

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS MARCH, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Louise C. Ngangana and Mansfield Wrotto,)
 Attorneys-in-Fact for Frederica Free-Moulton)
 and Michael D. Moulton, Administratrix and)
 Administrator of the Intestate Estate of Joseph)
 Karbar Levee Moulton of the City of Monrovia,)
 Liberia.....Appellants)

Versus)

APPEAL)

His Honor, Judge Scheaplor R. Dunbar, and)
 Evelyn Brown Moulton Widow of the late)
 Joseph Karbar Levee Moulton, by and thru her)
 Attorney-in-Fact, Mr. Abel J. Mulbah of the City)
 of Monrovia, LiberiaAppellees)

GROWING OUT OF THE CASE:

Evelyn Brown Moulton, Widow of the late)
 Joseph Karbar Levee Moulton, by and thru her)
 Attorney-in-Fact, Abel J. Mulbah of the City of)
 Monrovia, Liberia.....Petitioner)

Versus)

Petition for the Revocation)
 of Letters of Administration)

Louise C. Ngangana and Mansfield Wrotto,)
 Attorneys-in-Fact for Frederica Free-Moulton)
 and Michael D. Moulton, Administratrix and)
 Administrator of the Intestate Estate of Joseph)
 Karbar Levee Moulton of the City of Monrovia,)
 Liberia.....Respondents)

Heard: November 16, 2023

Decided: June 14, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

The appellants, Frederica Free-Moulton, presumptive widow, and Michael D. Moulton, son of the late Joseph Karbar Levee Moulton, through their Attorneys-in-Fact, Louise C. Ngangana and Mansfield Wrotto, filed a petition for letters of administration to administer the Intestate Estate of Joseph Karbar Levee Moulton, who died on October 15, 2020, in the United States of America. On March 30, 2021, the Monthly and Probate Court for Montserrado County heard the petition and issued letters of administration

to the appellants. Subsequently, the Probate Court amended the letters of administration to include Barbara-Lee P. Moulton, John Kojo Lemuel Moulton, and Malissa Moulton as co-administrators/trix of the Intestate Estate of Joseph Karbar Levee Moulton.

While the administrators/trix were executing their duty, on January 4, 2022, the appellee, Evelyn B. Moulton, filed before the Monthly and Probate Court a petition for the revocation of the letters of administration issued to Frederica Free-Moulton and Michael D. Moulton on March 30, 2021, alleging that she is the widow of the late Joseph Karbar Levee Moulton because she was married to him before he died.

Appellee, therefore, contended that she, rather than the appellants, is entitled to the letters of administration to administer the intestate estate of her alleged husband. She, therefore, prayed that the court revoked the letters of administration issued in favor of the appellants.

The appellants filed their returns and alleged therein substantially that they, Frederica Free-Moulton and Michael D. Moulton, are widow and son, respectively, of the late Joseph Karbar Levee Moulton and are entitled to letters of administration; that Joseph Karbar Levee Moulton and Federica Free-Moulton were legally married on April 23, 2004, in Maryland, United States of America; that the appellee was the third wife of the deceased but was divorced on March 22, 2004, by the Circuit Court for Howard County, Maryland, United States of America. The appellants, along with their returns, filed a motion to dismiss the appellee's petition for the revocation of March 30, 2021, letters of administration on the ground that there existed no such letters issued to the appellants since the court had amended same on July 15, 2021. Upon the filing by the appellee of her resistance to the motion to dismiss, the court entertained arguments, denied the motion, and proceeded to hear the matter on its merit. After the hearing, the trial judge ruled, ordering that the letters of administration issued to the appellant be revoked. The trial judge's ruling captured the substantive fact from the records. Therefore, we reproduce the said ruling verbatim.

THE COURT'S FINAL JUDGMENT

On January 4, 2022, Mrs. Evelyn B. Moulton, by and thru her Attorney-In-Fact, as petitioner, filed a petition for the revocation of letters of administration issued by this court to Frederica Free Moulton and others, to administer the Intestate Estate of the late Joseph Karbar Levee Moulton.

In her 9-count petition, petitioner alleged the following:

1. That she is represented by her attorney-in-fact, Abel J. Mulbah.
2. That petitioner is the widow of the Late Joseph Karbar Levee Moulton who died in the United States of America and has since been buried in Washington D.C., United States of America.
3. That petitioner and the late Joseph Karbar Levee Moulton got married in Liberia on February 25, 1989 and were still married up to the death of Mr. Moulton.
4. That up to the time of his death, petitioner's late husband did not obtain any Bill of Divorcement against her at the Civil Law Court, Sixth Judicial Circuit, Montserrado County to indicate that they ever got divorced and therefore could not have consummated another marriage. Petitioner attached copy of a Clerk's Certificate from the Civil Law Court to prove the pendency of the divorce action at that court.
5. That on February 25, 2021, one Frederica Free, who named herself as Frederica Free Moulton, a girlfriend of the deceased, who claims to be the widow of the deceased, filed a petition for letters of administration to administer the Intestate Estate of the Late Joseph Karbar Levee Moulton. On March 30, 2021, this Court issued letters of administration to respondents without any reference to petitioner, widow of the deceased.
6. That on July 5, 2021, Barbara-Lee P. Moulton, John Kojo Moulton, and Malisa Moulton-Sheriff filed a motion for the modification and amendment of the letters of administration issued in favour of respondents and that the motion was granted. On July 15, 2021, this court issued amended letters of administration to include Frederica Free Moulton.
7. That co-respondent Frederica Free who was a concubine of the deceased and her attorney-in-fact are total strangers and therefore have no legal capacity to administer the estate of the late Joseph Karbar Levee Moulton. Hence, the letters of administration issued to them should and must be revoked by this Court.
8. That petitioner being the widow of the late Joseph Karbar Levee Moulton, should be given the first priority to administer the estate of her late husband and not a girlfriend or concubine of the deceased. Petitioner therefore pray the Court to issue her letters of administration in keeping with Section 111.1 of the Decedents Estates Law.

Petitioner prayed this court to revoke the letters of administration issued to co respondent Frederica Free Moulton because she is a total stranger and therefore has no legal capacity to administer the estate of the late Joseph Karbar Levee Moulton.

Respondents filed their returns to the petitioner's petition along with a motion to dismiss the entire action.

The averments of the respondents' returns are summarized as follows:

1. That the entire suit should be dismissed for the fact that there is no letters of administration issued by this court in the names of respondents Frederica Free Moulton and Michael D. Moulton, as said letters of administration were amended by the Court to add thereon Barbara-Lee P. Moulton, John Kojo Lempel Moulton and Malisa Moulton, by virtue of which the original letters of administration were replaced by a new letters of administration.
2. That petitioner is misrepresenting to and misleading the court into believing that she is the wife of the later Joseph Karbar Levee Moulton and that she was his wife at the time of his death.
3. That petitioner was the third wife of the deceased but was divorced by him on March 22, 2004 by the Circuit Court for Howard County, Maryland, U.S.A., and by virtue of the judgment of the American Court petitioner was no longer the wife of the deceased and therefore she is not his widow. Respondents proffered a copy of the judgment of divorce.
4. That after the deceased divorced petitioner on March 22, 2004, he married Co-respondent Frederica Free Moulton on May 8, 2004. Respondents proffered copy of the Certificate of Marriage.
5. There is no showing that petitioner ever challenged in court the legitimacy or legality of the divorce obtained by the deceased against her. If she felt the divorce was not valid or legal, she would have instituted an action challenging the legality of the divorce and the marriage of the deceased to co-respondent Frederica Free Moulton. It is only a court of competent jurisdiction that can annul a marriage or declare marital parties divorced.
6. Petitioner is not the wife of the late Joseph Karbar Levee Moulton as she is alleging and therefore she is not entitled to claim whatever property she assume the decedent left after his death.
7. That it is strange for the Clerk of the Civil Law Court to issue a Clerk's Certificate to confirm that the late Joseph Karbar Levee Moulton did not obtain any Bill of Divorcement when the case was never heard before said court. If petitioner knew that the late Joseph Karbar Levee Moulton did not obtain a divorce before getting married to co-respondent Frederica Free Moulton, why she did not challenge the marriage in a court in America but waited until after the death of the deceased before filing a suit in Liberia. Why she did not claim the dead body of her alleged husband?
8. That this Court did not have any duty to inform petitioner about the petition for letters of administration filed by deceased's wife, Frederica Free Moulton and his son, Michael D. Moulton before issuing letters of administration to them, as petitioner was no longer the wife and therefore was not in the line of persons specified under our law as being eligible to obtain letters of administration. She was therefore not entitled to and had no legal right to any information concerning the deceased's estate.
9. That If petitioner had considered Frederica Free Moulton as a concubine of the deceased, she should have proceeded to the Court in the United States to prove such allegation. Instead, suffering from no waiver, disability, and laches at the time, she waited until after his death to seek revenge for the divorce by attempting to drag the name of the deceased into the mud by seeking to illegally take over properties to which she is not entitled, driven by greed and revenge.
10. That petitioner is not qualified to receive letters of administration to administer the deceased's estate, as she had been divorced by the

deceased since 2004; as evidenced by the divorce documents proffered by respondents.

11. That respondents deny, refute, and disclaim any and all issues, claims, contentions and points raised in petitioner's petition which were not specifically traversed.

Respondents prayed the court to deny and dismiss the petitioner's petition.

Pleadings rested with the filing of petitioner's reply in which she reconfirmed the averments of her petition and categorically denied that she was lawfully divorced by the deceased in 2004. Petitioner maintained that she could not have been lawfully divorced by the deceased in an American Court while the divorce proceedings he filed in Liberia was still pending undetermined before the Civil Law Court. Petitioner also maintained that she not could have challenged the purported divorce action in the American Court because she was never served with any writ of summons to bring her under the jurisdiction of the foreign court by the service of a Writ of Summons on her.

After pleadings rested, the respondents' motion to dismiss was resisted by petitioner, heard and denied by the court. The law issues raised in the pleadings were also heard and disposed of and the case ruled to trial to determine the factual issues raised in the pleadings. The trial of this case commenced on May 24, 2022. During trial, petitioner produced two general witnesses and one subpoenaed witness. Their testimonies are summarized herein.

RUTHIE A.C. MILLS

Petitioner's first witness was Ruthie A.C. Mills. She testified that she was acquainted with Petitioner Evelyn Moulton and the late Joseph Karbar Levee Moulton, as they were her God parents at their church. She told the court that petitioner and the late Joseph Moulton got married at a breakfast wedding in Brewerville in February, 1989. She testified to the wedding certificate of the couple which was marked by court. She testified that even though the deceased filed a divorce action against the petitioner, the divorce did not go through, so they remained married up to the time of the death of the deceased.

On the cross examination, Ms. Mills testified that she was baptized at Shiloh Baptist Church at the age of 13 and the petitioner and the deceased served as her Godparents. She said she usually spent weekends with her Godparents at their home. She said she was present at the wedding of her Godparents in 1989.

ABEL J. MULBAH

Petitioner's second witness was Mr. Abel J. Mulbah, who is also the attorney-in-fact for petitioner. He testified that petitioner was his grandmother-in-law and that he also serves as her attorney-in-fact in the revocation proceedings. He told the court that the late Joseph Karbar Levee Moulton was also his grand father-in-law as he was happily married to their granddaughter, Mrs. Marthaline Evelyn Moulton Mulbah. He testified to the Power of Attorney executed by Mrs. Evelyn Brown Moulton in his favour.

He told the court that petitioner and the late Joseph Karbar Levee Moulton were legally married and remain husband and wife up to the time of the death of the

deceased. He testified to and also identified the wedding certificate of petitioner and the late Joseph Karbar Levee Moulton.

On the cross examination, he told the court that his wife was a biological granddaughter of petitioner Evelyn Moulton and the Late Joseph Karbar Levee Moulton.

He testified that he started knowing the family from 2011 to 2012 and was opportune to have witnessed a visitation of Mr. Moulton to his wife and witnessed him kissing his wife in the living room where he was holding their grandchild. He also testified that he did not know any other wife of the deceased other than Mrs. Evelyn Moulton.

VICTOR G. GAILOR

The Petitioner's last witness was Mr. Victor G. Gailor, Clerk of the Civil Law Court, 6th Judicial Circuit, Montserrado County, Liberia.

He testified that based on a writ of subpoenaed duces tecum and ad testificandum served on him by the Probate Court, he came along with the entire case file of a divorce action pending before the Civil Law Court between the late Joseph Karbar Levee Moulton and Evelyn Brown Moulton. He testified that the divorce action was still pending undetermined before the Civil Law Court. The case filed was later transcribed and marked by court upon the request of petitioner's counsel.

At the close of petitioner's evidence, the following instruments were admitted into evidence: (1) the Power of Attorney executed by petitioner in favour of Abel J. Mulbah, (b) copy of the couple's marriage certificate, and (3) transcribed copy of the entire case file of the divorce action filed by the deceased against respondent in 1994 which is still pending undetermined before the Civil Law Court.

RESPONDENTS' EVIDENCE

Respondents produced five (5) witnesses during trial. Their testimonies are summarized herein.

JOHN KOJO LEMUEL MOULTON

Respondents' first witness was Rev. John Kojo Lemuel Moulton, son of the late Joseph Karbar Levee Moulton.

He testified that his father got married four (4) times during his lifetime and that Evelyn Moulton was his late father's third wife. He said the fourth wife is co-respondent Frederica Free Moulton, who is his stepmother.

He said his father divorced his last three wives, including petitioner and that he has copy of the certificate of divorce as evidenced that his father divorced petitioner before marrying his fourth wife. He testified that his father divorced petitioner in 2004 and on May 8, 2004 he married co-respondent Frederica Free Moulton in Moulton in Maryland, U.S.A. he testified and identified a Judgment of

Divorce entered by the Circuit Court in Maryland, U.S.A. and a certificate of divorce issued by the American Court which were marked by the court. He testified that his father died on October 15, 2020 in Maryland, U.S.A. and that he attended the

funeral in the United States. He testified to and identified the funeral program of his late father. He said his father and co-respondent Frederica Free Moulton visited Liberia in 2013/2014 at which time petitioner was still in Liberia.

On the cross examination, he testified that it was in 2022 that he received copy of his father's divorce certificate from his elder brother. He also admitted that he was aware of a divorce action filed by his father against petitioner in Liberia.

LOUISE CHARWLE NGANGANA

Respondents' second witness was Mrs. Louise Charwle Ngangana, sister of co-respondent Frederica Free Moulton. She testified that the late Joseph K.L. Moulton got married to her sister in 2004 and that she testified that the late Joseph K.L. Moulton got married to her sister in 2004 and that she took part in the wedding.

She testified that she knows petitioner to be the third wife of the late Joseph Karbar Levee Moulton. She told the court that the deceased and petitioner were not married at the time of his death, as he had divorced her in 2004. She testified that the deceased and co-respondent Frederica Free Moulton visited Liberia in 2013 and lived with her family at their home.

She testified that she attended the funeral program of the deceased in the United States in 2020 and that several of his children and relatives attended the funeral. She maintained that petitioner was never married to the deceased at the time of his death in 2020.

BARBARA-LEE MOULTON

Respondents' third witness was Barbara-Lee Moulton, daughter of the late Joseph Karbar Levee Moulton. She testified that petitioner was her former stepmother and that co-respondent Frederica Free Moulton was her father's present wife and that he married her in May, 2004 in Maryland, the United States of America. She told the court that her father married four (4) times during his lifetime. Petitioner was his third wife while co-respondent Frederica Free Moulton was his fourth wife and widow. She testified that her father died on October 15, 2020 in the United States where he has also buried and that she was not present for the funeral. She said her late father visited Liberia in 2013 accompanied by his fourth wife, co-respondent Frederica Free Moulton. During their visit, they stayed at the home of Mr. and Mrs. Ngangana and later moved to her home in Virginia. At the time of his visit to Liberia, petitioner Evelyn Moulton was in Liberia. During his visit to Liberia, the deceased attended a honouring program at the Shiloh Baptist Church in Virginia. At that program, her father introduced Frederica Free Moulton as his wife to the congregation but she could not remember if petitioner attended that program. She said her father got divorced in the United States and that a notification was published in Liberia in the Inquirer Newspaper and two other local newspapers but does not know if the notification was served on petitioner.

FREDERICA FREE MOULTON

Mrs. Frederica Free Moulton was respondents' fourth witness. She testified that she is the fourth wife and widow of the late Joseph Karbar Levee Moulton. She told the court that the deceased married and divorced three other women before

marrying her in Silver Springs, Maryland, U.S.A on May 8, 2004 and that they lived together as husband and wife for sixteen (16) years.

She said the deceased divorced petitioner in March, 2004 in the United States and later married her that same year in the United States. She said in all family meetings, she was referred to as the wife of Joseph Moulton while petitioner was referred to as the ex-wife. She testified that she give the divorce decree to Faith Moulton, petitioner's daughter when she asked for it to enable her get a visa for her mother.

She said when she and her husband visited Liberia in 2013, petitioner was in the country and did not raise any issue about her marriage to Mr. Joseph Moulton. She said she was surprised when petitioner filed her petition to revoke the letters of administration that had been issued to respondents, including her. She said during their visit to Liberia, they attended Shiloh Baptist Church where a program was held in his Honor and that petitioner was present at the honouring program.

On the cross examination, she said the deceased had been married to her from 2004 up to the time of his death in 2020. She admitted that she was aware of divorce proceedings filed against petitioner by the late Joseph Moulton in Liberia, but due to the Octopus war in Liberia, the deceased left the country for his survival and that the Civil Law Court's records will show the status of the divorce proceedings. She said petitioner was aware of the divorce proceedings against her in the United States of America.

ATTORNEY KORBOI DANIELS

Atty. Korboi Daniels was designated by Cllr. Dewel Gray, the Deputy Minister for Legal Affairs at the Ministry of Foreign Affairs to appear in court and testify on her behalf.

During his testimony, the witness produced a Passport Application Summary for Mrs. Evelyn Moulton. The documents also included copy of the passport application form filled out by Mrs. Evelyn Moulton in which she is alleged to have described her marital status as "Single". The documents were received and marked by the Court.

On the cross examination, he told the court although the passport Director and earlier informed the Court that there was no information in the Bureau's data base for Mrs. Evelyn Moulton, he was not the final arbiter when it comes to the submission of passport application documents. He said the Deputy Minister conducted a further research and obtained the documents that he submitted to the court.

At the close of respondents' evidence, the following documents were admitted into evidence to form a cogent part of the respondents' case in chief: (1) copy of a judgment of divorce entered by the Circuit Court for Howard County, Maryland, U.S.A., (2) a certificate of marriage issued by the Circuit Court for Montgomery County, Maryland, U.S.A, (3) funeral program of the Late Joseph Karbar Levee

Moulton, (4) copy of the memorial program for the late Joseph K.L. Moulton held at the Shiloh Baptist Church in Virginia, Liberia, and (5) A communication from the Deputy Minister of Legal Affairs at the Ministry of Foreign Affairs which comprised of the passport application summary of Mrs. Evelyn Moulton and what purports to be copy of Evelyn Moulton's passport application form.

The pleadings and evidence of the parties raised several issues, but the issues that are determinative are:

- (1) Whether the late Joseph Karbar Levee Moulton legally divorced petitioner Evelyn Brown Moulton on March 24, 2004 in the United States of America?
- (2) Whether Petitioner produced sufficient evidence to warrant the revocation of the amended letters of administration issued by this court to the Respondents.

The Court shall dispose of the issue in the order presented.

The evidence adduced at the trial showed that the late Joseph Karbar Levee Moulton married Evelyn Brown Moulton, his third wife, in February, 1989. On October 4, 1994, the Late Joseph Moulton, as Plaintiff, filed an Action of Divorce for Incompatibility of Temper against Evelyn Moulton at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Liberia. The Clerk of the Civil Law Court issued a Clerk's certificate to the effect that the 1994 Divorce action filed by the late Joseph Moulton against petitioner was still pending undetermined before that Court.

The evidence also showed that while the divorce action was still pending in Liberia, Mr. Moulton travelled to the United States in 1996 or thereabout. While in the United States, and without first discontinuing the 1994 divorce action he filed in the Civil Law Court against petitioner, Mr. Moulton preceded to the Circuit Court for Howard County, Maryland, U.S.A and filed a second divorce action against petitioner.

In her petition for the Revocation of Letters of Administration issued to respondents, petitioner maintained that she remained the wife of the Late Joseph Karbar Levee Moulton up to the time of his death in 2020 because she was never brought under the jurisdiction of the American court by the service of the Writ of Summons and the complaint on her. She alleged that the only divorce action that she knew about was still pending undetermined before the Civil Law Court in Monrovia, Liberia.

It is settled law that the burden of proof rests on the party who alleges a fact, but when the subject matter of a negative averment lies within the knowledge of the other party, the averment is taken as true unless disproved by that party. **1 LCLR, Civil Procedure Law, Section 25.5 (1).** Petitioner having produced evidence to prove the pendency of a divorce action against her in Liberia, and having alleged that she was never brought under of the American Court, the burden of proof shifted to the respondents to prove that the American Court acquired jurisdiction over the petitioner. Respondents' evidence failed to produce any valid evidence from the American Court to prove that petitioner was brought under the jurisdiction of a foreign court by the service of a writ of summons on her. Instead, what respondents produced during trial was a judgment of divorce from the Circuit Court for Howard County, Maryland, U.S.A. and a Marriage Certificate issued by the Circuit Court for Montgomery County, Maryland, U.S.A. The Writ of Summons issued by the Maryland Court and the Returns thereto were never produced during trial. Can the judgment of divorce entered by the Maryland Court be deemed valid and enforceable in the absence

of any concrete evidence to prove that petitioner was brought under the jurisdiction of that foreign court? The Answer is resounding "No".

Liberian law provides that a foreign judgment in a case in which the defendant did not appear although a party thereto shall not be admissible against him, but if any person appeared on his behalf in the case, the foreign judgment shall be admissible unless he shows that the appearance was without his authority. A foreign judgment is not conclusive of any act whatsoever, but is some evidence. **1 LCLR, Civil Procedure Law, Section 25.12.**

In the mind of the Court, the failure of respondents to produce any evidence from the Circuit Court in Maryland, U.S.A, which they could have obtained if a diligent effort had been made, to prove that the Writ of Summons issued by that Court was served on the petitioner in 2004 is fatal to their defense. It is settled law that no judgment is binding on a party unless he/she was brought under the jurisdiction of the Court. **Badio vs. Cole-Lartson**, 33 LLR 125 (1985). How did Mr. Moulton expect the judgment of the Maryland court to be binding and enforceable against petitioner when no effort was made to bring her under the jurisdiction of the foreign Court?

This Court also takes judicial notice of the pendency of a divorce action filed by Mr. Moulton in 1994 against petitioner at the Civil Law Court. Did the late Joseph Moulton obtain a valid divorce against petitioner in 2004 in the United States without first discontinuing the first divorce action he filed against petitioner in Liberia. The answer is "No". the divorce the late Joseph Moulton obtained in 2004 against petitioner in the United States was not valid and binding on petitioner because (1) she was never brought under the jurisdiction of the American Court and (2) the 1994 divorce action in Liberia was never discontinued prior to the filing of the second divorced action in the United States. This Court therefore holds as a matter of law that that the 2004 divorce judgment entered by the American Court was not valid and enforceable for want of jurisdiction over the person of the petitioner and due to the pendency of another divorce action in Liberia. Petitioner therefore remained the lawful wife of the deceased up to the time of his death in 2020. Whatever relationship that existed between the deceased and co-respondent Frederica Free Moulton was merely a bigamous relationship which did not confer any valid martial rights on her. We therefore agree with petitioner that she is and remains the widow of the deceased and therefore was first priority to apply for and obtain letters of administration consistent with **Section 111.1 of the Decedents Estates Law of Liberia.**

As to the second issue, this court says petitioner produced sufficient evidence during trial to warrant the granting of the relief prayed for in her Petition. Her evidence clearly showed that she was never validly divorced by her husband in 2004 in America. The only divorce action in which she was brought under the jurisdiction of the court and appeared to defend is still pending undetermined before the Civil Law Court in Liberia.

In any effort to prove that petitioner was fully aware of the divorce action filed against her in America, respondents produced evidence to show that petitioner never questioned or challenged the validity of the American divorce until after the death of Mr. Joseph Moulton in 2020. How could she have challenged a divorce judgment entered against her in an American Court when she was never brought under the jurisdiction of that foreign court?

Respondents also produced evidence to prove that petitioner was fully aware that she had been divorced by her husband in America, as she designated her marital status as "Single" in her passport application form she filled out at the Passport Division of the Ministry of Foreign Affairs. That contention or argument is not persuasive. This Court having held that the divorce judgment entered by the American Court in 2004 was invalid and unenforceable for want of jurisdiction over the person of petitioner and due to the pendency of another divorce action in Liberia between the Late Mr. Joseph Moulton and petitioner, the issue of what petitioner did nor did not do after the foreign divorce judgment was entered against her in 2004 is absolutely irrelevant as far as this Court is concern. As the saying goes, what is not done legally is not done at all. Nothing the petitioner did nor did not do after 2004 can validate that foreign divorce judgment.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the Petitioner's Petition is hereby granted. The Amended Letters of Administration issued to co-respondent Frederica Free Moulton and the other named respondents are herewith revoked for legal reasons detailed herein above. The amended letters were obtained through misrepresentation of material facts. Costs ruled against respondents. And it is hereby so ordered.

To this final ruling of the trial judge, the appellant entered exception and filed an eight-count bill of exceptions imputing eight errors allegedly committed by the trial judge. The appellants' bill of exceptions can be summarized as follows: 1) that the trial judge erred to have revoked the amended letters of administration when the appellee's petition was only to revoke letters of administration that did not exist; 2) that the trial judge erred when he failed to consider the testimonies that the appellee knew about the divorce obtained by the Late Joseph Karbar Levee Moulton against her in the United States of America, and to take into consideration all the evidence introduced by the appellant to include, oral testimonies and documents such as the divorce certificate, marriage certificate, and the funeral programs of the deceased which listed the appellee as the third wife

of the deceased; and the passport application in which the appellee designated herself as "single" filed with the Ministry of Foreign Affairs; 3) that the trial judge erred to have ruled that the appellee is still the lawful wife of the late Joseph Karbar Levee Moulton since there is an action of divorce pending before the Civil Law Court.

Having reviewed the certified records and considered the alleged errors imputed to the trial court as summarized from the appellant's bill of exceptions and a careful reading of the parties' briefs filed with this Court,

we have identified one determinative issue for the resolution of this case. The issue is:

Whether or not the trial judge erred when he revoked the appellants' letters of administration and subsequently declared the appellee Evelyn B. Moulton as the widow of the late Joseph Karbar Levee Moulton?

We shall now proceed to address the lone issue as presented. As gathered from the judge's final ruling, the appellee produced two regular witnesses and one subpoenaed witness. Substantially, the testimonies of these two witnesses tend to establish that the appellee and the deceased consummated a contract of marriage in 1989 and that the deceased filed an action of divorce against the appellee in 1994 in the Six Judicial Circuit, Civil Law Court, Montserrado County still pending undetermined. The testimony of the appellee's 2nd witness tends to establish that the witness is the grandson-in-law of the appellee, that he started knowing the family around 2011 and 2012, and that he witnessed a visitation by the deceased to co-appellee and witnessed the deceased kiss the appellee in the living room on one occasion.

For its part, the appellant produced five (5) regular witnesses. The appellant evidence tend to establish that the deceased divorced appellee in 2004 and in the same year the deceased got marry to appellant Frederica Free Moulton and that they both live together as husband and wife until the death of the decease on October 15, 2020; that the appellee was the third wife of the deceased; that the deceased paraded with co-appellant Frederica Free Moulton in Liberia and that they both visited the Shiloh Baptist Church in Virginia where the deceased introduce appellant as his wife to the congregation where the appellee was also present; that the decease and co-appellant after their marriage lived together as husband and wife for sixteen (16) years both in and out of Liberia without any confrontation and that throughout the marriage, the deceased refer to the co-appellant as his wife, while he refer to the appellee Evelyn Moulton as his ex-wife; that the deceased give the divorce certificate of the appellee to the appellee's daughter, Faith Moulton, to enable her get a visa for the appellee to travel to the U.S.A and to have the certificate delivered to her mother, the appellee; that the appellee was aware of the divorce proceeding against her

in the United States; that the appellee refer to herself as single in a passport application form filed with the passport division of the Ministry of Foreign Affairs.

A scrutiny of the petition and the evidence adduced by the appellee in support of her petition for the revocation of the letters of administration issued in favor of the appellant shows that the appellee's entire case is premised on the ground that she was married to the deceased in 1989, that the deceased commenced divorced proceedings in the Civil Law Court in 1994 which is pending in the said court, that she is not aware of any subsequent divorce proceedings that the deceased initiated and concluded. Therefore, she remains the widow of the deceased. Conversely, the returns of and the evidence adduced by the appellants in support of the letters of administration issued to them are premised on the allegations that, indeed, the appellee and the deceased were married in 1989 but that the deceased instituted an action of divorce against the appellee in the United States and obtain a favorable judgment culminating in the court issuing a divorce certificate in 2004. After that, the deceased married co-appellee Frederica Free Moulton in the same year. The divorce certificate was given to the appellee's daughter to facilitate the appellee's travel to the U.S.A. and for onward delivery of the certificate to the appellee, and the appellee, with the knowledge of the divorce, indicated in her passport application that she was single. The appellants' defense is also premised on the allegation that the co-appellant and the deceased live together as husband and wife and travel to Liberia on several occasion representing themselves as husband and wife in clear view of the appellee without any objection whatsoever from the appellee.

It is the law in this jurisdiction that when statements are made, or evidence presented, in the pleading or by witnesses on the stand that is damaging to a party and need to be rebutted, and the party fails to produce rebutting witnesses or other evidence, the evidence presented will be deemed to be true. *Cole v His Hon. Wah et al., Supreme Court Opinion, December Term, 2013*; In *Wien et al. v. Republic* 30 LLR 71 (1982). This Court has held that “the failure to deny [or rebut a material fact within [one's) knowledge previously testified to against him warrants the inference that it was true”. As stated hereinabove, the appellee failed to rebut germane allegations made by the appellant, which are relevant in determining this matter. Consequently, the appellee's failure to rebut the appellants' testimonies that a copy of the divorce certificate was given to the

appellee by her daughter, that the co-appellant Frederica Mouton and the deceased openly and notoriously show themselves to be husband and wife, and that the appellee was aware of this without objection, and that the appellee, knowing of the divorce represented herself in a passport application form as being single, are all deemed to be admitted, the appellee not having rebut them.

The trial judge, also in his final ruling, reasoned that the 2004 divorce judgment entered by the American Court was not valid and enforceable for want of jurisdiction over the appellee due to the pendency of the divorce action between the deceased and appellee Evelyn Moulton in Liberia and based on the law that foreign judgment obtained against a person in a trial in which the person was not present or represented is not enforceable. To begin with, we are left to wonder about the basis of the judge's conclusion that the co-appellee was never brought under the jurisdiction of the Howard County Circuit Court when the judge himself stated in his ruling that the returns to the writ of summons were never produced. However, we believe that the real issue here ought to be that in the face of the divorce certificate, did the co-appellant Frederica Free Moulton have a duty to produce court records of the divorce between the appellee and the deceased? Neither is it co-appellant Frederica Free Moulton who filed the divorce action nor was she a party to the said action. Once the court issues the certificate, it is deemed correct unless the contrary is established.

Additionally, unless it can be established that co-appellant Frederica Free Moulton, in any manner or form, connived in fraudulently procuring the said instrument, she is in good faith. It, therefore, ought not to be the duty of the co-appellant to prove whether the appellee was served the summons, thereby bringing her under the jurisdiction of the court. We agree that it is the law that he who alleges a fact has the burden to prove it. It is, however, also an exception to that law that "when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party. 1LCLR25.5 In the instant case, co-appellant Frederica Free Moulton, who was not a party to the alleged divorce proceedings between the appellee and the deceased, cannot be expected to have in her possession instruments such as the precepts that were issued by the court during the pendency of the said action. The divorce certificate is

the best evidence to induce her reliance. It is the party that challenges the validity of the certificate that has the onus to produce evidence to the contrary. In the instant case, none of the appellee two regular witnesses produced any evidence challenging the authenticity or validity of the said certificate.

The unrefuted testimonies of co-appellant Frederica Free Moulton and her witnesses that a copy of the divorce certificate was sent to the appellee through her daughter placed upon the appellee the burden to act in defense of her purported marriage. The records show that not only did the appellee not act, but the appellee also sat supinely as co-appellant Frederica Free Moulton and the deceased openly and notoriously presented and represented themselves as husband and wife to the world and in the full glare and to the knowledge of the appellee without any objection whatsoever. As if these were not sufficient, the undisputed evidence shows that the appellee filled out an application form for a passport in which she referred to herself as single. It is the law that he who should speak and elect to remain silent assent. Every person is entitled to take full advantage of the law in defense of his right, but the law gives no protection to him who abuses his own rights. *Sheriff v. Pearson et al* 35 LLR 355 (1988). The silence, inaction, and action of the appellee enumerated hereinabove clearly demonstrate her acquiescence to the divorce and a waiver of her rights. She, therefore, suffers from laches.

Equity will not permit her to change her position in light of changing reality. A waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment, while the doctrine of estoppel is based upon the ground of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably rely thereon. *METCO v Chase Manhattan Bank* 34 LLR 419 (1987). The appellee, being in possession of the divorce certificate and having knowledge that the co-appellant Frederica Free Moulton and the deceased were openly and notoriously presenting themselves as husband and wife without objecting, suffered waiver and laches and therefore

estopped from challenging the marriage of the Co-appellant after the death of the deceased.

For the reasons enumerated herein, we cannot uphold and confirm the trial judge's final ruling revoking the letters of administration issued in favor of the appellants.

WHEREFORE, and in view of the foregoing, the ruling of the Monthly and Probate Court for Montserrado County revoking the appellants' amended letters of administration is reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and give effect to the judgment growing out of this Opinion. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing Counsellors Rosemarie B. James and Emmanuel B. James appeared for the appellants. Counsellor Tommy N. Dougba appeared for the appellee.