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

Isaac Gboking of the City of Paynesville, Montserrado County, Liberia and The Intestate Estate of the Late David & Joel Clarke represented by its Administrator, Joseph B. Narbo, T. Morris Whenkon, Eric B. Narbo, Matthew Clarke and Naomi Clarke all of the city of Paynesville, Montserrado County, Liberia .....DEFENDANTS/APPELLANTS

VERSUS

Johnny Hills, Sr., S. Emmanuel Freeman, Winston F. Gaye, Tom W. Diggs, Administrators of the Intestate Estate of the Late Tar-sue Gezor of the city of Paynesville, Liberia.....PLAINTIFFS/APPELLEES

GROWING OUT OF THE CASE:

Isaac Gboking, of the City of Paynesville, Montserrado County, Liberia.....MOVANTS

VERSUS

Johnny Hills, Sr., S. Emmanuel Freeman, Winston F. Gaye, Tom W. Diggs, Administrators of the Intestate Estate of the Late Tar-sue Gezor of the city of Paynesville, Liberia.....RESPONDENTS

GROWING OUT OF THE CASE:

Johnny Hills, Sr., S. Emmanuel Freeman, Winston F. Gaye, Tom W. Diggs, Administrators of the Intestate Estate of the Late Tar-sue Gezor Of the city of Paynesville, Liberia.....PLAINTIFFS

VERSUS

Isaac Gboking, of the City of Paynesville, Montserrado County, Liberia.....1ST DEFENDANT

AND

The Intestate Estate of the Late David & Joel Clarke, represented by its Administrators, Joseph B. Narbo, T. Morris Whenkon, Eric B. Narbo, Mathew Clarke and Naomi Clarke all of the city of Paynesville, Montserrado County, Liberia.....INTERVENOR/2ND DEFENDANT

APPEAL

MOTION FOR NEW TRIAL

ACTION OF EJECTMENT

HEARD: JUNE 13, 2019.

DECIDED: AUGUST 5, 2019.

When this case was called for hearing, Counsellor Cooper W. Kruah, Sr. of the Henries Law Firm appeared for the appellants. Counsellor Abraham B. Sillah of the Heritage Partners and Associates appeared for the appellees.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This case is on appeal from the final judgment of the Sixth Judicial Circuit, Civil Law Court for Montserrado County in an ejectment action. The appellee/plaintiff,

Johnny Hills, Sr., Emmanuel Freeman, Winston F. Gaye, and Tom W. Diggs, Administrators of the Intestate Estate of the Late Tar-sue Gezor, instituted an action of ejectment on the 22nd day of October, A.D. 2013, against the co-appellant/defendant, Isaac Gboking, and substantially alleged that it is the owner of four (400) hundred acres of land lying, situated and located in the Pipeline Community, Paynesville City, Montserrado County, Liberia; that in the year 2009, one of the appellee's Administrators, Johnny Hills, Jr., granted co-appellant/defendant permission to squat on two lots of property with the understanding that the co-appellant/defendant vacates and turns over the subject property upon appellee/plaintiff's request, or if the co-appellant/defendant desires to purchase the property, he would do so for an agreed purchase price; that the appellee/plaintiff subsequently requested the co-appellant/defendant to vacate and turn over the property in keeping with their understanding so that it may develop the property, but that the co-appellant/defendant deliberately refused and claimed that he purchased the property from another person; that all efforts to have the co-appellant/defendant vacate and turn over the property to the appellee/plaintiff failed; therefore, the appellee/plaintiff instituted this ejectment action requesting the lower court to evict, oust and remove the co-appellant/defendant from the subject property and award the appellee/plaintiff general damages in an amount not less than US$100,000.00(One Hundred Thousand United States Dollars), for wrongful withholding and possession of the subject property.

The co-appellant/defendant filed a six-count answer denying the allegations contained in the plaintiff/appellee's complaint. Co-appellant/defendant substantially alleged that he acquired the disputed property from Samuel Vawah and Joe Clarke.

The plaintiff/appellee filed his reply along with a motion to strike the co-appellant/defendant's answer because the co-appellant/defendant filed his answer outside of statutory time and without serving the appellee/plaintiff's counsel. The trial court issued a regular notice of assignment for the hearing of the motion to strike. The sheriff's returns, as found at the back of the assignment, showed that the parties were duly served and returned served. At the call of the motion for hearing, the counsel for the co-appellant/defendant did not appear, and therefore appellee's Counsel evoked Section 10.7 of the Civil Procedure Law on default motion. The trial court granted the appellee's application for default on the motion, ordered the co-appellant/defendant's answer stricken off the records and ruled the co-appellant/defendant to bare denial. The case progressed to trial by default, and the

trial court entered a final judgment of liable against the co-appellant/defendant. The trial court subsequently issued a writ of possession ordering the co-appellant/defendant to be ousted, evicted, and ejected from the subject property.

The co-appellant/defendant then filed an eleven-count motion for relief from judgment citing irregularities that occasioned the trial by default. The motion was regularly heard and denied. Co-appellant/defendant fled to the Chambers Justice for a writ of error. During the hearing of the petition, the appellee/plaintiff conceded the legal soundness of the co-appellant/defendant's petition. The Chambers Justice remanded the case for a new trial.

Upon the resumption of jurisdiction by the trial court, the co-appellant/intervenor, the Intestate Estate of David and Joe Clarke, filed a four-count motion to intervene in which the co-appellant/intervenor submitted that the two lots of land, subject of the litigation, was part of the 150 acres of land owned by the said estate; that the co-appellant/defendant acquired the said two lots from the co-appellant/intervener and evoked Section 5.61 of the Civil Procedure Law Revised (1973). The co-appellant/intervener's answer substantially alleged that it is the grantor of co-appellant/defendant; that the co-appellant/defendant first purchased the subject property from Samuel Vawah who was not the rightful owner of the property; and that appellee and his wife, Yannel Zoegar, witnessed the deed issued by Samuel Vawah to co-appellant.

The appellee/plaintiff filed a nine-count resistance to the motion to intervene and a reply to co-appellant/interveners' answer both of which substantially averred that the co-appellant/interveners lack the capacity to intervene by virtue of the fact that the letters of administration proffered by the co-appellant/interveners had expired on its face; and that the co-appellant/intervenor failed to state legal grounds for which the trial court should grant the application for intervention. The trial court heard and granted the Motion to Intervene over the exception of the appellee/plaintiff.

The trial commenced upon the impaneling of a jury who, after hearing the evidence of the parties, returned a unanimous verdict of liable against the co-appellant/defendant on the 20th day of October, A.D. 2016. Co-appellant/defendant filed a motion for a new trial on the 25th day of October, A.D 2016 and essentially averred that the unanimous verdict of liable against him was contrary to the weight of the evidence adduced at trial. The appellee/plaintiff resisted this motion in a twenty-two count resistance. The records show that the co-appellant/intervener did not file a motion for a new trial. The appellee/plaintiff requested, and the Clerk of the trial court issued a Certificate to this effect. Upon the issuance of a notice of

assignment by the trial court for the hearing of the motion for a new trial on the 2nd day of November, A.D. 2016, +co-appellant/defendant withdrew his motion for a new trial with reservation, and together with the co-appellant/intervenor filed an amended motion for a new trial on the selfsame 2nd day of November, A.D. 2016.

We deem it necessary to quote the pertinent part of the trial judge's ruling on the motion for a new trial and amendment made to it.

"With respect to the so-called amended motion filed by the defendant, this Court says said motion was filed outside of the statutory period of four days because the statute clearly states that the four days within which a party is permitted to file a motion for new trial cannot be extended. Hence, the amended motion having been filed more than four days after the jury verdict was returned and exception thereto was noted, counsel's argument that this court should accept the amended motion as legally sound is an attempt to circumvent the clear and unambiguous language of the statute provision relative to the filing of a motion for new trial. Were this court to agree with counsel's position, such conduct on the part of this court will lead to a distortion of the relevant statutory provision and also cause a floodgate of frivolous amendments filed by party litigants. With respect to the motion for new trial which is actually before this Court, this Court says that having reviewed said motion and resistance thereto, having listened to arguments from both sides, and as will be set more fully in the final judgment to be rendered in this case, said motion is hereby denied. And it is hereby so ordered."

The trial court after that entered a final judgment on November 7, 2016. It is from the final judgment of the trial judge that appellants certified to this Court a twenty-five count Bill of Exceptions for our review. We quote the bill of exceptions:

> "AND NOW COME THE APPELLANTS in the above captioned case and submit the Bill of Exceptions requesting Your Honor and this Honorable Court to approve the Appellant's Bill of Exceptions so that the reversible errors made by Your Honor can be reviewed and corrected by the Honourable Supreme Court during its March A.D. 2017 Term of Court and showeth the following to wit:
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> 1. That Your Honor erred and made a reversible error when you held that the jury verdict holding the defendants liable is not contrary to the weight of evidence adduced at the trial without taking into account the fact that the plaintiff was the driver of the late Samuel Vawah, one of defendant Isaac Gboking's grantors. In defendant Gboking's testimony, he testified that the land was sold to him by the late Samuel Vawah based on the advice of Mr. Johnny Hill, the plaintiff in these proceedings and Johnny Hills, his mother and father witnessed the sale transaction between Samuel Vawah and defendant Isaac Gboking. The deed was testified to, identified, and admitted into evidence. The Plaintiff did not rebut the testimony. By this, it means the plaintiff is fully aware of Mr. Gboking's ownership of the property from 1987, the time of the land sale transaction between Isaac Gboking and Samuel Vawah.

2. That Your Honor erred and made a reversible error when you failed to take into consideration the testimony of defendants' witnesses that the plaintiff's property, that is the intestate estate of Tar-sue Gbezor does not own property, in that area where the defendant's property which the subject of this litigation is located. The intervener pleaded in its Answer that their property which the defendant's property is a part is separate and distinct from the plaintiff's property. Also, the Co-Administrators of the Tar-sue Gbezor estate in the person of Emmanuel Freeman and Tom Diggs appeared before a Notary Public and testified upon Oath stating that the Tar-sue Gbezor intestate estate is lying and located between Wein Town and the Johnsonville Community. The affidavits of confirmation produced by the two Co-Administrators were pleaded in the defendant/movant Motion for New Trial but yet, you failed to consider the fact that the defendant's property does not fall within the Tar-sue Gbezor intestate estate, and you went on to grant a Judgment in favor of the plaintiff without instructing that the plaintiff be placed on the property with the aid of the Surveyor.

3. That Your Honor erred and made a reversible error when you failed to take into account the fact that the plaintiff in an Ejectment action is required to win the case only based on the strength of his title deed and not the weakness of the defendant's title. In the instant case, Your Honor failed to take into consideration the fact that the plaintiff's deed called for a property that is located between Wein Town and the Johnsonville Township, that before you can travel from the plaintiff's property, you have to pass through the Wein Town and the intestate estate of Joseph Boker which contain the Boker Town Community nowadays before reaching David and Joe Clarke intestate estate of which the defendant's property is a part.

4. That Your Honor erred and made reversible error when you ruled against the defendants without taking into account the testimony of the plaintiff alleging that he placed on the subject property in the year 2009 and also without submitting any evidence to this fact, that on the contrary the defendant's witness testified that the only time he had a problem with the Church group was in 2006 and he was never evicted from his property where he has been living all through, secondly, when the plaintiff was called as a rebuttal witness, he was posed a question by the defendant's counsel and in answering that question, he told the court that after Mr. Gboking was removed by the court, he was placed in possession by the same court in about a month's time. Meaning, Mr. Gboking was in possession of his property since that one month and up till now.

5. That your Honor erred and made reversible error by sustaining the Jury Verdict when the Jury failed to take into account the lies and misrepresentation made by the plaintiff's witnesses such as (the plaintiff was also a plaintiff in an action between the David and Joe Clarke intestate estate on the one hand and the late Samuel Vowah and associates on the other hand.

In this case, Samuel Vawah, whom the plaintiff was driving for at the time the case was heard at the Ministry of Justice, lost the case. The plaintiff presented in his complaint that he was the plaintiff, and he won the case and he exhibited the Newspapers covering the said case.

6. That your Honour erred and made reversible error when you failed to take into consideration the plaintiff's witnesses testimonies that he built a mud house on the subject property that is in dispute in this case and the mud house was roofed by tarpaulin when he placed the defendant in the subject property. Contrary to this, the defendant's witnesses testified that the two houses on the land were built by Mr. Isaac Gboking and the main house was a concrete building and the second one was a zinc warehouse. The defendant's witness's testimonies were not also rebutted by the plaintiff.

7. That Your Honor erred and made reversible error when Your Honor failed to take into consideration the fact that the plaintiff's first witness testimony and the second and third witnesses testimonies did not corroborate, and the plaintiff's title deed was not pleaded to, identified and confirmed by the second and third witnesses. Under the rule, a document presented to court as evidence in such a matter must be testified, identified and re-confirmed by at least two witnesses so that party can meet up with the requirement of preponderance of evidence; but that was not the case with the plaintiff production of evidence.

8. That Your Honor erred and made reversible error because Your Honor confirmed the Jury Verdict even though the defendant made it clear both by his pleading and denial that his property is separate and distinct because the plaintiff is claiming title under the Tar-sue Gbezor's property which is located within the Joe and David Clarke Intestate Estate which is located within the Wein Town area, while the defendant's property is located in Neezor, two separate and distinct areas.

9. That Your Honor erred and made reversible error because Your Honor confirmed the Jury Verdict which failed to take into consideration that the time of the purchase of the property from the Vawah for the second time after the purchase from the Joe and David Clarke Intestate Estate, the plaintiff was the driver for Mr. Samuel Vawah. This testimony that the plaintiff was the driver for Mr. Vawah at the time of these transactions which was testified to by the defendant and the Intervener was never rebutted, yet the Jury brought a Verdict against the defendant contrary to the weight of the evidence which was confirmed by Your Honor.

10. That Your Honor erred and made reversible error because the Jury Verdict was confirmed by you, failed to have taken into consideration the contradiction between the plaintiff's testimony and those of the defendant, in that the plaintiff alleged that he allowed the defendant to squat on his property in 2009, whereas the defendant title instrument which was also pleaded by the

intervener, that is to say, the deed from the Joe and David Clarke dated 1985 and the deed from the Vawah was executed in 1987, meaning that the plaintiff could not have allowed the defendant to squat on the property that the defendant was challenged by the plaintiff and that the genuineness of the 1985 was never also challenged. The confirmation of the July Verdict by Your Honor, therefore constitute a reversible error.

11. That Your Honor erred and made a reversible error because the Jury Verdict that was confirmed by you, was contrary to the weight of the evidence, in that the plaintiff, in his testimony, told the court that the defendant was evicted from a certain property based upon which he allowed the defendant to squat on the subject property. During the hearing, the defendant negated the allegation and told the court that he still lives on the two pieces of properties owned by him, one at the Catholic junction and another at the Daniel Chea junction. Once the plaintiff made allegations that were contradicted by the defendant without any rebuttal by the plaintiff, the Jury would have found for the defendant instead of finding for the plaintiff and that Your Honor confirmation of this erroneous Verdict constituted a reversible error.

12. That Your Honor erred and made reversible error because Your Honor confirmed that Jury Verdict which failed to take into account that the appellants/defendant's 1860 mother deed was not objected to by the appellee/plaintiff, nor was there any evidence adduced during the trial to show that the Joe and David Clarke's 1860 Deed was not authentic to form the basis to rule against the appellants/defendant in these proceedings. The confirmation of this erroneous Verdict of the Jury by Your Honor constituted a reversible error.

13. That Your Honor erred and made reversible error because Your Honor confirmed the Jury Verdict against the weight of the evidence, in that the appellants/defendant, in his testimony told the court that indeed he bought the property from Joe and David Clarke Intestate Estate in 1985 and that when he went on the land to clear the site to start construction, the late Samuel Vawah came on the site along with Johnny Hills who was his driver and stopped him from carrying out any work on the property on ground that the property belongs to Vawah and not Joe and David Clarke. This testimony of the appellants/defendant was not rebutted by the appellee/plaintiff. In other words, if the property belongs to Tar-sue Gbezor Intestate Estate which the plaintiff now claims to be one of the Administrators, why was he protecting Samuel Vawah to stop the defendant from carrying out construction on the property? Certainly, this testimony of the defendant/appellants supports a Verdict in his favor which the Jurors failed to so declare and that your confirmation of the jury verdict which is manifestly contrary to the weight of the evidence constitutes a reversible error.

14. That Your Honor erred and made reversible error because Your Honor confirmed the Jury Verdict which failed to take into account the testimony of the defendant to the effect that he was never evicted from any property as the basis for the plaintiff to have allowed him to squat on any property. The defendant further told the Court and the Jury that up to the hearing of this matter, he had his family in two locations – one house at the Catholic junction,

the subject of these proceedings and another property at the Daniel Chea junction where the defendant told the Court and the Jury that he lives there up to date which contradicted or refuted the plaintiff's allegation that he allowed the defendant to squat on his property because he was evicted from the Daniel Chea junction. The glaring fact was ignored by the Jury and Your Honor confirmed such erroneous conclusion of the Jury thereby making a reversible error.

15. That Your Honor erred and made reversible error when Your Honor in your ruling under discussion admitted that the parties made conflicting testimonies yet Your Honor confirmed the Jury Verdict against the defendant in these proceedings based upon these conflicting testimonies contrary to the holding of the Supreme Court, as found in 32 LLR that "A court must yield to a jury verdict, unless to do so would be against the interest of transparent justice." Certainly, the Verdict of the Jury against the defendant having listened to testimony that the properties are not identical, the metes and bounds are not the same, the mother deeds separate and distinct, the location of the properties are not the same, yet the Jury found for the plaintiff to evict and eject the defendant from a separate and distinct property from that which is being claimed by the plaintiff. The confirmation of this Jury Verdict by Your Honor therefore constituted a reversible error.

16. That Your Honor erred and made a reversible error because Your Honor confirmed the Jury Verdict which runs contrary to the weight of the evidence, in that Your Honor conclusion in your ruling that the Intervener did not show that its interest would have been adversely affected for which she intervened in this matter constituted a reversible error, in that the Intervener intervened for reason that she owns 150 acres of land in the are out of which they sold two (2) lots to the defendant in these proceedings. To preserve and protect the remaining 148 lots under their deed, it was necessary to intervene in the matter, because any judgment against the defendant will certainly have an adverse effect on the entire 150 acres, portion of which was being claimed by the plaintiff. In support of this intervention, the Intervener pleaded its 1860 deed along with its Letters of Administration, and also Newspaper publication all in support of the interest of the Intervener in the subject matter. The conclusion by Your Honor that the Intervener failed to show that its interest would have adversely affected by the action, because the Intervener failed to produce any evidence of interest certainly runs contrary to the evidence and therefore, constituted a reversible error.

17. That Your Honor also erred and made reversible error because Your Honor confirmed the Jury Verdict which was contrary to the weight of the evidence, in that the testimony of the defendant that his deed from the Vawah was witnessed by Johnny Hill, the mother and other relatives was not denied in any material form, in that none of the parties who witnessed the Vawah deed

was brought to court to deny their signature on the Vawah's deed. More besides, the defendant told the court and confirmed by his witnesses that at the time of the purchase of the land to buy his piece from the Vawah, Johnny Hills, the plaintiff in these proceedings was present, because he was the driver for Vawah at the time that drove Samuel Vawah to the defendant's land.

18. That Your Honor erred and made reversible error because Your Honor confirmed the Jury Verdict which was contrary to the weight of the evidence, in that although the Plaintiff in these proceedings, that is to say, the Tar-sue Gbezor Intestate Estate was represented as plaintiff by Johnny Hill, S. Emmanuel Freeman, Winston P. Gaye, and Ton W. Diggs, meaning that these Administrators, acting in concert, instituted these action, on the contrary, two of the Administrators, S. Emmanuel Freeman and Ton W. Diggs, executed affidavits of Statement of Fact before the filing of Motion for New Trial, in which they informed this court that they did not authorize Mr. Hill to institute these proceedings. They also indicated in the affidavits that the Tar-sue Gbezor Intestate Estate and the Joe and David Clarke do not share the same boundary and the defendant's property in these proceedings was located on the Joe and David Clarke Intestate Estate, miles away from the Tar-sue Gbezor Intestate Estate which is located in the Wein Town Community.

19. That Your Honor erred and made reversible error when Your Honor held that it was the responsibility of the defendant to have subpoenaed those members of the Hill family who witnessed the deed that was issued in favor of the defendant by Mr. Vawah. Reason being that one cannot vitiate written instrument which carried the signatures of the Hill family in support of his testimony that the Hills were aware of the purchase from the Vawah, it was the responsibility of the Hill to negate the allegation by producing members of their family to testify to their signatures which appeared on the written instrument.

20. That Your Honor erred and made a reversible error because Your Honor confirmed the Jury Verdict against the defendant even though the defendant and his witnesses presented corroborating testimonies to the effect that the defendant purchased this property in 1985 which was supported by the deed that was executed in 1985, probated and registered as in keeping with law without any objection.

21. That Your Honor erred and made a reversible error when Your Honor denied the defendant's Amended Motion for New Trial, because once the Motion for New Trial was filed within statutory period, the Statute, provides that the Motion should be filed within four days was satisfied. Where the respondent/plaintiff in these proceedings filed Returns or Resistance to the Motion twelve days thereafter and raised issues that necessitated the filing of an Amended the Motion for New Trial, Your Honor Ruling that the Amended

Motion which was filed before the hearing was not properly before the Court, constituted reversible error, because Chapter 9 of 1LCL Revised, Section 9.10, provides that any pleading may be amended once at any time before trial by any party in so far as it does not unreasonably delay trial, and that the amendment of the motion for new trial that was already filed within the statutory period was properly before the court.

22. That Your Honor erred and made reversible error when Your Honor concluded that because the plaintiff, in his testimony told the court that he had structure on the disputed property over the testimony of the defendant that he built two structures on the disputed property. There is no reasonable basis for Your Honor to have accepted the plaintiff's allegation over the testimony of the defendant that he built two structures that were destroyed by the plaintiff in these proceedings. The facts presented before the Court show that the plaintiff in these proceedings and the defendant live in the same vicinity, few feet from each other. The plaintiff knew the development made on his property so his testimony therefore could not have been given credence over the defendant whose property was the subject of the litigation.

23. That Your Honor erred and made a reversible error when Your Honor misinterpreted the defendant's testimony regarding the construction of a fence around his property. The defendant, in his testimony, told the Court that his property (the two houses) were illegally demolished by the plaintiff and a group of gangster after the plaintiff misled the Court and he, the defendant was illegally evicted from his property. While the matter of his illegal eviction was being pursued before the Chambers Justice, the plaintiff in these proceedings sold the property to a Fula man who proceeded overnight to fence the property. When the Chambers Justice ordered the defendant repossessed of his property, the fence had already been erected. So, the defendant was therefore correct to have told the court that he did not know who constructed the fence.

24. That Your Honour erred and made reversible error because Your Honor failed to take into consideration that the complaint in these proceedings according to the caption of the case, was instituted by group of Administrators. The very Administrators, who allegedly instituted this action, executed Affidavits to inform the Court that they did not authorize nor were they informed of the institution of any action. This being a property matter, this information would have been investigated by Your Honor to ensure transparency in the determination of this matter so that the ownership of real property which is guaranteed under our constitution, is not concluded adversely against the party without taking into consideration all information regarding the true nature of the allegation or complaint, thereby making a reversible error.

25. That Your Honor erred and made a reversible error when Your Honor failed to have taken into consideration the Affidavit that was issued by the Elder of the Tar-sue Gbezor Intestate Estate to the effect that the Tar-sue Gbezor

Intestate Estate is located in Wein Town and that the Joe and David Clarke Intestate Estate is located in Neezor, meaning that the two properties are separate and distinct and that the plaintiff was using illegally the deed for the Tar-sue Gbezor Intestate Estate to institute action against the defendant in these proceeding outside the territorial confines of the Tar-sue Gbezor Intestate Estate.

WHEREFORE AND IN VIEW OF THE FOREGOING, appellants most respectfully pray that Your Honor will approve this Appellants' Bill of Exception so that the Honourable Supreme Court can review and correct the many reversible errors that were made by Your Honor in these proceedings and to also grant unto appellants all further relief that your Honor may deem just, legal and equitable."

The appellants' Bill of Exceptions advanced four main contentions:

(1) That the unanimous verdict returned by the jury was contrary to the weight of evidence;
(2) that the trial judge ought not to have denied the amended motion for new trial;
(3) that the trial judge erred when he ruled that appellants ought to have subpoenaed the Hills Family to testify at trial; and
(4) that the appellee's disputed two lots and appellants/intervenor's' 150 acres of land are calling for two separate and distinct locations.

On the other hand, the appellee/plaintiff's main contention is that co-appellant/defendant having been ruled to bare denial could not have asserted affirmative defense by way of intervention through the co-appellant/intervenor.

A scrutiny of the parties' contentions as are couched in the records before us, presents three issues that are determinative of this matter.

1. Whether a defendant ruled to bare denial can assert affirmative defense through an intervenor whose interests in the suit appears to be remote, indirect, and inconsequential?

2. Whether a motion for a new trial filed within statutory time may be withdrawn and amended outside of the mandatory four days allowed for the filing of a motion for a new trial?

3. Whether or not the trial judge was justified in affirming the unanimous verdict of the jury?

This Court has observed an evolving yet disturbing menace creeping into the administration of justice which if not checked will ultimately lead to defeating the end objective of our procedural code. The need for a clear and decisive position to arrest the irregular intervention in cases by third party strangers whose interest in the

said matters are remote, indirect and/or inconsequential cannot be overemphasized. Certainly, while intervention as provided by Section 5.61 of the Civil Procedural Code is a matter of right, however, this does not confer upon a person who is not a party in the main suit a blank check to intervene in that suit. For a person to be entitled to the enjoyment of the right of intervention, that person must demonstrate that he or she has direct and substantial interest in the subject matter of the suit and that any judgment and/or determination arising from such a suit will necessarily affect the substantial interest of that person. To be imbued with the right of intervention, one must demonstrate that his interest in a matter is not extraneous and that such intervention is not a camouflage to assert an affirmative defense on behalf of a defendant who has been placed on bare denial owing to his failure and neglect to interpose a timely defense in keeping with law.

Several such instances including in the case at bar have come to present themselves on appeal for our review. Unfortunately, counsels in these cases want to persuade this line of rationalizing the statute such that a third party enters a case by way of intervention to assert affirmative defense on behalf of a defendant ruled to bare denial for his failure and neglect to comply with the rules governing pleading in civil actions.

In this case, the appellee/plaintiff sued the co-appellant/defendant, who filed his answer in violation of the requirement of law. As a consequence of this violation, the court ruled him to bare denial. It is a well-known settled principle of law in this jurisdiction that when the court ruled a defendant to bare denial, that defendant cannot interpose affirmative defense. Gibson v. Williams (1985) LRSC 31; 33 LLR 193; FDA v. Buchanan Logging Corporation, 29 LLR 437 (1982); Liberia United Bank Inc. v. Swope et. al, 39 LR 537 (1999); Kashouh et. al. v. Heirs of Bernard et. al. (2008) LRSC 17 (2008). Engineers Inc. v. Tucker (1974) 23 LLR 211. Gaddini v. Iskander (1970) 490. In other words, a plea of bare denial entered for a defendant serves as a bar against that defendant interposing affirmative defense, which includes title to real property, in an ejectment action as in this case. He may, however, cross-examine plaintiff's witnesses and produce evidence in support of his general denial of the allegations of the complaint against him.

Isaac Gboking, now one of the appellants, had his answer stricken for violation of the rule of pleading and was ruled to bare denial. It is at this juncture that the co-appellants/intervenor elected to apply for intervention on the ground that the co-appellant/intervenor sold the two lots in dispute to co-appellant/defendant from the 150 acres allegedly owned by it. The co-appellant/intervenor's answer also interposed the title deeds of co-appellant/defendant that were an integral part of the previously stricken answer of the co-appellant/defendant by the trial court, thereby asserting affirmative defense on behalf of the said co-appellant/defendant who was placed on bare denial. The co-appellant/intervenor's contention is that because it allegedly owns 150 acres out of which the two lots, subject of this litigation is a part, it has interest in the suit that cannot be adequately defended by the co-appellant/defendant. More besides, the principle of notice forbids a party from producing evidence during trial which was not pleaded. By stricken out the pleading of the appellant/defendant, the said appellant/defendant does not have any instruments before the court that fulfil the requirement of notice so as to be qualified as an evidence to be produced during trial.

This Court has held in numerous opinions that intervention in civil actions is a matter of right in the first category under Section 5.61, and permissible in the second category under Section 5.62 of the Civil Procedure Law as revised. Cooper Heirs et al. v. Swope, 39 LLR 220 (4 December 1998). Dennis et. al. v. Dennis et. al. 24, LLR 490 (2 January 1976). 5.61 & 5.62 of the Civil Procedure Law. In all of these cases the right to intervene was upheld where the applicant was so situated as to allow him to defend his claim or claims; or where he shows by clear and convincing evidence that if he is not permitted to intervene in the particular case, his interest will be affected by an adverse judgment in that matter. However, this right is not absolute or automatic upon application. Courts must inquire into whether the applicant's interest in an existing suit is direct and consequential.

This Court held in the case Abi-Jaoudi et al v. Monrovia Tobacco Corp, 36 LLR 156 that "a person whose interest in the matter of the litigation is not direct or substantial, but indirect, inconsequential, remote, conjectural or contingent cannot intervene.". We also held in the case Ramatrielle v Metzger et al [1997] LRSC 2; 38 LLR 336 (1997) (22 July 1997) as follows: "Firstly, intervention as a matter of law and practice, cannot be obtained by a third party for the benefit of another. In order words, the intervener must have a legally protectable interest in the litigation in which it comes to defend".

A careful review of the records before us clearly shows that the co-appellant/intervenor's interest in the present suit is to defend the co-appellant/defendant interest in the ejectment action instituted against him. The allegation by co-appellant/intervenor that it sold the disputed property to co-appellant/defendant, or that the co-appellant/defendant also bought the said property from Samuel Vawah who did not have a good title, does not confer upon the said co-appellant/intervenor the right of intervention. Assuming that these averments are true, we do not see the interest that the co-appellant/intervenor has to intervene in this matter. By parting with title to the said property as alleged, the co-appellant/intervenor relinquished all rights to and interest in the said property. There is no demonstratable interest of the co-appellant/intervenor that is affected in this matter had the intervenor not be permitted to Intervene. Appellants' testimonies - if it is anything to consider - show that the co-appellant/intervenor's interest in the case at bar is remote, inconsequential and indirect and that the co-appellant/intervenor entered this suit for the benefit of co-appellant/defendant who was on bare denial. This design is not only a novelty to our practice and procedure, but it is also a clever maneuver to defeat the ends of our procedural code on pleadings and intervention. This act is quite disingenuous.

This Court is not persuaded by the argument advanced by the co-appellant/intervenor that because it allegedly owns 150 acres of land in the disputed area, a judgment from the present suit could adversely affect the remaining parcels of land. We must note that the co-appellant/intervenor allegedly parted with the title to the disputed two lots thereby alienating its interest to the co-appellant/defendant. We must also note that the co-appellant/intervenor alleged 150 acres is not a subject of litigation here, and therefore we cannot fathom how a judgment in these proceedings affect the interest of the co-appellant/intervenor. Therefore, co-appellant/intervenor has no interest. At best, the co-appellant/defendant should have timely filed an answer attaching his deeds and his grantor's deeds, and have his grantor appear as a witness on his behalf, rather than pursuing the irregular and strange method adopted through the application for intervention.

That said, we hold that the trial judge was in error when he granted the motion to intervene. The appellants are urging this Court to consider a rare application of a motion for a new trial. The appellants contend that the trial judge was in error when he denied the appellants' amended motion for a new trial on the ground that the motion was not filed within the statutory time. The question that confronts us here is whether the judge was in error when he proceeded to dismiss the amended motion for a new trial which was filed thirteen days beyond the legally prescribed period of four days although a motion for a new trial was initially filed by one of the appellants within the four-day statutory period. To address this issue, we take recourse to the statute on an application for a new trial in civil proceedings. Our statute provides:

> "After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section."

The controlling sentence is "No extension of time shall be granted for making a motion under this section." What need to be determined is whether a party relying on this statute may be allowed to amend a motion for a new trial after the expiration of the four days provided therefor. The inclusion of a prohibition against extension of time granted for filing a motion for a new trial was deliberate and purposeful. The statute leaves no room to a party wanting to exercise the right conferred to act outside of its ambit. While a motion for a new trial, as any other motion, may be amended, however, such an amendment must be made within the four days allowed. Permitting a motion to be amended after the expiration of the four days provided shall constitute a defeat of the intent of the statute.

Assuming that the appellants were relying on Civil Procedure Law, Rev. Code 1:9.10 as the basis for filing the motion, this still cannot validate the filling of the amendment of the motion nine days after the expiration of the mandatory time provided for by the statute to file a motion for a new trial. Section 9.10 ibid, provides for ten days to amend a pleading. This motion, not being a pleading but yet govern sometimes by the rule of pleading, provides for four days for its filing. The logical inference from the reading of section 9.10 ibid and section 26.4 of the civil procedure code together is that any amendment of a motion for a new trial ought to be made within the four-day limitation provided for by the law. Our review of the records

shows that the jury returned the verdict on the 20th of October, A.D. 2016 and the appellants filed the amended motion for a new trial on the 2nd day of November A.D. 2016, that is thirteen days after the jury returned its verdict. Indeed, the appellants not having filed this amended motion filed within the statutory time, the trial judge was not in error when he ordered the same stricken.

In addressing the last issue whether or not the trial judge was justified in affirming the unanimous verdict of liable by the jury, we like to first pass on the appellants' two other contentions that the trial judge erred when he ruled that the appellants ought to have subpoenaed the Hills Family to testify to the allegations by the appellants; that Mr. Hills and his wife witnessed the Samuel Vawah's deed executed to appellant/defendant. In our opinion, the testimonies of the Hills Family could not have vitiated the fact that appellant/defendant was on bare denial; so that the assertion of affirmative defense as is obtaining in this case by the appellant/intervener in order to benefit the appellant/defendant who was on bare denial was an exercise in futility. The fact of this case is that the appellant/defendant answer, including his title instrument, was stricken. To reintroduce said instruments by the intervener was intended to circumvent our laws.

The last important contention raised by the appellants is that the title instruments of both parties call for two separate and distinct locations. Under the facts and circumstances of this case where the appellant/defendant on bare denial, the appellant/intervener could not have introduced the appellant/defendant's title instruments to support a request for arbitration or investigative survey. Assuming that the trial court ordered arbitration or investigative survey, only the appellee's title instrument was qualified for said exercise because the appellant/defendant was on bare denial. Mussa v. Cooper et al [1994] LRSC 47; 37 LLR 906 (1994) (14 December 1994); Kashouh et al v Heirs of Bernard et al [2008] LRSC 17 (27 June 2008); Vargas v Eid [2001] LRSC 25; 40 LLR 624 (2001) (21 December 2001).

From the onset of this opinion, we decided that the trial judge erred by granting the motion to intervene for reasons already stated. This means that the proceedings, having gravitated to a default trial, the appellee had the burden, by operations of law, to produce evidence in support of its allegations contained in the complaint. We, therefore, take recourse to the certified records to see if appellee met the requirements of the preponderance of the evidence to support its allegations as found in the complaint and to warrant judgment in appellee's favor.

During the trial, the appellee produced three witnesses. The testimonies of the witnesses substantially tend to establish that the appellee is the owner of 400 acres of land including the disputed property; that it was one of appellee's administrators, Johnny Hills who placed the co-appellant/defendant on the disputed property when the said appellant/defendant was ordered evicted by the court based upon the application of the church to whom the uncle sold the property he was previously occupying. That at the time the appellant/defendant was placed on the property, the appellee had a mid-shift structure on the property and that it was the appellee who gave old zinc to the appellant/defendant and his wife to cover the said structure; that when the appellee requested the appellant to surround and turn over the disputed property the appellant/defendant refused to surround the said property on the ground that he has title to the property. That when the appellant instituted action against the appellee for the property in the magisterial court, it took the appellant/defendant up to two months to produce a title deed.

The appellants also produced three witnesses. Substantially their evidence tends to establish that the co-appellant/defendant purchased two lots from the co-appellant/intervenor in 1985 and later repurchased the same property from Samuel Vawah in 1987. That the appellee was the driver for Mr. Vawah during the co-appellant/defendant purchase of the property from Mr. Vawah, and that appellant/defendant purchased the property from Mr. Vawah based upon the advice of the appellee. More besides, the appellant/defendant claimed in his testimony that the appellee along with his father and mother witnessed the deed issued by Mr. Vawah to the appellant/defendant. The co-appellant/defendant denied that the appellee ever gives him a piece of property to squat on and that he is the bonafide owner of the disputed property. It is worth nothing apart from the appellant himself no other witness was produced to authenticate this allegation and no effort was made to either account for or to have appellee's father and/or mother to appear in corroboration of these allegations. Howbeit, the evidence tends to establish that the appellant/defendant purchased the property twice.

The appellants contended in their Bill of Exceptions that the trial judge failed to take into consideration the fact that the appellee was the driver of late Mr. Vawah, and that it was the appellee that advice the appellant/defendant to purchase the disputed property from Mr. Vawah. As stated hereinabove, the appellee denied this allegation

and maintained that the appellant/defendant's possession of the disputed property was at the behest of the appellee. The appellant/defendant did not attempt to produce witness/es to have this testimony corroborated. This issue is one of fact, and it was properly the province of the trial jury to determine as between the testimony of the appellant/defendant and the appellee, which one to accept. It is the exclusive office of the trial jury to weigh the evidence and determine the credibility of the witnesses, their testimonies, and the exhibits that are produced during a trial. In the case: Lib. Oil Refinery Co. v Mahmoud [1972] LRSC 24; 21 LLR 201 (1972) (19 May 1972) confirmed in 2015 in the case: Benson v Sawyer LRSC 42 (19 December 2015), this court held as follows:

> "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 greater 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 reached a conclusion after having given consideration to evidence which is sufficient to support a verdict, the decision should not be disturbed by the court." 39 AM. JUR., New Trial, § 133. ..."

The office of the trial judge is to determine the sufficiency of the evidence. Our examination of the records shows that the evidence was sufficient to support the verdict returned by the trial jury. It would have therefore constituted a usurpation of the office of the trial jury for the trial judge to have overturned the same and grant a new trial.

An examination of the evidence shows that both parties produced evidence that supports their respective side of the case except that the co-appellant/defendant placed on bare denial could not produce physical evidence and affirmative defenses to the appellee's claim. More besides, we have concluded that the co-appellant/intervenor did not adequately demonstrate his competence to intervene in this matter and that this intervention was merely done to interpose affirmative defense on behalf of the co-appellant/defendant whose answer was ordered stricken in this matter. By law, therefore, any affirmative defense interposes by the appellant/intervenor cannot find support in the law since the same violates our procedural statute.

Considering therefore the sufficiency of the evidence adduced by the appellee in this case and because we do not feel that the trial judge erred in denying the motion for a new trial, and further considering that the appellant/defendant is on bare denial and therefore could not have interposed affirmative defense, the trial judge was justify in sustaining the verdict as returned by the trial jury.

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