

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2026

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....CHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON ASSOCIATE JUSTICE
BEFORE HIS HONOR : BOAKAI N. KANNEH ASSOCIATE JUSTICE

Mrs. Sando Pauline G. Holder of the USA, widow of the late)
S. Raymond Holder (nephew of Ethel Holder Bethune), and)
Anna Holder of the USA (Niece of Ethel Holder Bethune), all)
represented by and thru their Attorney-In-Fact, Cllr. Benedict F.)
Sannoh of the City of Monrovia, Republic of Liberia)
.....Appellants) Appeal

Versus)

Reginald M. Holder Sr., Richard F. Holder, Lagnfelt Holder and)
James Charles along with all those acting under their authority)
.....Appellees)

GROWING OUT OF THE CASE:)

Mrs. Sando Pauline G. Holder of the USA, widow of the late)
S. Raymond Holder (nephew of Ethel Holder Bethune), and)
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represented by and thru their Attorney-In-Fact, Cllr. Benedict F.)
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.....Petitioners)

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Petition for Revocation of
Extended Letters of
Administration

Petition for Proper
Accounting

Heard: June 3, 2026

Delivered: August 28, 2026

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case ensued from a controversy over the administration of the intestate estate of Ethel Holder Bethune. From a review of the records, Ethel Holder Bethune died on April 26, 2010, following which the Probate Court for Montserrado County, appointed her nephew, S. Raymond Holder, on July 12, 2010, to administer the property of the deceased. Upon the death of S. Raymond Holder, the Probate Court, upon being petitioned, granted Letters of Administration *De Bonis Non* on February 16, 2015, to Reginald M. Holder, Sr., Richard F. Holder and Sando Gray Holder, for the continued management of the intestate estate of Bethune. On December 29, 2021, the Probate Court granted extended Letters of Administration to Richard F. Holder, Reginald M. Holder, Langfelt Holder and James Charles, who are all the appellees in the current appeal.

The co-appellant, Sando Gray Holder, the widow of S. Raymond Holder who during his lifetime served as the first administrator of the intestate estate of Bethune, on April 9, 2022, filed a nine-count 'Petition for Proper Accounting, requesting the trial court to order the appellees to account for funds received on behalf of the intestate estate. She later withdrew the petition filed in her name and refiled the petition jointly with co-appellant Anna Holder, niece of the decedent of the intestate estate, through their attorney-in-fact, Counsellor Benedict F. Sannoh.

This case originates from the facts that S. Raymond Holder, while alive, filed an action of ejectment, in his capacity as the sole administrator of the intestate estate of Ethel Holder Bethune, against the intestate estate of Abel Clark and the Management of CICO, and when he died while the suit was pending, the administrators *de bonis non* in persons of his wife Sando Gray Holder, Reginald M. Holder, Sr., and Richard F. Holder substituted the late S. Raymond Holder as direct party plaintiffs in the suit. Prior to the final judgment in the ejectment case, Sando Gray Holder, now co-appellant, traveled to the United States, and upon the expiration of the Letters of Administration that enlisted her as one of the administrators *de bonis non* an extended letter was secured by James Charles Lagnfelt, Reginald M. Holder and Richard F. Holder, appellees in the instant case.

The Intestate Estate of Bethune having prevailed in the ejectment case, it was awarded a judgement amount of Three Hundred Thousand United States Dollars (US\$300,000.00), and an initial amount of Seventy-seven Thousand Eight Hundred Ninety-two United States Dollars and Fifty Cents (US\$77,892.50) was paid by the defendants Abel Clark and the Management of CICO to the Bethune's estate with a commitment to pay the balance in twelve installments.

The appellants herein filed a petition for proper accounting in the Probate Court of Montserrado County, contending that the appellees unilaterally distributed the judgement amount referenced above, including the first installment with total disregard to their interest in the intestate estate and without the approval of the probate court; that the appellants are direct beneficiary in the intestate estate by virtue of their status, and that denial of that right entitles them to remedy under the law.

The appellants further complained that in addition to the judgment amount referenced herein, the appellees were mismanaging the asset of the estate by disposing of land, properties, and other incomes belonging to the estate. The appellants therefore prayed that proper accounting would lie to compel the appellees to submit all financial records and funds received from the date of the first payment up to present, conduct an inventory of all assets and hold the appellees to account for the aforesaid period.

On May 19, 2022, the appellees filed their returns denying allegations that they were mismanaging the estate's assets, but conceded to receiving 25% of the judgment amount for the ejectment case. The appellees stated that the money received was distributed in the presence of the co-appellant Sando's daughter, Ms. Amie, who received Seven Thousand United States Dollars (US\$7,000.00) for co-appellant Sando, on her instruction, in addition to the portion of the distribution due to her late husband, S. Raymond Holder; that the said distribution was conducted with the involvement of all parties, including the Civil Law Court, and the co-appellant having received a portion of money from the first installment, she was estopped from requesting any accounting.

The appellees averred that though co-appellant Sando was the widow of S. Raymond Holder, she had no inheritable blood with the decedent and therefore was not a direct beneficiary of the estate; that co-appellant Sando was without any standing to challenge the administrators of the intestate estate over which she has no authority and to which she has no connection; and that she could not be out of the bailiwick of Liberia while at the same time serve as an administrator for the intestate estate in Liberia. Further, the appellees stated that S. Raymond Holder had two children prior to meeting co-appellant Sando, and that out of her relationship

with him there existed no issue; that by operation of law, the two adult children had by S. Raymond Holder, prior to his marriage to the co-appellant are entitled to two-thirds of his benefits, and she the co-appellant, as his widow, to only one-third thereof.

Though the appellants amended their petition for proper accounting and refiled on May 30, 2022, the records show that the appellees did not file amended returns.

While the petition for proper accounting was pending, the appellants filed a second petition for the revocation of extended Letters of Administration and for the appointment of new administrators. The appellants prayed the trial court to revoke the extended Letters of Administration earlier granted to the appellees and, in its stead, appoint the Sannoh & Partners as administrators of the intestate estate of Ethel Holder Bethune.

The appellants submitted that Reginald M. Holder, Sr., Richard F. Holder, and James Charles had no property interest in the intestate estate, and as such, they had no right to remain administrators where their conduct called into question the honesty with which they handled the assets of the estate; that the appellees had embarked on a course of conduct tantamount to the mismanagement of the estate, including the disposition of land, properties, and monies belonging to the estate without consultation with or reference to the beneficiaries and despite the pendency of the petition for proper accounting before the probate court. The appellants therefore prayed the Probate Court to grant the petition for revocation pursuant to Section 107.10(b) of the Decedents Estates Laws, which authorizes a creditor or person interested in an estate to petition for a decree to suspend, modify, or revoke letters of administration where the fiduciaries have wasted or improperly applied the assets of the estate, and are unfit for the execution of the office.

It is noted that the appellants even filed a motion for preliminary injunction requesting the court to prohibit the appellees from conducting transactions in the name of the estate, and Judge Necular Edwards overwhelmed by all the complaints filed by the appellants, made a ruling placing the estate under the stewardship of the court and ordering the curator to administer the estate's affairs pending the outcome of the investigation of the two petitions.

The records do not show that the appellees filed any returns to the motion to revoke the extended Letters of Administration and for the appointment of new administrators. Notwithstanding, the appellees filed a motion to consolidate the petition for proper accounting and the petition to revoke extended letters of administration and appoint new administrators, contending that the facts and substance of both petitions were the same.

The appellants resisted the motion to consolidate and primarily contended that the appellees, having not filed answers to both petitions, could not legally move the court for any consolidation of said two petitions pending before the court. The appellants contended further that the extended Letters of Administration had expired, and therefore the petition for revocation had become moot and could not as a matter of law be consolidated with the amended petition for proper accounting.

On January 11, 2023, His Honor Necular Edwards, Resident Judge of the Monthly and Probate Court for Montserrado County, granted the appellees' motion to consolidate the amended petition for proper accounting and the petition for revocation of extended Letters of Administration. The trial court reasoned that both petitions arose from the same intestate estate of Ethel Louise Holder Bethune, involved the same parties, and presented substantially identical averments turning on the common question of whether the administrators had mismanaged the estate; and that, pursuant to Section 6.3 of the Civil Procedure Law, the consolidation of actions involving common questions of law and fact was warranted to avoid unnecessary costs and delay. The appellants noted exception, and same was granted by the Probate Judge.

This Court notes the temporary adjournment of the hearing by the court based on a request by the appellants to amicably settle their issues void of court litigation. However, given that a settlement could not be reached after a protracted period, the appellees requested that the court resume hearing and have the matter heard and decided.

Judge Edwards travelled, and while away, His Honor Judge U-Jay W.H.S. Bright was assigned to handle the Probate Court in Judge Edwards' absence. He sent out an assignment to the parties for hearing of the petitions as consolidated by Judge Edwards on April 16, 2024; however, when the case was called, counsel for the appellants was absent. The hearing was therefore postponed to April 19, 2024.

The court records show that upon appearance of both parties on April 19, 2024, the appellants, by leave of court, made a submission on the minutes of the court that the appellees not having filed their returns to the amended petition for proper accounting, and to the petition to revoke the extended Letters of Administration and appoint new administrators, the appellees be ruled to a bare denial.

The submission was resisted by the appellees, and Judge Bright ruled denying the appellants' application. The ground for the denial was that the very subject of the appellants submission

had been passed upon by Judge Necular Edwards on January 11, 2023, when he ruled on the appellee's motion to consolidate the two petitions and proceed to hear them. Consequently, Judge Bright ordered the appellants to have their witnesses take the stand and produce evidence. However, the counsel for the petitioners requested continuance, indicating that it had had thought that the assignment as issued was for the disposition of law issues. The appellees did not object to the request for continuance, and Judge Bright had the hearing adjourned until April 22, 2024, with the caveat that the parties prepare their witnesses for the scheduled date as same was meant for trial on the merits.

On April 22, 2024, when the case was called for hearing which was scheduled for 9:30 am, counsel for the appellants did not appear and the records reflect that the Judge waited for about two hours before proceeding to call the case, noting that the appellants' counsel was absent without a written excuse. As counsel for the appellants stated in count 7 of its bill of exceptions and in its argument before us, its motion for continuance of the case was filed, but inadvertently filed with the wrong court and it was on April 22, 2024, the day of the hearing that it had same filed with the probate court at 11:48 am, and at which time the hearing was being proceeded with. We note that the counsel for the appellants in its motion for continuance was requesting the court for postponement of the hearing for reason that their key witness was unreachable, and praying the court to grant them a week in order for them to make contact, consult and prepare their witnesses before trial.

Judge Bright in noting the absence of the appellants, referenced the case *Vijayaraman et. al. v. Xoanon Liberia*, 42 LLR (2004), and ruled that the absence of the appellants was tantamount to abandonment of their case, especially when the appellants had received more than adequate notice to appear with their witnesses and they had absented themselves without leave of court. The Judge then requested the appellees to proceed and produce their witnesses in support of their side of the case if they so desire.

Three of the administrators of the estate, Reginald M. Holder, Lagnfelt Holder and James Charlie, were qualified by the court. The fourth administrator, Richard Holder, was said to be ill and lived in Kakata. The witnesses testified that the probate court granted them in Liberia extended Letters of Administration to administer the intestate estate of Ethel Holder Bethune while the co-appellant Sando Pauline Gray Holder, widow of the late S. Raymond Holder (nephew of the deceased), and co-appellant Anna Holder, niece of the decedent of the said intestate estate lived abroad.

From the testimonies of the appellees, it was established that the administrators since 2014 had proceeded with the intestate estate's litigation in the ejectment action against Abel Clarke and CICO; that they had prevailed and the intestate estate was awarded a monetary award of United States Three Hundred Thousand Dollars (US\$300,000.00). The administrators alleged that they self-financed the said litigation with no contribution from the appellants despite efforts to have them make some contribution.

The appellees testimonies corroborated that the first installment of twenty-five percent (25%) of the judgment amount was received and distributed amongst the family and persons who financed the litigation; that the co-appellant Sando Pauline Holder received United States Seven Thousand Dollars (US\$7,000.00) from said distribution through her daughter, Amie Holder; that the balance of the judgment amount was paid by CICO at the rate of US\$19,473.00 to the Civil Law Court 'B' over twelve months, accumulating to a significant amount that was thereafter unlawfully withdrawn by the sheriff and clerk of the said Court without the consent or knowledge of the administrators.

When the appellees rested with the production of oral testimonies, the Judge proceeded to hand down his ruling, appointing Attorney D. Anthony Kromah to take the court's ruling on behalf of the appellants whose counsel, Attorney Peterina Jah-Kanneh, had walked into the court while the appellees were presenting evidence but had walked out before the Judge's ruling was given. Attorney D. Anthony Kromah noted exceptions to the ruling and announced an appeal on behalf of the appellants.

The trial judge decided the case against the appellants reasoning that the failure of the appellants and their counsel to appear for the hearing on April 22, 2024, amounted to abandonment of their case. Noting that the burden of proof rests on the party making an allegation and that mere allegations are not proof, the Judge found that the appellants had produced no evidence to support their claims of cheating and mismanagement. He therefore denied and dismissed both the petition for accounting and the petition for revocation of Letters of Administration with prejudice, and reinstated the appellees as administrators of the estate. He ordered the Clerk to issue extended Letters of Administration so the administrators could settle the estate's obligations and close it. An excerpt of the trial judge's ruling is reproduced verbatim below as follows:

“For the sake of clarity and precision of this final ruling and judgment, this court must pause and interject at this junction that all of the above statements are not in dispute concerning Petitioner Sando Holder being the wife of the respondents' late brother S. Raymond Holder, or the fact that the

respondents are nephews of late Ethel Holder Bethune, or the fact that the respondents are administrators of their aunt Intestate Estate, the Intestate of Ethel Holder Bethune, or the fact that the respondents prosecuted the estate ejectment case against CICO and obtained an award of US \$300,000.00 from the Supreme Court, or the fact that 25% of the money was received and used to settle the estate obligations and was also distributed among the beneficiaries of the estate to include the petitioners.

What is in dispute as gleaned from the records, are the allegations levied against the respondents to the effect that after receiving the money from CICO, the respondents collected same, cheated the petitioners in the distribution process, and then mismanaged the assets of the estate by selling some of the properties of the estate. The Court observes from the two petitions that it is based upon these allegations, that the petitioners are seeking the removal of the respondents and are requesting the Court to order the respondents to account for their stewardship.

It is trite law that the burden of proof rests on the party alleging the fact and that mere allegations are not proof. Civil Procedure Law, Rev Code 1:25.5; Id, 25.6 *Knuckles v. TRADEVCO*, 40 LLR 511 (2001); *Pentee v. Tuiay* 40LLR 207 (2000). This Court says that the petitioners having abandoned their case along with the production of evidence to support their allegations even after receiving stern warning from the Court to do their utmost best, the Court is left with no alternative but to treat the two petitions and the averments stated therein as superstitious recitals lacking the evidentiary weight to attract a judicial confirmation.

This being said, the Court is of the opinion that in the face of the petitioners' abandonment, the oral testimonies rendered by the respondents' witnesses are hereby considered sufficient grounds to warrant denial and dismissal of the petition for accounting and the petition for revocation of Letters of Administration and same are hereby denied and dismissed with prejudice against the petitioners herein named who have demonstrated absolutely no interest to prove their case.

The Court hereby reinstate the respondents as Administrators of the Intestate of Ethel Holder Bethune and order the Clerk of this Court to immediately issue Extended Letters of Administration in favour of the respondents to allow them close the Intestate of Ethel Holder Bethune. Finally, the respondents are ordered to settle all the estate financial outstanding obligations and reimburse all interested persons the estate is owing and close same within the soonest possible time."

The records show that the appellants appealed from this ruling of Judge Bright and filed a bill of exception for his approval. Judge Bright, having taken an affront to certain words placed in the bill of exceptions, refused to approve the bill of exceptions proffered by the appellants.

The appellants filed before His Honor Yussif D. Kaba, the Justice presiding in Chambers, two petitions for writs to prohibit the enforcement of the ruling, and to compel the trial judge to sign the bill of exceptions. The parties were cited and they attended a Chambers conference for the resolution of the two petitions filed. The parties reached an agreement to execute a stipulation which would be approved by Justice Kaba. The stipulation agreed that Judge Bright signed the appellants bill of exceptions *nunc pro tunc*, and with his approval thereof, a stay be placed on his final ruling. The bill of exceptions was subsequently approved and the ruling of the assigned probate Judge stayed upon the appeal.

The Court having examined the appellants bill of exceptions as was approved and filed, finds below counts 3, 4, 5, 6, 10, and 13, as relevant to the determination of this case:

3. On April 19, 2024, appellants filed their legal memorandum with the court, and appeared for hearing raising three law issues which were all argued with supporting statutes and Opinions. In resistance thereto, the appellees misinformed the court that the case had been ruled to trial and law issues disposed of on the strength of the January 11, 2023 ruling by His Honor Necular Edwards.
4. Appellants however knowing that the court heard the argument, and ruled on January 11, 2023 granting the motion for consolidation only, reason that there was common law issue brought to Your Honor's attention, and that nowhere in that ruling were there issues of law disposed of nor was the case ruled to trial on the basis of the merits. It was the reasonable expectation of appellants that Your Honor would have reserved ruling to familiarize yourself with the records considering that you had not previously presided over the case and hence not familiar with the facts and proceedings previous to your appointment as relieving Judge. To the dismay of the appellants and with all bias, prejudice and unfairness, Your Honor U-Jay granted the appellees resistance and ordered the trial proceeded with the production of witnesses which is tantamount to review and reversal of Your Honor's predecessor's ruling. To this, appellants filed a petition for a writ of Certiorari but could not have an alternative Writ issued since the lower Court had already entered its final ruling.
5. Appellants were taken aback at this ruling and submitted before the court noting its exceptions and requesting time to have its witnesses present. The Judge then requested a side bar with the lawyers and requested to have the case reassigned for trial on Monday, April 22, 2024. Appellants wonder why the court was so anxious to hear this matter that it had the case rescheduled back-to-back on the records even with objections from its counsel. The Court without taking into consideration the plea of the appellants' lawyer that Monday was too close to reach its witnesses, have them prepared in other to give adequate representation, assigned the case on the records for Monday, April 22, 2024.
6. That on April 22, 2024, appellants filed and served a motion for continuance stating that during the weekend it was impossible to contact the witnesses and

was therefore requesting a week to have its witnesses contacted and prepared. Counsel says that, though before the assignment time, its dispatcher had inadvertently filed the motion before the wrong court, however, the appellees were served within time before court hearing started.

10. That the service on this matter is especially key because, it demonstrates the good faith and reasonability to be applied by lawyers. This is because when appellants received the ruling from the court after almost four (4) days, though rendered on open court, it noted that the court *sua sponte* granted default judgment ordering the defendants to present evidence without any application for default judgment by the appellees. The rush to proceed with the case in the absence of a motion of default judgment, and for only one absence by appellants, shows the biasness and prejudice demonstrated by your Honor.
13. Your Honor erred when you granted the appeal announced noting that it is a matter of right, but however, proceeded to order the Clerk of the Court to immediately issue an extended letters of administration to the appellees to manage and close the estate. Your Honor not only committed reversible errors but committed a grave injustice against the appellants notwithstanding the clear and unequivocal provisions and opinions of the Honorable Supreme Court that an appeal from a final judgment other than a summary proceeding or habeas corpus act as a supersedeas or suspension of such judgment. This illegal and unlawful conduct has the propensity to directly affect the constitutional right they have to the enjoyment of their property.”

Considering the facts, circumstances, and contentions of the parties, we determine that the following issue are dispositive of this appeal: 1) whether the trial court erred in consolidating the petition for proper accounting and the petition to revoke the Extended Letters of Administration; 2) whether the trial court erred in ruling the consolidated petitions to trial on the merits without first disposing of the law issues; and 3) whether the trial Judge erred in treating the appellants cause as abandoned, receiving and relying solely on the appellees testimonies and granting the appellees relief which they had not pleaded.

In regard to the first issue raised by the appellants that the Judge erred in consolidating the petition for accounting and the petition to revoke the extended Letters of Administration, arguing that the appellees had not replied to the two petitions and therefore could not request their consolidation, upon examination of the records, we found that although the appellees filed their returns to the petition for proper accounting, they did not file any returns in response to the petition for revocation of the extended Letters of Administration. The records further show that after the parties rested with pleading with respect to the petition for proper accounting, the appellants withdrew their petition and filed an amended petition for proper accounting; that the appellees, being satisfied with their returns, did not file any amended

returns, a position they reiterated when this matter was called for oral argument before this Court. What the appellants seem to suggest is that the appellees were under an obligation to file an amended returns to the amended petition filed by the appellants. This Court says that a party is not obliged to amend its responsive pleading to an amended petition merely because the petition has been amended, and the appellants argument finds no support in the practice of law in this jurisdiction or in our governing statute.

Our Civil Procedure Law, Rev. Code 1:9.10(3) provides that where a pleading is amended after a responsive pleading has already been served, the responding party **may amend** [emphasis] its responsive pleading if such amendment is necessitated by the new matter added to the opposing pleading. The right to amend the responsive pleading is not mandatory; it is conditional, arising only where the new matter necessitates it. In the instant case, the appellees did not find it necessary to amend their returns where they believed that their returns originally filed adequately traversed the contentions raised in the appellants amended petition.

The Court further ascertained from the records whether the appellees filed returns to the second petition, same being the petition to revoke appellees' Letters of Administration. The Court observed that the file did not contain any returns to this second petition. Be that as it may, the records show that the extended Letters of Administration, the cancellation of which was sought in the appellants' revocation petition, had already expired by the time the motion to consolidate the two petitions was raised. Granted by the court on December 29, 2021, the subject extended Letters of Administration was due to expire on December 29, 2022. The petition to have said extended Letters of Administration revoked was filed on December 8, 2022, while the motion to consolidate the two petitions referenced herein was filed on January 4, 2023, when the Letters had already expired. In fact, in support of the appellants' argument for the trial court to deny the motion to consolidate, the appellants themselves contended during oral argument that the subject extended Letters of Administration had already expired and the contention thereto was moot, and therefore it was improper for the court to consolidate the petition for its revocation with the petition for proper accounting.

This Court says the extended Letters of Administration having expired during the pendency of the petition for its revocation, pleadings appertaining thereto were likewise rendered meaningless, for it is impossible to cancel that which has already expired. It was therefore immaterial as to whether the appellees filed returns to the said petition or not. Therefore, a consolidation of the petition for proper accounting against which the appellees had filed returns with the petition for revocation of the extended Letters of Administration which had

become moot and with no returns filed by the appellees did not in any way prejudice the claim of the appellants, especially where Judge Edwards, in his ruling of October 11, 2022, placed the supervision of the estate under the Probate Court pending the hearing of the petition for accounting and appointment of new administrators.

The appellants also contend that the trial judge erred when he ruled the consolidated petition to trial on its merits without first disposing of the issues of law. The parties confirmed during oral arguments that when Judge Necular Edwards, Assigned Judge of the Probate Court, ordered the consolidation of both petitions, the parties requested time to determine whether they could reach a resolution without resorting to further litigation. Judge Edwards accordingly informed the parties that in the event they did not reach a resolution the matter would proceed to trial on its merits. When the parties returned to the court after failing to reach an amicable resolution, Judge U-Jay Bright had been assigned to continue the court's function in the absence of Judge Edwards. The appellants moved for Judge Bright to dispose of the issues of law, but the appellees pointed to a portion of the January 11, 2023, ruling of Judge Edwards, where it was stated that the matter could proceed to trial absent any out-of-court resolution. Judge Bright accordingly interpreted that to mean that he would proceed directly to the trial of the facts on the merits and reasoned that prior disposing of the issues of law would amount to reviewing the ruling of his predecessor.

This Court disagrees with the interpretation that Judge Bright assigned to the January 11, 2023, ruling of his predecessor. Judge Edwards' assertion that the case would proceed to trial where the parties did not reach any out-of-court resolution was unambiguous. When a matter is ruled to trial, it cannot be interpreted to mean that the trial of factual issues will proceed to the exclusion of the trial of law issues. Issues of law must be disposed of first, before the factual determination on the merits. In the case *Johns v. Johns et al*, 11 LLR 312, 315 - 316 (1952), this Court opined that whenever an answer filed by a party raises issues of law and fact, the issues of law must be adjudicated before the issues of fact may properly be tried. In *Swen-Kennedy v. Cooper*, Supreme Court Opinion, March Term A.D. 2008, this Court reiterated this principle and indicated that failure on the part of a judge to dispose of law issues raised in the answer to a complaint is a ground for the reversal of a judgment.

In the application of the principle, however, this Court established that where, upon reviewing the answer to the complaint, the trial judge identifies only mixed issues of law and fact, it may proceed directly to the trial on the merits. We restate verbatim the relevant excerpt from the *Swen-Kennedy* Opinion below:

“Failure on the part of a judge to dispose of law issues raised in the answer to a complaint is ground for reversal of a judgement. In view of the importance the court has attached to the requirement that issues of law should first be disposed of before trial of facts, and since indeed the appellant/defendant in count one of the bill of exceptions has stated that the trial judge failed to pass on the law issues and proceeded to trial on the facts, we deem it necessary to peruse the complaint and the answer to determine whether law issues were raised therein. Our perusal shows that there were no issues of law. But rather, only mixed issues of law and fact were raised in the answer.”

We frown at Judge Bright for ruling the instant case directly to trial on the facts without first disposing of the law issues. Notwithstanding, we have, as required by the case cited above, perused the case file and found no pure issue of law that would have terminated the case upon determination. All we have identified from the records are purely issues of mixed law and facts. Therefore, the decision of the judge to rule the case to trial without disposing of law issues cannot be said to have prejudiced the interest of the appellants. Accordingly, this Court cannot treat same as a reversible error.

Finally, did the Probate Judge erred when he held that the appellants had abandoned their cause and proceeded to dispose of the case by allowing the appellees to testified, and thereupon entered final judgment?

The certified records show that at the call of the consolidated petitions on April 19, 2024, the trial court having denied the appellants' submission for the disposition of law issues, the appellants requested the Judge for a reassignment, and the appellees while not interposing objection to the request, ask the Judge to take Judicial notice of the court's records which showed that the case had been substantially delayed by the appellant and that delays perpetuate injustice which the court must curtail. The Judge thereafter assigned the case for the following Monday, April 22, 2024, both on the records and through a notice of assignment signed for by the counsels for both parties. Judge Bright in his ruling to postponed the hearing until the April 22, 2022, dictated:

THE COURT: The court hereby order this case to be assigned for Monday, April 22, 2024 at 9:30am for trial on the merits. The court takes judicial notice of the records which shows that this case has been substantially delayed and that these delays are perpetuating injustice which this Court must curtail. In light of the aforesaid, the court mandates all parties, especially the petitioner, to prepare with their witnesses on Monday, April 22, 2024 at 9:30am for trial on the meri of this case as the Court will not

entertain any frivolous excuse, or procedural ploy to delay this case. The clerk is ordered to issue a regular notice of assignment to this effect, mandating the parties to appear in court with their witnesses and have this matter heard, So Ordered.

We note from the records that at this point, no party whatsoever opted for a contrary schedule. However, on April 22, 2024, counsel for the appellants did not show up for the hearing and the Judge having waited for about two hours, called for the Sheriff to inspect whether the counsel for the appellants was duly served. The Sheriff having confirmed service on the appellants counsel, the Judge reiterating that it had during the previous appearance of the parties in court sternly warned the appellants counsel to come with its witnesses for the hearing on April 22, 2024, and also insisted on an assignment been made and served on the parties to appear. The Judge having observed that the counsel for the appellants though in court when the case was reassigned, and that the Sheriff report stated that the appellants counsel was further served with the assignment, the Assigned Probate Judge committed no error when he proceeded to hear and rule on the case on the grounds that the appellants had abandoned their case.

The Probate Judge having declared that the appellants had abandoned their case, the appellees relying on the applicable laws and rules of court prayed to proceed to present evidence in their defense. The appellees took the stand and presented their evidence in support of their defense, and after the appellees rested with evidence, the court denied and dismissed the appellants petitions and entered judgment in favor of the appellees. He ordered the appellees reinstated as administrators with a mandate to close the estate and that they be reimbursed by the estate for the expenses they incurred in the ejectment case they had handled among others. We also note the following statement made by the Judge before ruling on the evidence presented by the appellees:

“THE COURT: Before passing on the submission made by the respondents, this Court notes with grave dismay the late entry of the petitioner’s lawyer in person of Atty. Peterina Jah-Kanneh. The Court is taken aback that although Atty. Peterina Jah-Kanneh was sternly warned at our last sitting to be present here today at 9:30am with her witnesses; the Court is appalled that the said lawyer having signed and received the regular notices of assignment would abandon the hearing of the case without any excuse and march/enter into the Court room at 11:50, and then attempt to disrupt proceedings. This conduct, to say the least, is highly unacceptable and Atty. Peterina Jah-Kanneh is hereby sternly warned to desist from said conduct or risk being held in contempt.”

The Supreme Court has held that cases on the court's docket must be expeditiously handled, and there is no statute or case law in this jurisdiction that defines or determines the number of the absence that warrants the granting of a default judgment; the matter is left to the sound discretion of the court or administrative officer, such that even a single unexcused absence upon a duly served notice of assignment may suffice; and once a case has not been completed, counsel of record is bound to honor all assignments issued and served on him until the case is finally decided, or he will be presumed to have abandoned the case: *Vijayaraman et al v. Xoanan Liberia Ltd.*, 42 LLR 41, 50 (2004).

The Court observes that when the Probate Court dismissed the appellant's case on grounds of abandonment, the judge proceeded to appoint the appellants as administrators with mandate to close the Estate. The appellants contested this appointment as an error in its bill of exceptions.

We do not find that the assigned probate court Judge was in error when he appointed the appellees as administrators, as same amounted to exercise of the functions for which the court was statutorily established. It is noted that the appellants also filed a motion for preliminary injunction requesting the court to prohibit appellees from conducting transactions in the name of the estate, and Judge Necular Edwards, overwhelmed by all the complaints filed by the appellants, made a ruling placing the estate under the stewardship of the court and ordering the curator to administer its affairs pending the outcome of the investigation of the two petitions. The records revealed that the Sheriff and clerk of the Civil Law Court in the interim failed to account for the funds received on behalf of the estate and therefore it was incumbent upon the court to appoint an administrator(s) for the proper management of the intestate estate.

At common law, a plaintiff who failed to appear and prosecute a case was said to be "nonsuited" — the court's power to dismiss for want of prosecution existed independently of any statute or rule; it was treated as an inherent power of the court, necessary to control its own docket and prevent cases from being held indefinitely in suspense to a defendant's prejudice.

Rule 7 of our Circuit Court adopted in consonance with this common law principle states: "The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping

with law, and its discretion. A failure to file a motion for continuance or to appear for trial after return by the Sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon or, dismiss the case against the defendant, and rule the plaintiff to cost, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases, shall be the foremost concern of the judge assigned to preside over the term." This rule generally applies to all court since the authority to dismiss for lack of prosecution has traditionally been treated as an inherent power, resting not on any statute or rule but on the court's own control over the orderly disposition of its docket.

Though the counsel for the appellants says that it filed a motion for continuance prior to the court's hearing and in which it stated that it was impossible to contact its client and needed a week to do so. We take note that it was the appellants that filed various petitions before the probate court and which in fact instigated Judge Edwards to bring the estate under the probate court to be managed by the curator; that while the matter remained undecided and under the probate court, the Sheriff and clerk of the Civil Law Court upon receipt of the appellee funds proceeded to embezzle the funds of the estates. The Court finds it disturbing that the appellants who instituted the action and later requested for the suspension of the case for an amicable settlement which was not reached, would fail to pursue the hearing of their petitions filed. Further, counsel for the appellants walked in the court during the hearing but proceeded to walk out while the case was being heard. We see this behavior of the appellants' lawyer as a gross disrespect to the court, and it showed no regard for the petitions filed on behalf of the appellants. For the appellants to continuously delay the hearings into the matter, same was prejudicial to others interest in the estate and Judge Bright rightly ruled that the appellants had abandoned their case.

This Court, construing Section 5.2 of the Judiciary Law in the case in *Fadallah v. Gibson-Flomo*, Supreme Court of Liberia, March Term, A.D. 2015, decided July 20, 2015, listed the exclusive and original Jurisdiction and functions of the Monthly and Probate Court, the Provisional Courts and the Probate Divisions of the Circuit Court. For purposes of this Opinion we list three of the said functions as follows:

- (b) To grant letters testamentary and of administration;

(c) To direct and control the conduct and settle the accounts of executors and administrators;

(g) To have general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them.

This Court says the grant of authority under subsections (b), (c), and (g) is not confined to a single, discrete act of appointment upon a petitioner's specific prayer; it extends to the continuing direction and control of the conduct of administrators once appointed, and to the general supervision and direction of the estates of deceased persons and of all affairs connected with them. It follows that the probate court's authority to appoint an administrator is incident to its ongoing statutory supervision over the estate, and is not limited to conferring letters only upon the specific individual named in a petitioner's prayer for relief.

From the foregoing, the Court finds that Judge Bright acted within the authority of the court and scope of the law when he found that keeping the hearing of the petitions suspended, especially by the appellants who reside outside the country was not in the best interest of the estate. The court's order to reinstate the appellees as administrators of the intestate estate of Ethel Holder Bethune and requiring the clerk to issue them Extended Letters of Administration being also in consonance with the facts and laws stated herein, same is hereby upheld by this Court.

The appellees are hereby mandated to settle all financial obligations, make payments of all outstanding debts, and close the estate within one calendar year as of the date the Extended Letters of Administration is issued to them based on the Mandate of this Court.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the ruling of the Assigned Judge Bright of the Probate Court is hereby upheld and confirmed. The Clerk of this Court is ordered to send a Mandate to the Probate Court, commanding the judge presiding therein to resume jurisdiction and give effect to the Judgment emanating from this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS A. NDUBUISI NWABUKIKE AND MOHAMMED E. FAHNBULLEH OF THE SANNOH AND PARTNERS. APPEARED FOR THE APPELLANTS. COUNSELLOR M. WILKINS WRIGHT OF THE WRIGHT AND ASSOCIATES LAW FIRM. APPEARED FOR THE APPELLEES

