IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Francis K. Zayzay, Wilmot N. Sharow, Leroy, Florence, J.D.F. N.D., P.R., O.J. V. K., G.D.A, W.A.G., ZBK and F.K., T.C.K.H. and others to be identified also of Monrovia, Liberia.....APPELLANTS	APPEAL
VERSUS	
ABC Children's Aid Liberia, Inc. by and thru its Executive Director, Rev. Mathew T. Sakeuh of the City of Monrovia, Liberia.....APPELLEE	
GROWING OUT OF THE CASE:	
ABC Children Aid Liberia, Inc. by and thru its Executive Director, Rev. Mathew T. Sakeuh of the City of Monrovia, Liberia.....PLAINTIFF	
VERSUS	ACTION OF EJECTMENT
Francis K. Zayzay, Wilmot N. Sharow, Leroy, Florence, J.D.F. N.D., P.R., O.J. V. K., G.D.A, W.A.G., ZBK and F.K., T.C.K.H. and others to be identified also of Monrovia, Liberia.....DEFENDANTS	

HEARD: JUNE 13, 2019. DECIDED: AUGUST 5, 2019.

When this case was called for hearing, Counsellor Thompson N. Jargba appeared for the appellants. Counsellor Cooper W. Kruah, Sr. of the Henries Law Firm appeared for the appellee.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This appeal grows out of an action of ejectment instituted by ABC Children Aid Liberia, Inc. by and thru its Executive Director, Rev. Mathew T. Sakeuh, the appellee, on the 19th day of November, A.D. 2013 at the Sixth Judicial Circuit for Montserrado County, Republic of Liberia. The complaint alleged substantially that the appellee acquired 72.76 acres of land lying and situated at Gbengbah Town, Paynesville City, Montserrado County, from the Administrators of the Intestate Estate of Chief Barclay. The estate is said to compose of the people of Gbengbah Town.

Appellee alleged that the purchase of the land in dispute was twofold. It acquired the first 52.76 acres in the year 2005 following a well-attended mass meeting of the

people of Gbengbah Town. That based on an assessment conducted and recommendations made by engineers from the United States of America who visited after the acquisition of the 52.76 acres of land, the appellee acquired an additional 20.0 acres in the year 2007. It is further alleged in the complaint that the people of Gbengbah town advised the appellee to consummate the acquisition of the land through their Administrators, namely; J. Samuel Brown, Morris G. Payne, and Pliccaid M. Garway. That the appellee purchases the property as advised, and constructed thereupon a school, a hospital, and a dormitory. That the school and hospital so build are currently operating and providing missionary services to the people of Gbengbah Town and beyond. That the defendants, Francis K. Zayzay, Wilmot N. Sharow, Leroy, Florence et al, have encroached on a portion of the 72.76 acres without the appellee's permission and are destroying pillars planted and wooden fence built by the appellee to demarcate the boundaries of the subject property. That the defendants also destroyed palm and cassava farms planted by the appellee on the said property. The appellee/plaintiff averred in its complaint that she gave repeated warnings to the intruders but, to no avail.

The certified records also show that in keeping with the Written Directions filed along with the appellee/plaintiff's complaint, a writ of summons was issued by the clerk of the trial court, made and returned made on the 27th day of December, A.D. 2013. The Sheriff's Returns shows that three of the defendants, namely, Robert Cooper, Edward Brown Gbee and J. Samuel Brown signed for and received copies of the Writ of Summons. Of the three defendants that received the precept, only co-defendants J. Samuel Brown and Robert Cooper filed a joint answer on the 2nd day of December, A.D. 2013 to the appellee/plaintiff's complaint. It is also worth noting that co-defendant J. Samuel Brown is one of the co-signers of the administrators' deeds issued to the appellee/plaintiff, and that co-defendant Robert Cooper was the Town Chief of Gbengbah Town at the time the title deed was executed, and that up to present he is regularly receiving compensation therefor from the Government of Liberia.

The two co-defendants' answer substantially acknowledged the appellee/plaintiff's ownership of the disputed property and denied all other allegations that they illegally entered or infringed on the said property. Accordingly, the appellee/plaintiff filed a reply to the co-defendants' answer confirming and affirming the allegations of facts as are contained in the complaint.

Because all of the defendants named in the writ of summons were not brought under the jurisdiction of the trial court, the appellee/plaintiff prayed for, and the clerk issued a writ of re-summons which was served and returned served on the 18th day of January, A.D. 2014. The sheriff's returns to the writ of re-summons show that six of the defendants, namely, Henry Richard, Patrick Bellyema, D. Wolobal Sonnie, Thomas K. Kollie, Benjamin Boar and Gibson James signed for and received the writ of re-summons. None of these six defendants so named and served with the writ of re-summons filed answer to the complaint. The appellee/plaintiff then requested a clerk's certificate to the effect that of the nine persons served a writ of summons and re-summons, only J. Samuel Brown and Robert Cooper filed a responsive pleading in keeping with the law. This certificate was duly issued and signed by the assistant clerk of court and issued to the appellee/plaintiff on the 23rd day of December, A.D. 2013. The appellee went a step further by applying for service by publication so as to ensure that the remaining defendants, who could not be served with the summons or re-summons, are brought under the jurisdiction of the trial court. The court granted this application, and on the 20th day of January 2014, the appellee caused to be published in the National Chronicle Newspaper the service of process by publication.

On the 20th day of January 2014, the same date of the first publication, the appellant/intervenor filed a four-count motion to intervene along with a five-count intervenor's answer without stating the name of the intervenor. Both the motion and the intervenor's answer substantially alleged that the intervenor is the acting Town Chief of Gbengbah Town; that the property, subject of this ejectment action, was repeatedly interfered with by the appellee's grantors; that the appellee's grantors falsified the deed of intervenor's property and made themselves administrators of the Barclay's Estate; that a petition for cancellation of the alleged falsified documents, including deeds, letters of administration, is pending before the trial court; that the property in question was granted to the people of Gbengbah Town through an Aborigine's Deed; and that the defendants against whom the action was interposed were placed upon the disputed property by authority of the people of Gbengbah Town. The appellee, in its resistance to the motion to intervene, substantially alleged that while intervention in a case pending before a court is a matter of right, however that the party so intervening should demonstrate such interest and capacity to intervene; that none of the defendants in the main suit ever interposed a defense in which intervenor's interest is apparent; and that intervenor failed to show his capacity

to represent the Barjuay Estate. The trial court heard and granted this motion. The case progressed to a regular trial by a jury and a unanimous verdict of liable returned against the defendants and the appellant/intervenor. The appellant/intervenor filed a motion for a new trial which the trial court heard and denied. The court entered a final judgment which is now before us for review upon submission of a six-count Bill of Exceptions by the appellant/intervenor.

We deem it necessary to quote the appellant's Bill of Exceptions in its entirety;

1. " That Your Honour erred when you rendered judgment of liable against intervener/ defendant on ground that he lacks capacity to intervene when such issues was never raised by the other party/plaintiff."
2. "That Your Honour erred when in your judgment, you said that the stay order of this court in the petition for preliminary injunction cannot affect the title of plaintiff even though said order was against the grantors of the plaintiff."
3. "That Your Honour erred when you failed to explain to the jury in your instruction the effect of the stay order of the injunction restraining and stopping the grantors of plaintiff not to sell or survey pending final determination of the main suit."
4. "That Your Honour erred when you failed to explain the effect of the 1905 Act which grant rights to natives to own land and the use of such land granted or issued under aborigine deed."
5. "That Your Honour erred when you decided to question defendant's witnesses and without question to the plaintiff/appellee's witness as it gave impression to the jury that plaintiff has better title than the defendants/appellants".
6. " That Your Honour erred when you refused to make the clerk of your court to produce the file of the case between plaintiff's grantors and the defendants (people of Gbengbah Town) which was prayed for by the defendants/appellants to establish that the land purchased by the plaintiff was in dispute between the people of Gbengbah town and plaintiff's grantors.'

As already indicated *supra*, only Emmanuel Togar, the appellant/intervenor, who alleged to be the acting Town Chief for the people of Gbengbah Town, appeared for the trial of these proceedings. The defendants named in the Writ of Summons, re-summons although served in person and by publication, never appear. At trial, the evidence of the appellant/intervenor tends to established that the appellee grantors' deed was a falsification of the aborigine deed issued to the people of Gbengbah Town and that a petition for the cancellation of that deed and other related documents (letters of administration and decree of sale) was pending before the trial court at the

time the appellee consummated the purchase of the land, subject of this appeal. The basis for the appellant/intervenor's contention is that the Republic of Liberia, during the administration of President Edwin J. Barclay, granted an aborigine deed to Chief Barjuay and the people of Gengbah Town for 1,600 acres of land and That the seven families comprising the people of Gbengbah Town apportioned the said 1,600 acres of land among themselves with each family head reserving the right to sell on behalf of his family. This court takes judicial cognizance of the fact that the appellant/intervenor filed his application to intervene in the absence of a defense interposed by defendants who received court's writ of summons and defendants who were served process by publication.

On the other hand, the evidence of the appellee/plaintiff tends to established that the purchase of the disputed property was made openly and notoriously in consultation with the people of Gbengbah Town in a mass meeting without any objection whatsoever from any quarter; that based on the advice of the people of Gbengba Town in a mass meeting, the appellee/plaintiff proceeded to transact the purchase of the property from the administrators of the Barclay Estate having diligently satisfied the requirements of law governing such purchase of an intestate estate by evidence of the authority from the Monthly and Probate Court for Montserrado County through a valid letters of administration and decree of sale duly issued to the administrators; that the land was a high bush at the time of the purchase, and there were no cornerstones present on the property; that it was the appellee who contracted young men from Gbengbah Town to brush, clear and burned debris on the said tract of land and thereafter constructed the school, hospital, and dormitory without molestation or hindrance from anyone including defendants in the main suit; that not until 2011 or thereabout, the defendants and appellant/intervenor began to encroach on the subject property destroying the appellee/plaintiff's wooden fence, palm and cassava farms.

The appellee evidence also tends to established that the purported aborigine's deed of the Barjuay Estate is a scheme and machination by the appellant/intervenor and others to deprive the appellee of her lawful property. That the purported aborigine's deed proffered by the appellant/intervenor in court is not different from the appellee's grantors' deed, except the difference in spelling of the name Barclay or Barjuay. However, the two deeds have the same metes and bounds, same date of probation and

registration, and signed by the same President, Edwin J. Barclay. The appellee's evidence as revealed in the records of this case tends to establish that the appellee made a massive investment in the subject property to the tone of 1.4 million United States Dollars and that the appellee is currently rendering social services to the people of Gbengbah Town and beyond.

We consider four germane issues raised in the appellant's Bill of Exceptions that are determinative of the appeal before us:

1. Whether the appellant was entitled to injunctive relief against the appellee growing out of the petition for a preliminary injunction filed in a case in which the appellee was not a party?

2. Whether the appellant demonstrated interest to intervene within the meaning of sections 5.61 and 5.62 of the Civil Procedure Law as revised?

3. Whether the trial court erred when it failed to explain the effect of the 1905 Act which grants rights to natives to own land and the use of such land granted or issued under aborigine deed."

4. Whether or not the verdict as returned by the trial jury finds support in the evidence as was adduced during the trial.

We shall address these issues in the order in which they are presented.

Relative to the first issue, the appellant argued before us that when the people of Gbengbah Town became aware of the selling of their land by the appellee's grantors, the estate filed a petition before the Monthly and Probate Court for Montserrado County against the appellee's grantors for interference with the estate. The probate court had a hearing in the year 2000 and ruled that the Intestate Estate of the Barclay and petitioner (Estate of Chief Barjuay) were calling for two different and distinct locations. Hence the court declined to revoke appellee grantors' Letters of Administration and Decree of Sale.

The estate appealed this ruling of the probate court to the Supreme Court which appeal remains pending to date. Appellant/Intervenor also argued before us that the Sixth Judicial Circuit Court issued a restraining order growing out of a Cancellation proceedings, in which the appellee was not a party, restraining appellee's grantors from selling or surveying the parcel of land in dispute. Appellant further argued before us that appellee was in the know of the existence of this restraining order.

We are keen to note here that appellee was not a party to the two suits referred to hereinabove; that is to say, the case of Interference with Intestate Estate of Barjuay filed before the Monthly and Probate Court for Montserrado County and the Cancellation Proceedings filed before the Sixth Judicial Circuit Court. We also note that the survey and acquisition of the over 72 acres of land, the clearing of dense bush and subsequent construction of the school, hospital, and dormitory on the subject property was not done and certainly could not have been done in a moment. This exercise was a massive construction project as can be seen from the evidence before us. The compelling question that begs any reasonable and thinking person would be: what step or steps did the Barjuay Estate take to inform appellee about the pendency of litigation between the appellant and the appellee's grantors in the face of the enormous project that was being undertaken by the appellee on the disputed property. Alternatively, why did appellant not called the attention of the court before whom these several cases were pending to the allege violation of the injunctive order issued against appellee's grantors in the face of the appellee's undertaking of such a vast project in the clear view of the appellant especially considering that appellant had knowledge that the appellee was undertaking such project as the outcome of the sale of the property to the appellee by the appellee's grantors? Better still, why did the appellant not institute action against the appellee or have the appellee joined in the action against appellee's grantors for appellee's interference with the disputed property at the time appellee was undertaking such a vast construction project on the disputed property so as to bring the appellee under the ambit of the injunctive order?

For all intent and purposes, the Barjuay Estate had a legal duty in the face of the activities of the appellee on the disputed property to have either legally confronted The appellee to arrest their alleged illegal interference with the appellant's estate or better still bring this allegation of illegal interference to the attention of the trial court that issued the injunctive order against the appellee's grantor. Alternatively, can it be discerned that the failure of the appellant to either file a Bill of Information against the appellee's grantor for the violation of the injunctive order was because the said order was lifted? We take judicial notice of the records that were forwarded to this court from the Sixth Judicial Circuit under the appellant's application for the diminution of records. The court observed that the records consist of two rulings, the

first ruling dated January 21, 2005, granted the application for a preliminary injunction on the condition that the applicants, James McClain et-al, filed additional security in the amount of L$75,000.00. The second ruling, rendered on February 24, 2005, granted a Motion to Vacate the Injunction with the modification that additional security to the tune of L$100,000.00 be filed. Since the ruling vacating the injunction came after the ruling granting the injunction, it is by operation of the law of recency that the latter ruling supersedes the former. In the absence of any contrary evidence to the action, it can be said that there was no injunction to restrain the appellee's grantors from disposing of the said property, subject to the caveat that the prevailing party in the said action be determinative of the strength of the title conveyed to the appellee/plaintiff by the appellee/plaintiff's grantor. Assuming for the sake of argument - which finds no support in the records before us - that there was another determination of the trial court overturning the February 24, 2005 ruling of the court, the Barjuay Estate could have alternatively filed a bill of information to report the alleged disobedience of the appellee's grantors of the injunctive order issued by the court restraining the appellee's grantors from selling or surveying the property, subject of the restraining order; or still better, join the appellee as a party defendant in the event that the sale was consummated before the reinstitution of the injunctive order.

The Barjuay Estate not having surrounded its cause and interest with the necessary legal safeguards by calling the attention of the court in the Cancellation Proceedings in which the injunctive order was issued against the appellee/plaintiff's grantors to the violation of the said order by the said grantor, and/or by joining the appellee as a party defendant in the face of the appellee/plaintiff's acquisition and development of the disputed property, the said estate cannot thereafter and without the intervention of the court place others on such property. In other words, the failure of the appellant to act when it was necessary constitutes a waiver, and therefore, the appellant suffers laches for his inaction. Under the circumstances of this case, it cannot be said that the appellee had such notice of the injunctive relief to be bound thereby. In the case Ezziedine v Saif [1985] LRSC 12; 33 LLR 21 (1985) (20 June 1985), this Court held that a waiver operates to preclude a subsequent assertion of the right waived or any claim based thereon, even if subsequent events prove the right waived to have been

more valuable than anticipated. This holding finds support in 28 AM JUR 2d., *Estoppel and Waiver,* § 16. That Rights granted by statute or policies may be waived by a party, and if so waived, a party is *estopped* from asserting it. "*Estoppel*" means that a party is prevented, by his own acts, from claiming a right to the detriment of another party who was entitled to rely on such conduct and has acted accordingly. *Estoppel* arises when one is concluded and forbidden by law to speak against his act or deed. An inconsistent position, attitude, or course of conduct may not be adopted to the loss or injury of another. *Estoppel* is a bar or impediment which precludes allegation or denial of a certain fact or state of facts, in consequence of previous allegation, denial, conduct or admission, or in consequence of a final adjudication of the matter in a court of law. It operates to put a party entitled to its benefit in the same position as if the things represented were true. *See* BLACK'S LAW DICTIONARY 494 (5th ed.)." More besides, in the case *Tuning et al. v. Thomas et al.[1972] LRSC 5;* , 21 LLR 33 (1972), at Syl. 6, this court held that "There is a defense peculiar to courts of equity founded on lapse of time and staleness of claim where no statute of limitations directly governs the case. In such cases, the courts often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights." *Id.,* at 42.

Coming to the second issue that the appellant/intervenor raised in count one of his bill of exceptions regarding the ruling of Judge Emery S. Paye that appellant/intervener failed to establish his right or capacity to intervene, we take further recourse to the certified records before us. Our search of the records shows that when the appellant/intervener filed his application to intervene, the appellee also filed a resistance to it. Appellee/plaintiff did raise the issue of lack of capacity of the appellant/intervener to intervene. The application was duly assigned for hearing, argued and granted by Judge Peter W. Gbeneweleh. Appellee/plaintiff's counsel entered exception on the records to the said ruling. We observe from the records that Judge Emery S. Paye in his final judgment passed on the very same issue his predecessor of concurrent jurisdiction had ruled on contrary to the settled principle of law in this jurisdiction that a judge of concurrent jurisdiction cannot review, modify, or undo the ruling or judgment of his predecessor colleague. We hold that

Judge Paye was in error to have passed on the issue of the capacity of the appellant/intervener where his predecessor Judge Gbenewelleh had entered ruling granting the application of appellant/intervener to intervene in the case. However,

appellee having excepted to the ruling of Judge Gbenewelleh granting appellant/intervener's application to intervene, it is within our appellate review authority to say whether or not the ruling of Judge Gbenewelleh granting the application to intervene was in harmony with Sections 5.61 and 5.62 of our Civil Procedure Law as revised.

Coming to the issue of whether the appellant/intervenor, in his application to intervene demonstrated sufficient interest to be permitted to intervene in the action out of which the said motion grew, we hold that the trial judge was in error when he granted the said application to intervene.

We are keen first to explore the interest of the appellant/intervenor given the gross neglect and failure of the original party defendants in the suit to file a responsive pleading in keeping with the settled principle of law in this jurisdiction. The failure of the defendants in the main suit to interpose responsive pleading to the complaint constitutes a general denial of all the allegations in the complaint. This act on the part of the defendants estops them from interposing any affirmative defenses to the issues raised in the appellee/plaintiff's complaint.

However, this does not stop defendants from producing evidence in support of their denial of the averments contained in the appellee/plaintiff's complaint. Unfortunately, the defendants did not appear before the court during the trial in support of their plea of general denial.

The question then is, can this failure on the part of the original defendants to interpose responsive pleadings to the plaintiff's complaint be cured by an intervention on the part of a person who is not named in the appellee's complaint raising affirmative issues? In our opinion, this act of intervention is a smart design to sway and circumvent our established procedure on how defenses are interposed in civil actions.

The flagrant disregard by the original party defendants to interpose their individual or collective defense leaves this Court to wonder whether defendants who are ruled

to general denial by their failure to appear within statutory time upon due notice can enter a case by way of intervention through a third party who is a stranger. We do not think so.

Chapter 5, Subchapter E (Intervention) at Section 5.61 of our Civil Procedure Law as revised, provides as follows:

1. In general. Upon timely application, any person shall be allowed to intervene in an action:

- When a statute of the Republic of Liberia confers an unconditional right to intervene; or

- When the representation of the applicant's interest by existing parties is or may not be adequate, and the applicant is or may be bound by a judgment in the action; or

- When the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof.

From scrutiny of the appellant's application for intervention and the accompanying appellant/intervenor's answer, we are convinced that the only applicable provision of the statute on intervention in this case is sub-paragraph (b). We reach this conclusion because there are no averments in the application or the answer that a statute "confers an unconditional right to intervene in the action under review" upon the appellant/intervenor, or that "the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof".

We also cannot, from the said pleadings, find any support for the application of Section 5.62 to the resolution of the issue of the appellant's right to intervene in this matter. Sub-paragraph (b) shall, therefore, be examined as the basis of our determination on this issue.

One of the bases of the appellant's claim of interest in this matter is that the original defendants in the main suit were placed on the property by the appellant. It follows, therefore, that the appellant has the obligation to defend them since their presence on

the said property was based upon the instruction of the appellant. We have succinctly established from the records that those defendants are on bare denial by their failure to interposed answers to the appellee's complaint. The only defense available to the defendants is a general denial of the averments in the complaint, and they are estopped from interposing affirmative defense. An affirmative defense is defined as a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. (Black's Law Dictionary, Abridged Eighth Edition).

The averments that the defendants were placed on the disputed property by the appellant who was not named in the original suit constitute an affirmative defense. The original party defendants to the action out of which the appeal grew did not name the appellant/intervenor as their grantor so as to establish a correlation between those defendants and the appellant/intervenor. What is more interesting to note here is that the appellant herein filed his application to intervene and his intervenor's answer on the self-same date when the first summons by publication was made. No effort was made by the said appellant to have the original defendants in the court below file answer(s) to it thereby exerting their right to interpose affirmative defense to the appellee's complaint. Will it, therefore, not a defeat of the purpose and intent of our procedural code on pleadings to allow a third party to interpose such defenses for the original defendants what they ought to have done for themselves? By not filing an answer, the defendants are not entitled to the benefit of this defense. We are convinced that this defect cannot be cured by the intervention of a third party who is a stranger to the suit.

This Court held in the case Ramatrielle v Metzger et al [1997] LRSC 2; 38 LLR 336 (1997) (22 July 1997) that intervention as a matter of law and practice, cannot be obtained by a third party for the benefit of another. Once the defendants did not file an answer interposing this defense, a stranger to the suit cannot be permitted to raise the same as bases of intervention.

More beside the appellant, in both his application for intervention and his intervenor's answer, admitted that the appellant was aware of the acquisition of the disputed property by the appellee in 2005 and 2007 respectively. The only action that the appellant took - as can be discerned from the appellant's pleadings in the court below - in response to appellee's acquisition and development of the said property was to

allegedly damaged the enclosure placed around the said property by the appellee, entered thereupon and placed persons on portion thereof sometime in 2011. We are left to wonder whether this action gives any color of right to the appellant to this property especially considering, as alleged by the appellant, the pendency of actions instituted by the appellant against the appellee's grantor for this self-same property? Does this not constitute a gross disregard of the court before whom the appellant had instituted his pending suits, and the taking of the law in one's hand? We are further left to wonder as to what color of right or law under which the appellant can justify such action? For all-purpose and intent, this alleged act on the part of the appellant/intervenor, if established in a competent court of jurisdiction, constitutes a trespass which is criminal under our law. We, therefore, hold that this action by the appellant confers upon the said appellant no right by the strength of which he should have been granted intervention in this matter.

Considering the substance of the intervener/appellant's answer, we note that said answer addressed issues relating to the relationship between the intervener and appellee's grantor. We are left to wonder as to how the lower court could enter a determination affecting the rights and interest of the said appellee's grantor without the said grantors being a party to the action in which such rights and interests are made a subject of inquiry by the court.

We further observe that the application to intervene and the intervener's answer attacked the Plaintiff's right to the property based on pending actions before our courts to which the appellee is not a party. We are again left to wonder as to how the appellee can be affected by those actions considering their pendency and considering that the appellee was not made a party to those actions before our courts.

More besides, since, as alleged by the appellant, there are suits pending in the courts instituted by the appellant against the appellee's grantor regarding the estate of which the disputed property herein form a part, no direct interest of the appellant stands in harm way for which intervention by the appellant in this matter becomes a necessity. While we acknowledge the absence of any concise yet comprehensive definition of what constitutes a litigious 'interest' for intervention, we, however, note that interest in the subject matter of the litigation must be a substantial interest or an interest known and protected by law….. "One interested in an action is one who is interested

in the outcome or result thereof because he has a legal right which will be directly affected thereby or a legal liability which will be directly enlarged or diminished by the judgment or decree therein." The interest here referred to is generally required to be direct and not inconsequential, and it must be an interest which is proper to be determined in the action in which intervention is sought ....59 AM JUR 2d, *Parties,* 138" Abi-Jaoudi et al v. Monrovia Tobacco Corp. 36 LLR 156 (14 July 1989). The defendants in the main suit not having interposed answers from which the interest of the intervener may be inferred, and the intervener's answer rather than address appellee's claims against the original defendants focuses on issues allegedly in controversy between the intervener and appellee's grantor, this Court says it sees no right of intervention that accrues to the intervener in the matter out of which the appeal grows. Also, see Boye v. Nelson (1978) LRSC 33; 27 LLR 174 (1978) (30 June 1978).

With respect to the issue of the capacity of the appellant to intervene in this matter, we take judicial notice of the records. We note that the appellant introduced himself as the acting town chief of Gbengbah Town. He further stated that because the property in question was granted to the People of Gbengbah Town through an aborigine deed and that the defendants against whom the action in the lower court was instituted were placed on the said property by authority of the people of Gbengbah Town, appellant therefore possesses the competence to intervene so as to protect and preserve the interest of the people of Gbengbah Town. We observed that the said acting town chief did not attach any instrument to his pleading supporting his claim to be the acting town chief of Gbengbah Town nor did he attach any instrument executed by the people of Gbengbah Town empowering him to institute this intervention for and on their behalf. In response to the question placed to him during the trial of this matter regarding his authority to institute this action, the appellant failed to account for the authority he relied upon to institute the said action. This Court says that capacity is essential to support the assertion of a claim; Citizens Solidarity Council v. RL (2016) LRSC 21 (27 June 2016); Morgan v Barclay et al. (2004) LRSC 22; 42LLR 259 (2004) (17 AUGUST 2004). Not having demonstrated his capacity this Court does not see how the lower court could entertain this matter and enter judgment either in favor of or against the people of Gbengbah Town and how that determination could be effectuated. Further to the above, this Court takes

judicial cognizance of two other actions that were referred to by the appellant in his intervener's answer before the lower court.

The appellant cause to be brought before this court a copy of ruling rendered in one of those cases had before the Sixth Judicial Circuit Court. Not only was this Action not instituted by or against the People of Gbengbah Town, but also the said action was not instituted by or against the appellant for and on behalf of the people of Gbengbah Town. This is further compounded by allegations found in the records that the actual town chief of Gbengbah Town is Robert Cooper who is currently on the government payroll and receiving a salary as such. This certainly brings into issue the status and the capacity of the appellant to enter this matter in the name, and for and on behalf of the people of Gbengbah Town.

Considering the third issue, we do not see the urge to delve into ancient matters about the rights of native people under the facts and circumstances of this case. The appellant/intervenor's evidence tends to establish that the property granted to the people of Gbengbah Town was distributed amongst the seven families constituting the people of Gbengbah Town with the right reserved to each family to alienate any and all portion granted to them. More besides, the appellant's evidence tends to establish that in spite of the communal nature of the Gbengbah Town grant to the community, Letters of Administration were always obtained for the administration of the property. It can, therefore, discern that by practice, the people of Gbengbah Town transform the communal nature of their holding to an estate in fee. They cannot now repudiate their actions due to changing conditions and interest to the detriment of the third party who relied thereupon on. We think that the dispute, in this case, is squarely between the people of Gbengbah Town-the appellee's grantors and the supporters of the appellant who are all part and parcel of the people of Gbengbah Town. This conclusion is also supported by the averments of the appellant/intervenor's answer, which attack the appellee's grantor's deed instead of appellee's deed. Counsel for appellant during an argument before us conceded this point and said that the appellant is after the appellee's grantor to prevail in the present case. The appellant' counsel's contention does not persuade us.

The fourth issue concerns the appellant's attack, in his bill of exceptions, to the fairness of the trial judge when, according to the appellant, the trial judge elected to question only the defendants' witness. According to the appellant, this act on the part of the said judge communicated the wrong signal and impression to the trial jury

regarding the evidence adduced by the parties, which also influence the jury verdict. For this alleged prejudicial act, the appellant is of the opinion that the verdict returned by the panel ought to have been set aside.

The appellant is not challenging the judge's competence to ask a question to witnesses when he believes he should so do. This is a right conferred upon the judge by our practice and procedure. Kopoi v. RL (2012) LRSC 12 (16 August 2012) More besides, the appellant fails to provide any legal and/or factual bases to support his allegation that once the trial judge puts questions to the witnesses of one party during the trial he is under obligation to also put questions to the other side so as to demonstrate fairness. It is the general rule that in the absence of any showing to the contrary the law presumes that a judge is unbiased and unprejudiced. The burden to overcome this presumption lies upon the party who alleges prejudice or bias against a judge. To overcome this presumption a party must produce evidence beyond a reasonable doubt to overcome the question as to whether a reasonable person, knowing all of the circumstances will harbor doubt about the judge's impartiality or bias. 46 AM JUR., 129, Page 248. In the case under review, the appellant failed to produce that needed evidence to support the averments that the judge asking questions to only his witnesses constitute prejudicial action on the part of the judge. We, therefore, find no justification to entertain this point.

With respect to the fifth issue, under our law, the office of the court in a matter heard with the aid of a jury is to determine the sufficiency of the evidence. It is the office of the trial of fact to determine the weight and the credibility to be attached to the evidence and the witnesses appearing before the court. For a court to disturb a verdict returned by a trial jury, it must be demonstrated that the trial jury's verdict cannot find support in the evidence as adduced during the trial. It is important to search the evidence that was adduced during the trial in order to make the determination as to whether the verdict is in harmony with the evidence adduced during the trial.

It has been said earlier in this opinion that the court ruled the defendants in the action to bare denial and that the defendant failed to appear during the trial in defense of their general denial. Because of this, these proceedings took the form of a default trial where appellee is required by law to produce evidence to substantiate the allegations contained in the complaint. Appellee produced two witnesses during the trial.

Appellee's Executive Director in the person of Mathew Sakueh testified followed by appellee's second witness, Bahba Kaba. Witness Sakueh recounted the facts as contained in the appellee's complaint. Appellee produced two administrator's deeds, letters of administration and a decree of sale duly issued by the Monthly and Probate Court for Montserrado County along with photos of the meeting held with the people of Gbengbah Town, the clearing and development of the mission project. These species of exhibits were confirmed and admitted into evidence by the trial court. Our statute provides that letters testamentary and of administration are admissible into evidence as long as they are not regularly revoked. "Letters testamentary and of administration may be introduced in evidence in all cases until they have been regularly revoked" Civil Procedure Law, Rev. Code:1:25:25.15.

Witness Kaba told the trial court and jury that he acquired 26.0 acres of land from the people of Gbengbah Town between 1994 and 1997 through the same administrators of Barclay Estate, appellee's grantor, J. Samuel Brown, Morris G. Payne, and Pliccaid M. Garway. That he has had no trouble since he acquired the 26 acres of land from the people of Gbengbah Town up to and including the time of his testimony at the trial. Witness Kaba corroborated the testimony of the appellee's first witness that at the time of the sale of land to appellee, the area was a dense bush with no other persons on the property and that he was the only person sharing boundaries at the time with the appellee. It suffices to say that the appellee produced the preponderance of evidence to establish its ownership of the subject property during the trial.

This Court also takes judicial cognizance of the presence of a 24 room hospital, 32 bedroom dormitory, a three-story school building, and a guest house lying and situated the at the Robertsfield Highway, Gbengbah Community, City of Paynesville, Montserrado County, Republic of Liberia, commonly known as the ABC Children Village owned by appellee. Interestingly the intervenor, in his testimony before the trial court and the jury, denied the presence of these facilities in the location above described. His testimony was corroborated by appellant's' third witness Marcus R. Toby, but contradicted by the second witness Othello Garway.

It is worth noting that the testimonies of the appellant's second and third witnesses contradicted the appellant in many respects as seen from the records. Needless to

mention that Othello Garway acknowledged in his testimony that one of the appellee's grantor in the person of Pliccaid Garway was his brother and head of the family who had authority to sell land on behalf of his family. Likewise, Marcus R. Toby acknowledged in his testimony one of the appellee's grantors in the person of Morris R. Paynes to be his father and head of the family who also had authority to sell on behalf of his family. It becomes evident to us from testimonies of appellant's witnesses couched in the records of this case that there is family feud within the communal holdings between elders and the youth. The disagreement between the young people on the one hand and the chiefs and elders on the other should not transcend to innocent third parties who have genuinely transacted land sales with the people of Gbengbah town. It is also our findings that the contention as to the difference between Barclay or Barglay and Barjuay was borne by a feud between and amongst the seven families making up the people of Gbengbah Town. This court decided similar contention in the case Lartey et al v Corneh et al 17 LLR 403 (1966). The defendants contended in that case that the plaintiffs were not the proper parties to bring an action of ejectment for recovery of property belonging to the Vai Community, commonly known as Vai Town. It was the defendants' further contention that the tribal authorities of Vai Town were the proper parties to maintain an action in respect of the subject property, predicated upon the fact that the fee for these communal holdings was vested in the aforementioned tribal authorities as trustees. As an additional plea in bar the defendants contended that the deed made profert by the plaintiffs conveyed a communal holding granted by the Republic to Chief Murvee Sonii and residents of Vai Town (Vai John's People), and that the name "Murphey" constituted but an incorrect spelling of the name of the chief, Murvee Sonii, who was commonly called Murphey.

The defendants asserted that this aborigine grant was not intended to devolve on the heirs of Vai John but was intended to be enjoyed in common by all the residents of Vai Town under the supervision and administration of the tribal authorities. In addition to the above-named pleas in bar there were certain pleas in abatement to the effect that not all of the defendants were named in the complaint or in the writ of summons; instead, the words et al. were inserted, which constituted a bad plea. Lastly, it was averred in the answer in the court below that Vai John was never seized of the subject property, since the grant from the Republic was made in 1906 whereas Vai

John had passed unto the great beyond during the year 1899, quite 6 years prior to the alienation of the fee by the Republic to Murvee Sonii and the residents of Vai Town. The pleadings rested with the rebutter as filed on the 4th day of November 1963, and thereafter, on the 15th day of May, 1964, his Honor John A. Dennis, then presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, ruled on the issues of law. In his ruling, the judge held that under the principle of idem sonans, Murphey was but a corruption of Murvee, and as both names sound alike, they refer to one and the same person. This Court is of the opinion that that particular portion of the trial judge's ruling was in consonance with law".

We affirm and hold that Barclay or Barglay is a corruption of Barjuay, and as both names sound alike, they refer to the same person. In support of this conclusion, we find that the two aborigine deeds in question bear the same volume and page of the Center for National Document, Records and Archives, Vol. 16-A, pages 734-735, with the same metes and bounds. Strikingly while we did not have the opportunity to examine the title deed of the appellee's grantor because it was not pleaded, we however keenly examine the title instrument proffered by the appellant. Our scrutiny shows that the name Barjuay as it appears on the said instrument is of a character different from the entire inscription of the rest of the instrument. This, however, is an area that we cannot say much to since this is an issue not properly before us in this matter. Had this action been a controversy where the title instruments of the appellant and the appellee's grantor was in controversy, the trial court would have been adequately situated to delve there into.

It is our holding that the unanimous verdict of the jury is in support of the evidence adduced at trial and therefore we have no reason to disturb the same. In support of this position, we affirm the opinion of Court hoary with time. In the case Lib. Oil Refinery Co. v Mahmoud, 21 LLR 201 (1972). This Court said: "In the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, estimate and weigh its value, accept, reject, reconcile, and adjust its conflicting parts, and be controlled in the result by that part of the testimony which it finds to be of higher weight. The jury is the exclusive judge of the evidence, and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence.

Accordingly, where the jury has concluded having considered evidence which is sufficient to support a verdict, the decision should not be disturbed by the court." 39 AM. JUR., New Trial, § 133. Since we do not feel that the trial judge erred in denying the motion for a new trial, count five of the bill of exceptions is not sustained. Given what has been stated above, it is our opinion that the verdict of the trial jury, in this case, is in accord with the evidence adduced during the trial and accordingly we, therefore, find no justification to disturb the final judgment affirming the same.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the trial court is affirmed and appeal dismissed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to this opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.