maude E. Pennoh's children to school in Switzerland and in the United States. I knew Maude E. Pennoh very well and I provided for her. She called me the son she never had". **PLEASE SEE MINUTES OF COURT, 16<sup>TH</sup> DAY JURY'S SITTING, JULY 3, 2014, PAGE 26.** Mr. J. Nyema Baker further testifying, spread on record that "The whole while Maude Pennoh lived with me, I took her to medical doctors; I provided her with everything. Maude E. Pennoh even got a heart attack once and I took her to the hospital. The very medical papers they are producing, look at it and you will find that every one of those medical papers was produced in New York City. I took Maude Pennoh to every one of those doctors including the last medical. **PLEASE SEE MINUTES OF COURT, 16<sup>TH</sup> DAY'S JURY SITTING, JULY 3, 2014, PAGE 37.** Thus, Mr. Baker, Respondent/Appellee established himself as a party standing in a confidential relation to the Testator and that he exercised undue influence over the Testator. Notwithstanding this testimony, which was never rebutted, the Jury returned a verdict in

*favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.*

14. *Objectors/Appellants say and aver that Your Honour erred, when in your Ruling/Final Judgment on the Motion for New Trial, you inadvertently ignored the sufficient and overwhelming evidence adduced at the trial which established that the Testator, the late Maude E. Pennoh, at the time she is said to have made her will, was not of sound mind and disposing memory; and that Mr. J. Nyema Baker, Respondent/Appellee exercised undue influence over her. The law is that "every person eighteen years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property. New Decedents Estates Law, Section 2.11. Notwithstanding the sufficient and overwhelming evidence adduced at the trial, which was never rebutted, the Jury returned a verdict in favor of Respondent/Appellee, indicating that fraud did not occur in the making of the purported will; you refused to grant a new trial but instead, entered judgment on the said verdict. Therefore, Objectors/Appellants excepted.*

*WHEREFORE, and in view of the foregoing, Objectors/Appellants hereby tender this as their Bill of Exceptions for Your Honour's approval so that the adverse Ruling/Final Judgment of Your Honour made will be reviewed by the Supreme Court."*

The entire bill of exceptions meticulously challenges the validity of the verdict from the Sixth Judicial Circuit Court and the final judgment entered thereon by the judge of the Monthly and Probate Court and has presented only one issue for the final disposition of this appeal. That issue is:

Was the instrument submitted for probation by the appellee, purporting to be the Last Will and Testament of the Late Maude Elizabeth Pennoh a product of fraud and undue influence?

According to case laws by the Supreme Court, "fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions, undue influence or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions and concealment involving a breach of legal or equitable duty and resulting to damage to another and it can be classified into several categories such as actual, constructive, intrinsic, etc., *Johnson-Duff v. Harmon* 11LLR 344, 348 (1953); *Wilson v. Firestone*, 34LLR 134,143(1986).

In deciding issues of fraud, the Supreme Court have stated that

"Courts of equity, sitting to decide whether or not a transaction be fraudulent, will be governed by the circumstances surrounding the case and the intent of the party, which intent is to be inferred from

circumstances; it is generally held to be a part of the equity doctrine of fraud not to define it; not to lay down any rule as to the nature of it, lest the craft of men should find ways of committing fraud which might escape the rules of such limit or definition. *Moore v. Solomon* 1LLR 347, 349 (1900); *The Management of Catholic Relief Services v. Junius and Natt* 39LLR 397, 403(1999)

Undue influence is defined as “the improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective. Undue influence is the unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his well being.” *Black’s Law Dictionary 9<sup>th</sup> Edition*. In cases of wills and estates, the Supreme Court has defined undue influence as that influence which compels a testator or testatrix to do something against his or her will and it is regarded as an element of fraud. *Murdock v. The United States Trading Co.*, 3LLR 288, 295 (1932); *Rauls v Manning and Railey* 10LLR 229, 231(1949); *Johnson-Duff v. Harmon* 11LLR 344, 348 (1953); *Weeks et al., v. Dennis*, 11LLR 82 (1951); *Hill and Hill v. Parker*, 13LLR 556(1960);

Being mindful of these definitions and holdings quoted *supra*, and in order to answer the issue as to whether or not the Will in question was a product of fraud and undue influence, this Court has meticulously analyzed the testimony of the appellee relating firstly, to his relationship with the deceased, the manner of the preparation of the purported Will and the events subsequent thereto. From our careful analysis the following were reveal; (a) the appellee is a lawyer, a Counsellor-At-Law of the Supreme Court Bar (b) he is a direct beneficiary and executor of the Will; (c) he was married to the deceased late daughter; (e) that the deceased lived with him and his late wife when the Will was prepared (f) he procured a Will form from which he and his late wife, an experienced secretary typed the purported Will; (i) that he and his late wife were the ones who contacted the attesting witnesses; (j) that he and his late wife maintained possession of the Will and after the death of the appellee’s wife he continued to retain possession of the Will up to death of his mother-in-law. We quote below the relevant portion of the appellee’s testimony on these points to wit:

...The Will form was bought and my wife being a professional secretary typed the Will. I read the Will and then we contacted the witnesses to attest to the Will. When Maude Pennoh signed her Will it was sealed and given to her oldest daughter Pearl. When Pearl became ill and could no longer walk, all our personal documents were put in a safe which I still have including Maude Pennoh’s Will. Pearl and I had privilege to this safe and that’s where the Will was locked up.”See minutes of Court, Thur. July 3, 2014, sheets 45-61, 16<sup>th</sup> day Jury session

This testimony of the appellee, quoted *supra* does not only constitute admission but same depicts and vividly describes the intimate position and relation he and his late wife held with the deceased which admission must be construed against him. Civil Procedure Law, Rev Code 1:25.8(1). An example of this intimate position

and relation of the appellee can be seen in the purported Will at sections 8 and 9 wherein, he described himself as a model son-in-law and granted unto himself a wide scope of authority in the disposition of the deceased's estate. Sections 8 and 9 of the purported Will read thus:

*"Eight: I wish to mention and express in this my Last Will and Testament my deepest thanks, appreciation and gratitude for the untiring love, generosity, faithfulness, assistance, and concern which my beloved son-in-law, J. Nyema Baker showered on me from the day he married my daughter, Pearl, up to my demise. Not only did he so generously and kindly take me on international trips at his own expense, including Europe and the USA, but he was always there to give me moral, physical, and financial assistance whenever I needed someone to "Hold my hand". As a token of my appreciation for his kindness, I will and bequeath to my son-in-law, J. Nyema Baker the one-half (1/2) lot which I own located at Mamba Point in the vicinity of Cerue Henderson's property. This parcel of land can be identified as the property which my late sister, Gertrude, and I owned, and on which Gertrude built on her half (1/2) lot portion a concrete structure.*

*Nineth: I hereby, nominate, constitute and appoint my good and faithful Son-in-Law, James Nyema Baker to serve as Executor of my Last Will and Testament, to serve without bond or surety, giving him the fullest power in all matters, including the power to sell or convey real or personal property or any interest therein in keeping with the Laws of Liberia."*

We state here, that as regards section 9, the appellee could legally only sell the remainder of the deceased properties and not those already bequeathed or devised.

"The principle that a man should be permitted to make his own Will should not be carried so far as to validate a Will which represents the purpose of another rather than the testator's own desires. A beneficiary in a confidential and fiduciary relationship with the testator who participates with the attorney in the preparation and execution of the testator's Will has the potential to unduly influence the testator. And, an attorney that is representing a beneficiary who is also engaged in the drafting of a testamentary document is in a position of irreconcilable conflict of interest and undue influence such that even prophylactic measures, including full-disclosure and intelligent waivers, may not overcome the conflict of interest and undue-influence presumption." Am Jur 79 2d., Wills § 371; Id.387; Id. § 393.

It would had been more professional had the appellee allowed an independent lawyer to prepare the will without the influence of he, the benefiting lawyer as this would have afforded the testator an independent advice from an unrelated attorney. Id. § 386.

Also, the admission by Counsellor J. Nyema Baker that he and his late wife drafted the Will wherein he named himself as direct beneficiary and Executor is sufficient proof that the Will with the provisions therein are not the intent and last wishes of the late Maude Elizabeth Pennoh, thus said Will is a product of fraud; and by his