

cancellation of a lease agreement executed between Leonard P. Bernard, the 1st Co-appellant herein, and Gyama Boyd, the 2nd Co-appellant herein.

The appellee alleged that he is the administrator of the Testate Estate of their late father, William Thomas Bernard Sr.; that Co-appellant Leonard P. Bernard executed a lease agreement with Co-appellant Gyama Boyd for a portion of the estate's property lying and situated on the Oldroad Sinkor, and upon which the Yes Gas Station is located; that Co-appellant Leonard P. Bernard has no legal capacity to lease portion of the estate's property; that notwithstanding her lack of capacity to lease the estate's property, Co-appellant Leonard P. Bernard employed tricks and artifice to lease the property to Co-appellant Gyama Boyd, in that she misrepresented her position as regards the administration of the testate estate of her late father, William Thomas Bernard, Sr.

Attached to the petition were facsimiles Letters of Administration Cum Testamento Annex issued in favor of the appellee in 2013, and the lease agreement executed between Co-appellant Leonard P. Bernard and Co-appellant Gyama Boyd for a portion of the estate's property as described herein above.

On December 4, 2018, the appellants upon receiving the trial court's precepts filed joint returns but withdrew same and filed amended returns on December 5, 2018. The appellants admitted to the existence of the lease agreement but asserted that Co-Leonard P. Bernard is Co-Administrator of the Testate Estate of William Thomas Bernard Sr.; that she is also the Trustee of the said estate; that based upon her authority as Co-Administrator of the estate she entered into the lease agreement with Co-appellant Gyama Boyd; that the appellee is estopped from instituting the cancellation proceedings since he and other siblings received proceeds from the payment of rent under the lease agreement; and that the trial court should deny and dismiss the petition for cancellation.

Attached to the returns were facsimile of the following: (i) a Letter of Administration De Bonis Non issued in favor of Co-appellant Leonard P. Bernard and her siblings in 2008; (ii) a notarized trust agreement, bearing the caption 'W. Thomas Bernard Revocable Living Trust Agreement' allegedly executed by the heirs of William Thomas Bernard, Sr; and (iii) remittance receipts in bulk.

On December 12, 2018, the appellee filed his reply alleging that he is the only administrator of the Testate Estate of William Thomas Bernard Sr.; that there is no Trust provided for the Testate Estate of William Thomas Bernard Sr.; that the purported notarized trust agreement bearing the caption 'W. Thomas Bernard Revocable Living Trust Agreement' is not a Trust as contemplated by law; that the doctrine of estoppel is inapplicable to him as he received no money from the rental proceeds of the lease agreement; and that the trial court should grant his petition and order the lease agreement cancelled.

On the same date, December 12, 2018, the appellee filed a motion for summary judgment praying the trial court to grant summary judgment in his favor on account that there are no material issues of fact; that Co-appellant having acknowledged that their late father estate is still opened she, the Co-appellant Leonard Bernard therefore

lacks authority to execute a lease agreement as Trustee for the estate when in fact she has no appointment from the Monthly and Probate Court, Montserrado County designating her as Trustee for the estate.

On January 21, 2019, the appellants filed their resistance to the motion for summary judgment alleging *inter alia* that the appellee's Letters of Administration *Cum Testamento annexo* is illegal because the appellee was out of Liberia in 2013; that the Co-appellant Leonard Bernard is still Co-Administrator of the Testate Estate of William Thomas Bernard Sr.; that Co-appellant Leonard P. Bernard being the Trustee of the estate by virtue of the 'Trust Agreement' had the legal authority to execute the lease agreement with Co-appellant Gyama Boyd; that the petition for cancellation contains factual issues, thus the trial court should deny the motion for summary judgment.

On February 1, 2019, the trial court assigned the petition for hearing and listened to oral arguments on the motion and the resistance thereto. Thereafter, on April 15, 2019, the trial court rendered its ruling granting the motion for summary judgment on grounds that Co-appellant Leonard P. Bernard lacks the legal capacity to execute the lease agreement on behalf of the Testate Estate of William Thomas Bernard Sr., and that by virtue of thereof, ordered the lease agreement executed with Co- appellant Gyama Boyd cancelled. Pertinent excerpts of the trial court's ruling ordering the cancellation of the appellants' lease agreement is quoted herein below, to wit:

"...The determinative issue in these proceedings is **whether or not First Respondent who signed the lease agreement, subject of the proceedings, has the legal capacity as a trustee to do so?** This Court says no. By examination of the various contentions of the parties, the Court is compelled to reach this conclusion.

Now, the contentions raised by the Respondents in both their Returns and Resistance, respectively, do not gravitate to genuine issues as to material facts to warrant trial. Firstly, Respondent acknowledges and admits that First Respondent signed the lease agreement as a trustee and not as an Administratrix. However, Respondents attempt to justify the validity of the action of First Respondent by asserting and so vehemently that because Petitioner allegedly received money under the contested lease agreement; Petitioner is estopped from assailing said lease agreement. Petitioner however denied ever receiving money from First Respondent. First Respondent's claims of payment by money transfer to Petitioner and other beneficiaries of the Testate Estate are not substantiated by receipts, but what he proffered as proofs of money transfers to one Archibald F. Bernard. The exhibit of money transfer to Petitioner and other beneficiaries, in the mind of this Court, are as good as "your words against mine" in the absence of a showing of corresponding mails or receipts acknowledging these payments or transfers. Secondly, Respondents alleged that the Monthly and Probate Court for Montserrado County appointed her

and another member of the Testate Estate in 2008 to serve as Administratrix De Bonis Non cum Testamento Annexo. This assertion coming from First Respondent leaves this Court to wonder how come First Respondent would sign the alleged lease agreement as a trustee and not as an Administratrix. And thirdly, the alleged W. Thomas Bernard Revocable Living Trust Agreement is not registered in keeping with law although the document is allegedly probated. In the face of this patent irregularity, this Court agrees with Petitioner that there exists nothing as trust in so far as the Testate Estate of William Tommy Bernard is concerned. And that First Respondent did not have the legal capacity to make and enter into lease agreement with Second Respondent as a trustee. The action of First Respondent being outside the pale of law, said lease agreement is a legal nullity and is not binding on the Testate Estate of the late William Tommy Bernard.

This Court therefore says that under the facts and circumstances as presented by the parties to these proceedings it is satisfied that there is no genuine issues as to material facts and that Petitioner is entitled to judgment as a matter of law. Let me conclude that it is a settled principle of law in this jurisdiction as expounded in a long line of opinions of the Honorable Supreme Court including the case cited below that "The Court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law.

This brings us to the next issue, which is whether the trial court acted within the pale of the law in granting of the motion for summary judgment is supported by law. We hold that the court acted properly, legally, correctly and within the law in granting the motion for summary judgment, and hence we are inclined to and do hereby affirm the said ruling. In rationalizing our affirmance of the trial court's ruling we take resort to Section 11.3, Sub-section 3, of the Civil Procedure Law, which governs summary judgment. The Sub-section states: "The Court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law." [Emphasis ours]. The appellant contends that because there were numerous factual issues in controversy and in dispute between the parties, and given that the law governing summary judgment requires that there should be no genuine issue as to any material fact, the judge could not legally grant the motion for summary judgment. We do not dispute that there are many factual issues presented in the case, and ordinarily the argument would be persuasive if we were to address the factual merits of the case. But we know that the factual allegations exchanged between the parties require the taking of evidence to substantiate the various claims. The Supreme Court has decided on numerous occasions that mere allegations are not proof. *Kamara et al v. Heirs of Essel*, Opinion of the Supreme Court, March Term, 2012; *Pentee*

v. Tulay, (2000} LRSC 23; 40 LLR 207 (2000). The allegations must be substantiated by the presentation of evidence. Knuckles v. Liberian Trading and Development Bank, [2001] LRSC 17; 40 LLR 511 (2001); Salala Rubber v. Garlawulo, [1999] LRSC 29; 39 LLR 609 (1999); Morgan v. Barclay, (2004] LRSC 22; 42 LLR 259 (2004). Equally, the Supreme Court has determined that it is without the authority to take evidence, and hence we cannot make a determination of the various factual allegations exchanged between the parties. Bah and A. Bah Business v. Henries et al., 41 LLR 87 (2001) LLR 87 (2001)" (2004). Equally, the Supreme Court has determined that it is without the authority to take evidence, and hence we cannot make a determination of the various factual allegations exchanged between the parties. Bah and A. Bah Business v. Henries et al., 41 LLR 87 (2001)." Ministry of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al. [2014] LRSC 5 (10 January 2014).

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioner's Motion for Summary Judgment is hereby granted and said lease agreement ordered cancelled. The Clerk of this Court is hereby ordered to issue the writ of possession and same place in the hands of the Sheriff of this Court to evict oust and eject Respondents from the said Testate Estate of the late William Tommy Bernard. AND IT IS HEREBY SO ORDERED."

The appellants excepted to the trial court's final ruling, announced an appeal therefrom to the Supreme Court, and on May 20, 2019 filed a nine (9) Count bill of exceptions. In its bill of exceptions the appellants basically alleged that the trial court committed reversible error when it granted the motion for summary judgment although there were factual issues raised in the pleadings that needed to be disposed of by a trial. The appellants nine (9) Counts bill of exceptions is quoted herein below, to wit:

"APPELLANTS' BILL OF EXCEPTION

AND NOW COMES APPELLANT in the above-entitled cause of action and being dissatisfied with Your Honor's Ruling on the Motion for Summary Judgment in the above caption case do hereby most respectfully submit this Bill of Exception for Your Honor's approval.

1. That You Your Honor inadvertently erred when you granted the motion for summary judgment although the Appellant raised genuine material issue of fact in their returns by attaching receipts of money transfers to beneficiaries of the William Thomas Bernard Estate through WESTERN UNION and MONEY GRAMS clearly evidencing that the Appellee and the rest of the Bernard family were receiving portion of the rent from the leased property, which is an issue of fact which the court could not determine without a trial.
2. That Your Honor made a reversible error when you failed to take evidence when both the Petition for cancellation and the returns raised contentious factual issues as well as the motion for summary judgment and the returns

thereto which presented issues of fact in addition to the law issues raised therein.

3. That Your Honor made a reversible error by passing on factual issues such as money received by Appellee by Money Gram and Western Union without taking evidence, contrary to the law in this jurisdiction.
4. That Your Honor made a reversible error when you failed and ignored the circumstances surrounding the letters of Administration issued to Appellee when the letters of Administration that named the Petitioner and Respondent as Administrators had not expired or been revoked.
5. That Your Honor made a reversible error when you ignored the issue of the Appellee's failure to attach the copies of the minutes and all records from the Monthly and Probate Court for Montserrado County relating to his appointment as Administrator of the Testate Estate of the late Thomas William Bernard.
6. That Your Honor made a reversible error by not taking evidence on the factual issue of the Appellee's having participated in the distribution of the income generated under the lease without raising any issue regarding the capacity of the 1st Respondent to enter the lease agreement with the 2nd Respondent.
7. That Your Honor made a reversible error by mentioning in your ruling that Western Union and Money Gram receipt are not evidence.
8. That Your Honor made a reversible error when you relied on a mere denial of the Petitioner that he has never received money from the Respondent as the Money Gram and Western Union documents were not only the receipts of the Petitioner rather it consists of receipt of all of the other children of the late Tommy W. Bernard, all which required a hearing before determination.
9. That Your Honor made a reversible error when you failed to rule the case to trial for the purpose of taking evidence from the other children of the late Thomas W. Bernard who had all been receiving money from the lease income of the property covered by the lease agreement.

WHEREFORE AND IN VIEW OF THE FOREGOING APPELLANT/DEFENDANT prays Your Honor to approve Appellant's Bill of Exception so that Your Honor's Ruling on the Motion for Summary Judgment can be reviewed and passed upon on Appellate review by the Supreme Court of the Republic of Liberia, and to further grant unto Appellant/Petitioner such other relief that this court deems just, legal and equitable under the facts and circumstances of this case."

Having meticulously presented the circumstances regarding the cancellation of the appellants' lease agreement, and the contentions raised in the bill of exceptions, this

Court says that the questions it needs to address in bringing finality to this appeal are:

- (1) Whether or not Co-appellant Leonard P. Bernard had the legal capacity to execute a lease agreement on behalf of the Testate Estate of William Thomas Bernard Sr., as a Trustee of the Estate; and
- (2) Whether or not the trial court committed reversible error when it granted the motion for summary judgment and ordered the appellants' lease agreement cancelled?

In addressing the first issue, this Court takes judicial notice of the trial court's records and the pleadings of the parties which show that the Testate Estate of William Thomas Bernard, Sr. is still opened; that there is no Testamentary Trust exhibited in the records; that there is no court's decree from the Monthly and Probate Court placing the Testate Estate of William Thomas Bernard in a Trust; that Co-appellant Leonard P. Bernard has admitted that the estate is opened and that she is one of the Co-Administrator; and that notwithstanding these undisputed facts surrounding the Testate Estate of William Thomas Bernard Sr., Co-appellant Leonard P. Bernard leased the property in the capacity of a Trustee rather than an co-administrator or Executor of the estate.

Co-appellant Leonard P. Bernard has argued that by virtue of the Trust Agreement between she and her siblings, she has the legal capacity to lease the property of the Testate Estate of William Thomas Bernard Sr. We disagree.

Firstly, the Trust Agreement relied on by Co-appellant Leonard P. Bernard is not a testamentary trust created by the late William Thomas Bernard Sr. and as such the said Trust Agreement has no recognition or protection under Section 114 of the Decedents Estates Law relating to trust and trustee. It should be noted that under this provision of the Decedents Estates Law no trustee including Co-appellant Leonard P. Bernard could relied on this 'Trust Agreement' to obtain letters from the Monthly and Probate Court to conduct transaction on behalf of the estate of the late William Thomas Bernard Sr., neither could portion of the said estate be disposed of under this Trust Agreement.

But *assuming arguendo*, we were to give said Trust Agreement and its fiduciaries some legal recognition pursuant to Section 114 of the Decedents Estates Law, can the trustee of said Trust Agreement *sua sponte* disposed of portion of the estates without the involvement of the Monthly and Probate Court? We answer in the negative.

It is trite law that the Monthly and Probate Court has exclusive authority over a decedent's estate and an administrator or administratrix must be authorized by the Monthly and Probate Court before disposing the estate of a decedent. "A person who is not a fiduciary of a decedent's estate duly appointed by a probate court has no power to dispose of the decedent's estate, whether such person be an heir of the decedent or not." *Brown et al v. Summerville*, 4LLR 353 (1935); *Jawhary v. Hassoun*, 40LLR 418 (2001).

In view of the above principle of law this Court says that Co-appellant Leonard P. Bernard had no legal authority to execute any lease agreement(s) on behalf of the Testate Estate of William Thomas Bernard Sr., in the capacity of a Trustee absent a Testamentary Trust or a court's decree from the Monthly and Probate Court placing the Testate Estate of William Thomas Bernard in Trust.

Further, this Court says that even if Co-appellant Leonard P. Bernard had executed the lease agreement in the capacity of a Co-administrator of the estate or a Trusteedly appointed by the Monthly and Probate Court, it was still imperative on the part of Co-appellant Leonard P. Bernard to first obtain the expressed permission of the Monthly and Probate Court, a decree of lease, authorizing her to execute the lease agreement on behalf of the estate. Regrettably, none of the foregoing actions were pursued by the co-appellant in this case

The Supreme Court has held "that one without authority from the Monthly and Probate Court cannot legally or otherwise bind the said estate and an administrator/administratrix or a fiduciary cannot dispose of any property of a decedent's estate without first obtaining the court's permission/order to do so." *MDMC, Express Inc., v. Ruth S. Y. Ibrahim*, Supreme Court Opinion, March Term, A.D. 2020.

We hold therefore, that absent a Testamentary Trust or a court's decree from the Monthly and Probate Court placing the Testate Estate of William Thomas Bernard, Sr. in Trust, Co-appellant Leonard P. Bernard had no legal authority to execute any lease agreement on behalf of the said estate in the capacity of a "Trustee."

We also hold that because the Monthly and Probate Court still retains exclusive authority over the Testate Estate of William Thomas Bernard Sr., same remaining opened to date, and absent an expressed order or permission by the Monthly and Probate Court, authorizing the co-appellant to execute the subject lease agreement on behalf of the estate this Court hereby declare the lease agreement executed between Leonard P. Bernard, the 1st Co-appellant herein, and Gyama Boyd, the 2nd Co-appellant, null and void *ab initio*.

As regards the second issue, whether or not the trial court committed reversible error when it granted the motion for summary judgment and ordered the appellants' lease agreement cancelled recourse to the certified records show that the appellants sternly argued that there existed factual issues that warranted the denial of the motion for summary judgment. The appellants have drawn our attention to the facsimiles of Letters of Administration *Cum Testamento Annexo* issued in favor of the appellee in 2013, the purported notarized trust agreement, bearing the caption 'W. Thomas Bernard Revocable Living Trust Agreement' allegedly executed between the heirs of the late William Thomas Bernard, Sr.; and several receipts of remittances to the heirs, to include the present appellee to support the co-appellant's argument that the appellee is estopped from challenging the lease agreement as he benefitted from rental proceeds from the lease agreement executed between Leonard P. Bernard, the 1st Co-appellant herein, and Gyama Boyd, the 2nd Co-appellant. We think not.

Motion for summary judgment, says the law, will be granted in instances where the court is satisfied that **there is no genuine issue as to any material fact** [Emphasis ours] and that the party in whose favor judgment is granted is entitled to it as a matter of law". Civil Procedure Law, Rev Code 1:11.3(3) provides; *Dennis v. Philips* 21 LLR 506, 513 (1973); *Sia v. Sia* 35 LLR 92, 98 (1988); *Hussan v. Butler*, Supreme Court Opinion, October Term A.D. 2014; *Bettie v. Bettie*, Supreme Court Opinion, March Term, A.D. 2018.

This Court says that while it acknowledges the existence of factual issues like the ones alluded to by the appellants nevertheless, those factual issues are not material, germane or determinative to the conclusion of this appeal as they do not prove or disprove Co-appellant Leonard P. Bernard's authority to administer the estate and lease same. For a factual issue to be considered material, germane, or dispositive in contemplation of the law it means that the fact is very significant and essential to the issue or matter at hand. Blacks' Law Dictionary 9th Edition. It therefore goes without saying that every case that comes before our courts are set in motion by certain peculiar facts but not all facts within a case qualify as material facts in contemplation of the law.

In the present appeal, the material issue germane and relevant to the disposition this case is Co-appellant Leonard Bernard's legal authority to execute the lease agreement on behalf of the estate. There being no dispute as per the material facts that the Testate Estate of William Thomas Bernard is still opened; that there is no Testamentary Trust; that there is no court's decree from the Monthly and Probate Court placing the Testate Estate of William Thomas Bernard, Sr. in a Trust; and that Co-appellant executed the lease agreement as Trustee absent the requisite legal process and instruments articulated herein, there was no need to have the case submitted to trial on immaterial factual issues.

We hold therefore, that the appellee being better situated and entitled to summary judgment as a matter of law, the trial court committed no reversible error when it granted the motion for summary judgment and ordered the appellants' lease agreement cancelled.

In concluding this Opinion, we must unequivocally state here that our decision affirming the trial court's ruling ordering the cancellation of the lease agreement between Co-appellant Leonard P. Bernard and Co-appellant Gyama Boyd is predicated solely on the fact that the act of Co-appellant Leonard P. Barnard in signing the lease agreement with the 2nd appellant in the capacity of a 'Trustee' was *ultra vires* as there was no trust established. Thus, no one including the current appellee or other heirs, has the authority to *sua spante* convey or lease properties of the testate estate without the authorization of the Monthly and Probate Court and the knowledge of other beneficiaries who are named and entitled to benefit under the Last Will and Testament of William Thomas Bernard Sr., as all the properties listed and mentioned in the Last Will and Testament of William Thomas Bernard Sr., belong only to the Testate Estate of William Thomas Bernard, Sr., and no one person.

This said, the Court takes judicial notice that since the death of William Thomas Bernard, Sr., on March 6, 1977, and the reading of his Last Will and Testament on June 23, 1977, there have been plethora of litigations surrounding his estate dating as far back to the first case decided in 1979, *Reeves et al., v. Johnson*, 28LLR 30 (1979) to the most recent one decided in 2016, *Testate Estate of William Thomas Bernard, Sr., v. The Intestate Estate of the late Martha Stubblefield Bernard*, Supreme Court Opinion, March Term, A.D. 2016. It is undisputed that these continuous lawsuits have their roots in the fact that the *Testate Estate of William Thomas Bernard, Sr.*, has remained opened and is still opened long over the statutory period of 12 months since the Letters Testamentary was issued in 1977.

The Court says that the act of keeping this estate opened for a period of 44 years clearly violates the Decedents Estates Law, the Rules of the Monthly & Probate Court, and Supreme Court Opinions, *Nungborv. Fisk*, 13LLR 304, 308 (1958), *Reeves et al., v. Johnson*, 28LLR 30, 47(1979); *The Testate Estate of the Thomas Bernard Sr., v. Intestate Estate of Martha Stubblefield-Bernard*, Supreme Court Opinion, March Term **A.D.** 2016, which state that all estates whether testate or intestate, must be administered and closed within twelve months, unless the executor(trix), administrator(trix) give notice to the court giving convincing proof of reasons for the impossibility of the estate to be closed, in which case, the court is authorized to extend the period six (6) months. Rules of the Monthly & Probate Court, Rule 11. This is not the case as the Testate Estate of the William Thomas Bernard Sr., has remained opened after 44 years.

WHEREFORE AND IN VIEW OF THE FOREGOING, the summary judgment of the Sixth Judicial Circuit, Civil Law Court, Montserrado County ordering the appellants' lease cancelled is hereby affirmed. The Clerk of this Court is hereby ordered to send a Mandate to the Sixth Judicial Circuit, Civil Law Court, Montserrado County ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Given the protracted period of 44 years that the Testate Estate of William Thomas Bernard Sr., has remained opened, we mandate the judge of the Monthly and Probate Court, Montserrado County to ensure, with immediate effect, the closure of the Testate Estate of William Thomas Bernard Sr., in keeping with law and that those who are entitled to benefit under the Last Will and Testament of William Thomas Bernard Sr., receive their just share(s) as stated in the Will. Costs are ruled against the appellants. AND IT IS SO ORDERED.

Appeal denied

When this case was called for hearing, Counsellors Tiawan S. Gongloe and Momolu G. Kandakai of Gongloe & Associates Law Firm appeared for the appellants. Counsellor Joseph P. Gibson of Wright and Associates appeared for the appellee.