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

Cynthia P. Tucker of the City of Buchanan, Grand Bassa County.....APPELLANT	)	
Versus	)	APPEAL
Joseph B. Sumo, also of the City of Buchanan, Grand Bassa County .....APPELLEE	)	
GROWING OUT OF THE CASE:	)	
Cynthia P. Tucker of the City of Buchanan, Grand Bassa County .....APPELLANT	)	
Versus	)	ACTION OF EJECTMENT
Joseph B. Sumo, also of the City of Buchanan, Grand Bassa County .....DEFENDANT	)	

HEARD: April 10, 2019 DECIDED: August 16, 2019

MADAME JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

On February 20, 2008, Cynthia P. Tucker, appellant herein and plaintiff below, filed an action of ejectment against Joseph B. Sumo, appellee, defendant below, before the Second Judicial Circuit Court, Grand Bassa County. The appellant prayed the said court to oust, evict and eject the appellee from a parcel of land allegedly belonging to the appellant, and to award her damages for the wrongful withholding of her property by the appellee.

In the appellant's complaint which was subsequently withdrawn and amended, she stated that she is the bona fide owner of a parcel of land measuring one town lot, specifically described as Lot No. 3, situated on Eastern Hill, Johnson Street, Lower Buchanan, Grand Bassa County, which was deeded to her by her mother, the late Mrs. Serina Tucker of Lower Buchanan, Grand Bassa County. The appellant averred further that the appellee, Joseph B. Sumo, had illegally entered upon her parcel of land, dispossessed her of same and began erecting a sub-standard structure on said parcel of land, and despite being notified by her to desist from constructing on her land, he continued with his illegal construction, refusing to heed to her warning, and notwithstanding the fact that a petition was heard by the same Second Judicial

Circuit, Grand Bassa County, and the appellee's title declared null and void on the 10th of December 1997, by the court; that following the cancellation of the appellee's title, the said appellee, in total disregard of the court's judgment, elected to illegally and unauthorisedly enter upon the said property while she was outside of the bailiwick of the Republic of Liberia attending to matters in the United States of America. Appellant further averred that her mother, Serina Tucker, having parted with title when she conveyed the disputed property to the appellant of the subject property in September 1988, she was without legal authority subsequently to convey the same property to appellee as he had alleged. The appellant attached a ruling dated December 10, 1997, entitled *Cynthia Tucker vs. Sumo et al,* alleged to have been signed by his Honor James C.R. Flomo, Assigned Circuit Judge, Second Judicial Circuit, Buchanan, Grand Bassa County. Taking judicial notice of the alleged court's record, we shall refer to this issue of Judge Flomo's ruling later in our Opinion.

Answering to the amended complaint, the appellee, Joseph B. Sumo, contended that the representation made by the appellant in her amended complaint, that she is the bona fide owner of Lot No. 3 and that she inherited same from her mother, the late Serina Tucker, is false and misleading. Referencing the appellant's previous withdrawn complaint, the appellee alleged that the purported deed now offered as Exhibit "A" to appellant's amended complaint calling for lot No. 3 was never in existence at the time of appellant's initial filing of the ejectment action against appellee as the appellant in her withdrawn complaint had proffered two deeds which she relied on in exerting her claim to the ownership of the land occupied by the appellee; that the first of the two deeds, appellant's Exhibit "A", called for Lot Nos. 402, 404, 408 which appellant claimed she had inherited from her grandfather, the Late John L. Donoum; that said deed Exhibit "A" showed that John L. Donoum, the appellant's grandfather had signed the deed as her grantor, on November 10, 2007, when in fact John L. Donoum died in 1961, forty-six years before the date of his alleged signature on the appellant's Exhibit "A"; that this was a clear indication of the legal phraseology, *Falsus in uno, falsus in omibus"*, meaning "False in one thing, false in everything." Fraud, the appellee said, was eminent; that the appellant after being served with copy of the appellee's deed that was attached to his answer, the appellant seized the opportunity to quickly prepare the deed bearing lot No. 3, which she attached to her amended complaint as Exhibit "A"; that when clearly observed, the original number on the deed attached and proffered to the amended complaint had been changed just to facilitate appellant's quest to illegally dispossess the appellee of his bona fide parcel of land owned by right of legal purchase from the appellant's mother during her life time.

The appellee further countered that his title to the disputed parcel of land was never nullified by the Second Judicial Circuit Court as contended by the appellant in her amended complaint; that the case the appellant referred to involved a bill of information filed by the appellant against three respondents, which included the appellee, for interfering with Testate Estate; this matter was not finally determined by the court as the then presiding Judge, His Honor James C.R. Flomo, who was hearing the matter was recalled from his assignment and later pronounced dismissed from office while the matter was being investigated and remained pending; that the matter remained unattended without the rendition of a final judgment. The appellee prayed that the deed proffered by the appellant to her amended complaint be set aside since the late Mrs. Serina Tucker from whom he purchased the disputed property could not have sold to him a parcel of land already given to her daughter, the appellant.

Following the filing of appellee's amended answer, the appellant filed a reply denying that she had falsified the deed attached to her amended answer; that the fact that the appellee is said to have purchased the disputed property on February 26, 1997, but kept the deed until six years thereafter before offering it for probation and registration despite the law controlling on probation and registration of real property (four months) is an indication that the said appellee fraudulently obtained the said deed and kept it until after the death of her mother before offering same for probation and registration. She maintained that legally at the time of the purported conveyance of the disputed property to the appellee in 1997, title to the said property was no longer vested in her mother Mrs. Serina Tucker since she had already made a conveyance of the same property to the appellant in 1988.

When pleadings rested, the appellant filed a motion to dismiss the appellee's amended answer on grounds that the said amended answer was not served upon her within the time prescribed by statute. Appellant argued in her motion to dismiss the amended answer, that her amended complaint was served on the appellee on April 1, 2008, and that the appellee served his amended answer on the appellant on April 12, 2008, after the expiration of the statutory time of ten days for filing said amended answer.

The appellee resisted the motion contending that he was served the amended complaint on April 3, 2008, and on April 8, 2008 he filed his amended answer and on the same day served the appellant with a copy.

The trial court denied the appellant's motion to dismiss and proceeded to empanel a jury to hear and determine the factual issues raised in the pleadings, such as the right of possession to the disputed property as claimed by both parties and the issue of fraud as alleged by the appellee against the deed proffered by the appellant

in support of her claim and right to the property. At the conclusion of the trial, the empaneled jury returned a unanimous verdict of not liable in favor of the appellee, and the trial judge entered a judgment affirming the said verdict as returned by the trial jury. The appellant excepted to the judgment of the trial court and announced an appeal, and has placed the matter before this Court for its review.

Appellant's bill of exceptions assigning errors in the conduct of the trial below comprises fourteen counts. Basically, the bill of exceptions raise the issues whether the appellee's amended answer should have been stricken by the judge for being filed outside the statutory period of ten days, and questions the improper handling and conduct of the trial by the judge in the lower court.

The Court considering that the issue of the judge's dismissal of the appellant's motion to dismiss the appellee's amended answer forms and integral part of the bill of exceptions, incorporates herein said motion to dismiss and the judge's ruling thereon:

MOTION TO DISMISS

Movant in the above entitled cause of action respectfully moves this Honorable Court to dismiss the amended answer for the following legal and factual reasons, to wit:

1. "That in keeping with the laws of service of responsive pleadings - answer or reply - shall be made within ten (10) days of the service of the pleadings to which it responds, and although the amended complaint was served on the appellee on the 1st day of April, 2008, at the hour 8:37am, the amended answer should have been served on the appellant on or before the 10th day of April A.D. 2008. Said amended answer was not served on the appellant until the 12th day of April A.D. 2008, after the statutory period for the serving of said amended answer; thereby, rendering the amended answer dismissible and appellant prays same should be dismissed.

2. "That further to the amended answer, appellant submits that same should be dismissed for the reasons that the Honorable Supreme Court of Liberia has opined that "The fundamental principle upon which all complaints, answers or replies are to be construed is that of giving notice to the other party by serving copies thereof simultaneously with the filing of said pleadings thereby affording notice and time to respond. Despite this, the appellee filed his amended answer on the 8th day of April 2008, at 3:45pm; he did not serve copy of the amended answer on the appellant until the 12th day of April A.D. 2008; quite four (4) days after the filing, hence said amended answer should be dismissed for the breach of controlling laws." [emphasis ours]".

WHEREFORE, Appellant prays that the Amended Answer be dismissed, the appellee be ruled to bare denial of the facts contained in the amended complaint, and appellant be granted all other relief in the premises as justice and rights demand."

In his resistance to the motion to dismiss, the appellee denied the allegation made in the appellant's motion, that the appellant was served his amended answer two days after the required statutory period of ten days. The appellee countered that he was served the amended complaint on the 3rd day of April A.D. 2008, and he filed and served his amended answer on April 8, 2008; that in fact it was the appellant, who in violation of the statute, failed to pay accrued costs following the withdrawal of her original complaint and filing of her amended complaint.

The judge of the lower court ruling on the motion held as follows:

> "In analyzing the various arguments on both sides for the granting and denying of the movant's motion to dismiss respondent's amended answer, this court takes recourse to the provision of the statute controlling on filing of papers, (responsive pleadings) as found in 1LCLR Subsection 8.2 entitled "Filing of Papers," at page 179 which reads thus: a. REQUIREMENT, All pleadings, affidavits and other papers required to be served in an action should be filed, if a party fails to comply with this paragraph, the court on motion by any party may order any paper not filed to be regarded as stricken."
>
> The statute therefore further provides the statutory period for the filing and service of papers (pleadings) as can be found in 1LCLR, Subsection 9.2(3) time of service of responsive pleadings. Except as provided in section 11.3(10), service of an answer, reply should be made within ten (10) days of service of the pleading to which it responds. A penalty for violators of this provision is clearly stated and quoted herein. The motion to dismiss is not provided for by statute but rather a motion to strike.
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> This Court now looks at the advantages and disadvantages of granting a motion to strike rather than a motion to dismiss.
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> In a civil action like the one at bar, i.e., an ejectment [action] out of which the motion grew, if a court grants a motion to dismiss, the defendant's responsive pleadings, i.e., his answer, the appellee will not be placed on a bare denial or a general denial of the allegations contained in the complaint. Further he will not be allowed to defend his legal interest in the property on trial, he cannot provide any affirmative defense in his interest, and is not allowed to cross examine the appellant's witnesses, a gross disadvantage to grant same.
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> In any event, should a court grant a motion to strike, the court could place the appellee or respondent on a general denial of the allegations levied in the complaint; at the trial, such appellee may cross examine appellant's witnesses and introduce evidence in support of his denial, but he may not introduce evidence in support of any affirmative matter. For reliance, court cites 1LCLR Subsection 9.1 entitled "Kinds of Pleadings."
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> WHEREFORE, and in view of the foregoing facts and circumstances, as stated in the motion and the resistance thereto, since this court finds no provision in the statute on "Filing of papers (responsive pleadings) as provided for in 1LCLR 8.2, for granting of movant's motion to dismiss, said motion is hereby ordered DENIED and DISMISSED. This court further says that to deprive the

appellee his right to defend his interest in the property would be a travesty of justice; the court further observed that the resistance raised the issue of the payment of accrued costs that has not been addressed by the movant's counsel and further ordered that same be addressed accordingly."

The Court observes that the lower court judge in his ruling went into great length on the advantage and disadvantage of granting the appellant's motion to dismiss while recognizing that the appellee's late filing under 1LCLR 9.2(3) was ground to strike the appellee's amended answer. The appellant alleged that she served the amended pleading on the appellee on April 1, 2008. According to 1LCLR 9.2(3), the amended answer should have been filed on or before April 11, 2008, ten days after the service of the amended complaint which computation began on the day following, that is, April 2 to April 11, 2008 and not April 10, 2008, as alleged by the appellant. Howbeit, the service of the amended answer on the appellant on April 12, 2008, as alleged by the appellant, placed the service a day outside the ten day period set by statute, and on a motion to strike by the appellant, the court should have acted accordingly as the appellant's prayer specifically asked for the appellee to be ruled to bare denial which applies when the amended answer is stricken. Besides this Court has reiterated that it is not the title or caption that determines the nature of a case but the averments: *Blamo v. Zulu et al.,* 30 LLR 586, 591 (1983); *Fima Capital Corp, LTD v. Alpha International Investment, LTD.*, 40 LLR 561,570 (2000).

We believe that the lower court judge was well aware of the sanctions for late filing and having taken cognizance of the relevant provisions of the statute 9.2 (3), 9.10 (2) regarding the time set for filing a responsive pleading, he should have proceeded to verify the appellant's allegation especially where the appellee denied the allegation stating that he did serve the appellant with a copy of the amended answer on April 8, 2008, the same day he filed the amended answer. The judge should have placed the onus on the appellee to produce evidence substantiating his claim that the answer was filed on April 8, 2008, and served on the appellant on the same day.- See Supreme Court Opinions: *Saleby Bros. Corporation v. Haikal*, 14 LLR 537, 540-541 (1961); *Kanneh v. Firestone Plantation Co.*, 37 LLR 211, 217 (1993). Where the court found that the amended answer was filed outside the statutory period as alleged by the appellant, the court as per our law and practice should have placed the appellee on bare denial of the allegations levied in the complaint, and in which case the appellee during trial could cross-examine the appellant's witnesses and introduce evidence in support of his denial but could not introduce evidence in support of any affirmative matter. The judge not having made any reference in his ruling regarding the proof of timely service as alleged by the appellee and denied by the appellant, his ruling on the motion was erroneous.

The appellee on the other hand countered that the appellant filed an amended answer without firstly paying the accrued costs to the appellee for withdrawal of her complaint and subsequent filing of her amended complaint as required by our Civil Procedure Statute, 9.10.1(b) which requires the appellant to pay all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleadings. The records is devoid of the appellant's denial of appellee's allegation that appellant did not pay all costs incurred by the appellee in filing and serving pleadings subsequent to the withdrawn complaint. This however is not a ground for dismissal of the case as said accrued costs could have been ordered paid nunc pro tunc by the trial judge.

Howbeit, where the appellee is placed on bare denial, this does not exempt the appellant from proving all the essential allegations set forth in her complaint. Restriction to a bare denial does not necessarily decide the case in favor of the adverse party (*Salami Bros. v. Kiazolu,* 15 LLR, 32, 38 (1962); *Kamara v. Thorpe et al.*, 30 LLR 841, 847 (1982). It is the law extant in this jurisdiction that in an ejectment action the burden to prove the right of possession or to title for real property rests with the plaintiff; it does not matter whether the appellee has a valid, defective, or any title at all; the plaintiff's right of possession must not depend upon the insufficiency or inadequacy of his/her adversary's claim; he or she must be entitled to possession of the property upon legal foundations so firm as to admit of no doubt of his/her ownership of the particular track of land in dispute. (*The Tower of Faith Church v. the Intestate Estate of The Late Wheagan Blaybor*, Supreme Court's Opinion, March Term, A.D. 2010; *Duncan v Perry*, 13 LLR 510, 515 (1960.

This brings us now to the core issue, whether the appellant, as our law expounds, firmly established during the trial her title to the disputed property?

The appellant alleges in her bill of exceptions that the judge erred when he allowed a layman to testify to Serina Tucker's mental condition when she issued the deed to the appellee despite the appellant's objection that said witness was not a medical doctor, and that the judge also erred when he sustained the appellee's objection to a question posed by the appellant's counsel as to what prevented the appellee from probating and registering his deed within the four months required by statute.

As far as this Court is concerned, the state of mind when the grantor of the parties signed the appellee's deed or when the appellee probated his deed is irrelevant to the issue whether the late Serina Tucker did indeed relinquished the disputed property to her daughter, the appellant, in 1988; that having relinquished title, Serina Tucker could not subsequently deed the selfsame property to the appellee, Joseph Sumo as she was divest of title to the property. To determine whether Serina Tucker did transfer the disputed property to the appellant and subsequently

sold the same property to the appellee Sumo, we must review the records brought up to the Court, look at the testimonies of appellant's witnesses, and documents presented and relied on to establish that her mother indeed transferred the property to her in 1988, and therefore her title was superior to that of the appellee.

The appellant, Cynthia P. Tucker, took the stand and testified that in 1988 her mother deeded her one lot of land that her grandfather had left to her mother in his Will; that her mother had purposely given her the land because the appellant's maternal grandparents were buried on the land and the spot on which the appellee built his house was where the family had buried its first grandchild; that her mother had written a letter to her forwarding the deed of the disputed property, dated September 28, 1988, said property being Lot No. 3 situated on Eastern Hill, Johnson Street, Lower Buchanan Grand Bassa County. The appellant introduced the letter into evidence. Testifying further, the appellant stated that in 1997, she returned to Buchanan and went on the property and saw some cornerstones on the land. She made inquiries about the owner of the cornerstones and Emmerline Junius King, the former City Mayoress of Buchanan and former Superintendent of Grand Bassa County, told her that she had found out that the appellant's mother, Serina Tucker, and her husband, Moses B. Tucker, had sold portion of the family's property to Joseph Sumo and others; that at the time of the sale, the appellant's mother was eighty five (85) years old; that the portion which the appellee Joseph Sumo occupied was the same lot No. 3 given to her by her mother. Upon the advice of the former Superintendent, the appellant said, she took the matter to the Presiding Judge of the Circuit Court, Grand Bassa County, His Honor James C. R. Flomo, who advised her to write him a letter to invite those on the property to a meeting; that the appellee and the others said that they were not sitting in a meeting and that they had retained Counsellor Sekum to represent them; that the Judge then advised her to retain a lawyer; she then got Counsellor Berry to represent her. She further testified that on December 10, 1997, Judge Flomo scheduled the case for hearing and ruled that the appellee and others purchase of the property was illegal because the grantor was old and she had already deeded the property to the appellant, her daughter. At this hearing, the appellant stated that her mother, her sister and her brother were present; her mother later died and the appellant traveled thereafter to London; that at the time she left, no structure was on the property; it was in March of 2004, that Mr. Samuel T. Watson along with his mother, with whom she left the property, reported that the appellee, Sumo, was digging a foundation on her property although the matter was settled by Judge Flomo; that she wrote to the court and attached a copy of her deed; she also sent a letter to be delivered to the appellee, but when Mr. Watson along with the Sheriff of the court took the letter to him, the appellee Sumo tore up the letter in front of the Sheriff; that when this was

reported to her, she decided to leave the matter until she got back to Liberia. She came to Liberia in October 2007 and went to Buchanan where she saw a building erected on the property. She then got Counsellor Berry to file a case to settle the matter. She put into evidence the letter allegedly written to her by her mother on January 14, 1989; a copy of Judge James C. R. Flomo's Ruling dated December 10, 1997; and the deed allegedly transferring Lot No. 3 to her by her mother dated 28th September, A. D. 1988.

The appellant second witness, Mr. Samuel Watson, testified that he was left in charge of the property when the appellant travelled to the United States. He confirmed the appellant's testimony that she had left him in charge of the property and when he saw the appellee digging a foundation, he called and informed her and she sent him a written notice to take to the appellant; he got the Sheriff from the court to accompany him to the site to carry the letter; when they got to the site, they met the appellee Sumo and his workers; the Sheriff presented to the appellee the notice, but after reading it, the appellee tore it up. The witness said that he reported this to the appellant and she advised him to hold on, that she would come from the States to follow up on the matter.

The appellant's third witness, Sarklah A. Tucker, her brother, testified that the land in question was given to the appellant by their late mother; that he was present when their mother gave his sister the property. He confirmed that it was his mother's signature on the deed presented by the appellant and that the appellee structure was on part of the one(1) lot of land conveyed to the appellant which was situated between Johnson and Kilby Streets; he testified that because their grandparents and the family's first grandchild were buried on the property, that was why the mother wanted the appellant to have the property, and did not want the property sold to anyone.

The appellant having rested with the production of evidence, the appellee, Joseph Sumo, took the stand testifying basically that he had purchased the land, one (1) lot, in January 1997 from the appellant's mother, Serina Tucker for three Thousand Five hundred Liberian Dollars. Countering the allegation that he could not have purchased such prime property for the equivalent of Fifty United States Dollars (US$50.00), the appellee retorted that because of the medical services rendered the appellant's mother, she called him and offered him the parcel of land since she said that she had no money to pay him; that in fact, she wanted him to pay her less than the three thousand five hundred Liberian Dollars but he insisted on paying her the three thousand five hundred Liberian Dollars; he refuted that the disputed lot No. 3 located in Block 45 was the same property that Serina Tucker gave to her daughter, the appellant; that his grantor, Mrs. Tucker had given him a historical

background of the property, stating that she had deeded to her daughter, the appellant, one (1) lot close to LEC near the family graveyard and that she had more lots extending to the Kissi Governor, Randolph Fiayah's property; that she wanted to give him a place behind Mr. Fiayah's property if he could find a surveyor. The appellee further testified that he told Mrs. Tucker that he did not know a surveyor and she then offered to find a private land surveyor, Rev. John Gayman, to whom she gave the mother deed to survey the property and demarcate the lot that was deeded to him; that Serina Tucker's grandchild, John Marsh, was present during the survey and that he (appellee) had probated the deed much later because of the series of unrest in the county and his work at the time with the St. Peter Health Center did not permit him to travel.

Appellee's second witness, Rev. John B. Z. Gayman stated that he was self-employed, working as a registered land surveyor since 1967. He testified that he knew the parties; that he was contacted by the appellee, Mr. Sumo, who told him that he had bought a lot from Serina Tucker and asked that he survey the lot. The witness said that he got in contact with Mrs. Tucker to see whether or not this information was true. He stated that he gathered all the information necessary, like having Mrs. Tucker show him the mother deed for the property, and she had her husband, Mr. Moses Tucker and her son, John Tucker, go with him on the site. He served notices to the adjoining parties, did the survey, prepared the deed which he signed as the surveyor for the appellee to take to Mrs. Tucker for her signature. The land that he surveyed for Mr. Sumo and prepared a deed is located on Kilby and Johnson Streets, Buchanan, Grand Bassa County. He explained further that at the time of the survey there were no cornerstones, and no objection from any caretakers of the appellant.

On direct examination and upon examining the deeds of both the appellant and the appellee, Rev. John B. Z. Gayman stated that the metes and bounds varied and were not the same. The counsel for the appellee then made application to the court for a writ of subpoena ad testificandum to be issued on James Harris, Land Commissioner of Grand Bassa County for the sole purpose of giving a second professional opinion as to the meets and bounds, place or location and variation of the two deeds so as to aid the court and jury in the determination of the proceedings. The appellant's counsel objected to the application, stating that the procedure adopted was wrong; that a subpoena ad testificandum could not be prayed for while the witness was on the direct and had not been discharged by the court; therefore, the application for the writ should be denied. The judge overruled and denied the objection, stating that though the procedure adopted by the appellee's counsel in making an application to the court for the subpoena ad testificandum while the witness was on the stand, was premature, it did not affect

the substantive rights of the parties. The Court therefore ordered the clerk to issue the subpoena ad testificandum on the County Commissioner to appear to testify as to the deeds. The appellant's counsel assigned this as error to be reviewed by this Court.

A review of the records on this issue reveal that on cross examination, the witness, Mr. Gayman had explained that it is possible that two deeds identified as lot No. 3 in block 45 could have different metes and bounds if it is not produced by one surveyor; that when he proceeded to survey the lot for the appellee, Block 45 in which the appellee's lot fell contained a little over four lots because the road took portion of the land. The subpoena of the County Land Commissioner as the appellee stated would give a second professional/ expert testimony as to the issue of the metes and bounds of both parties for the further clarity of the court and jury. We agree with the judge that though the request was made prematurely and was not in line with the standard practice and procedure to have the witness rest before making such application, this did not affect the appellant rights in the matter; it could only bring clarity as to whether the appellant's lot allegedly given her by her mother was the same lot sold to the appellee by the appellant's mother. Besides, the appellant had the right to bring a rebuttal witness to any testimony of the appellee's witnesses that she disagreed with.

The appellee's third witness, Edwin Smith, testified that in 1985, he built a house in the community and he wanted to do gardening in the bush nearby; he learned that the owner of the property was Serina Tucker; he then went to see her and requested her to allow him make a garden on the property, and she agreed; he told her that anytime she was interested in selling the property, she should let him know. In 1997, he said that he saw a survey notice from Mr. Gayman, the surveyor, stating that he was going to carry out a survey for the property as Mrs. Tucker was selling the land to the appellee; he then went to Mrs. Tucker and reminded her of her promise that she would let him know when she wanted to sell the property; Mrs. Tucker replied that she felt indebted to the appellee, Mr. Sumo, as what he did for her husband was more than giving a lot of land. The witness said that Mrs. Tucker promised that after the survey was done, if any land was left over, she would let him know; as promised, after the survey, Mrs. Tucker sent her husband to inform him that one (1) lot was left over; he paid for it and obtained a deed thereby sharing boundary with the appellee, Mr. Sumo. It was three years thereafter, the witness testified, that the appellant took him, Sumo and a third party to court; that when he last inquired from his lawyer the status of the case, the lawyer told him that the matter was not concluded and a ruling made.

The subpoenaed witness, Mr. Harris, Sr., came and took the witness stand to give an expert opinion on the two deeds. He testified that he was a professionally trained surveyor as far back as 1961, trained in Liberia and abroad; that he had worked with LAMCO-Buchanan for twenty five years as Chief Surveyor after which he obtained further studies in the field of survey and came back with other credentials; and practiced until he was appointed as Land Commissioner of Grand Bassa County. The deeds having been passed to the witness and reviewed by him, he stated that it was necessary for him to do a sketch to show the exact position of the property in conflict and therefore requested the court to grant him four (4) working days to peruse the documents and submit his findings relating to the metes and bounds with other information contained in the instruments so when he submits his findings, he would stand by it.

The judge granted the four (4) days as requested. Thereafter, the court resumed hearing and witness Harris presented to the court a report. An important highlight of the findings stated in Paragraph 2 of the report, referring to the appellant's deed, states, "Chain surveying is being outdated since the late 40s (forties) and may go up to at least the early 50s. It is unbelievable for a survey to be conducted in the City of Buchanan just twenty-four (24) years ago in chains when in fact there is no more trace of that tool on the world market or even in Liberia."

The parties having rested with evidence, the jurors retired and after deliberation returned a unanimous verdict of not liable in favor of the defendant and the judge confirmed the verdict.

Our review of the evidence produced by the appellant in support of her right to ownership of the land occupied by the appellee, shows that the appellant alleged that she acquired the disputed property from her mother in 1988. The appellant deed proffered, allegedly transferring Lot No. 3 from her mother Serina Tucker to her, the appellant, in Block No. 45, Buchanan City, Grand Bassa County is attacked by the appellee as being fraudulent, referring to the alteration made in the appellant's deed proffered in the trial court. The appellant's deed proffered into evidence clearly shows that the original number on said deed had being altered to the number 3, to reflect the Lot number on the appellee's deed. The apparent altered number in the body of the deed reflecting Lot No. 3 in Block Number 45 varies with the outer cover of the deed which is written thereon, Lot No. 2, in Block 45. Again, the appellant, in an attempt to substantiate that the property given to her mother was lot No.3, in Block No. 45, the same lot that the appellee occupies, placed in evidence a letter from her mother dated January 14, 1989, purporting to remit the deed to the said property. The letter reads as follows:

"Lower Buchanan

Grand Bassa
Jan. 14, 1989

My dear daughter, Cynthia,

Just a few lines to let you know that I am herewith sending the deed to you. It is for you.

My reason for giving you this deed is for you to take care of my grandma because I don't want when I am dead, I don't [want] nobody to sell my old lady grave to anybody.

So please take this. My love to all. This is for you.

Your mother,
Serina Tucker"

The Letter proffered by the appellant and said to be from her mother, Serina Tucker, does not state specifically the property said to be deeded to the appellant. It states that the reason for giving the appellant the deed was for appellant to take care of her mother, Serina Tucker's, grandma, as she did not want anybody to sell her old lady's grave. The letter did not state or describe any particular parcel of land that had been deeded to the appellant. Besides, the appellee in his testimony said that when Mrs. Tucker was about to sell him the land, she gave him a historical background telling him that she had deeded one lot to the appellant by L.E.C. near the family graveyard and so decided to sell the appellee the lot behind the Kissi Governor, Randolph Fayiah's property. This letter therefore could have been referring to Lot No. 2 which is actually written on the back of the deed proffered and admitted into evidence by the appellant and not lot No. 3 that Serina Tucker sold to the appellee.

Interestingly, the Land Commissioner in his report to the court stated that in the year when the appellant's deed was issued, Chain surveying was no more in use. He stated: "Chain surveying is being outdated since the late 40s (forties) and may go up to at least the early 50s. It is unbelievable for a survey to be conducted in the City of Buchanan just twenty-four (24) years ago in chains when in fact there is no more trace of that tool on the world market or even in Liberia".

In the analysis of his report, Mr. Harris, the land Commissioner of Grand Bassa County, discredited the appellant's deed stating that it lacked the name of the surveyor, the date of the survey, and diagrams to show the existence of the land. Mr. Harris also said that the metes and bounds contained in the appellant's deed was all rubbish as he had not seen a deed or there was a surveyor in the world that would read a bearing and say, West North, 70 Degree North, and in the same deed another bearing reading East South.

We have also seen and reviewed the ruling of His Honor James C. R. Flomo which the appellant put into evidence and which the appellant states was evidence that the lower court had declared the transaction between the appellee and Serina Tucker for the parcel of land lot No. 3 null and void. It reads as follows:

"INTERFERING WITH TESTATE ESTATE

COURT'S RULING:

A careful perusal of the records of this case reveals that the petitioner, Cynthia Tucker of Lower Buchanan, Grand Bassa County, filed a petition against the respondents, Sumo et al.

According to petitioner's petition, her mother at the age of 85 years and unsound minded sold a parcel of land situated and located in the City of Lower Buchanan belonging to her mother's sister and others by virtue of a Will executed and probated by her grandfather, without the consent and knowledge of the owners of said property. The petitioner further informed court in her petition that the said Will did not name her mother as Executrix; as such, the transaction that resulted to the sale of said property was without legal merit. She therefore prays court to declare said sale null and void.

During the hearing, petitioner's counsel, Counsellor J. Emmanuel Berry argued that since petitioner's mother was not Executrix of the property, she is without legal authority to sell same and the sale was without legal basis and that same be declared null and void. He further disclosed that the said Will named seller's sister as the owner of said parcel of land.

The respondents' counsel, Counsellor Joseph Sekum while arguing told court that he has no qualm with the court declaring the sale null and void but his client's money should be refunded.

The court having carefully listened to the argument pro and con, addresses itself to the following issues of law:

1. Can a grantor sell property without having genuine title to said property?

2. Is it proper for a grantee to purchase land without investigating every detail touching said property?

As to the first issue, this court says that it is clearly stated in the case, *Wallace v Green* 13LLR 269,277 (1958).

"There should be some title of interest, in law or in equity, in the grantor to enable him to convey, and a deed from a person not in possession or not shown to be owner, establishes no title."

Also relating to the last issue, the case in point is *Telleh v. Stubblefield*, 15 LLR 3, 11 (1962). The Supreme Court made it clear that in acquiring real property by purchase, it is the duty of the grantee to investigate every detail touching said property, and thereby surround his cause with sale-guards of the law, so as to prevent miscarriage of justice wherever title to said property is assailed.

In view of the above, this court rules that petitioner's petition is hereby granted, and said sale is hereby also declared null and void.

Cost disallowed AND IT IS SO ORDERED

GIVEN UNDER MY HANDS AND SEAL OF COURT
THIS 10TH DAY OF DECEMBER A.D.1997

HIS HONOR JAMES C.R. FLOMO
ASSIGNED CIRCUIT JUDGE
2ND JUDICIAL CIRCUIT COURT
BUCHANAN, GRAND BASSA COUNTY

The above court's ruling dated December 10, 1997, by His Honor James C.R. Flomo, put into evidence by the appellant and incorporated in this Opinion supra is captioned: *Cynthia Tucker v. Sumo et al.* ACTION: INTERFERENCE WITH TESTATE ESTATE.

The ruling of 1997, as can be seen, totally discredits the appellant's claim that she had ownership of the land in 1988, when her mother transferred the deed of the property the deed to her by a letter written in 1989. In fact, the Judge's ruling above states that land occupied by the appellee was sold by the appellant's mother who had no authority to sell the land as it belonged to the appellant's maternal aunt and others by virtue of a Will executed and probated by appellant's grandfather, and that her mother's transfer of the land to the appellee was done without the consent of the others. The ruling states that the appellant further informed the court in her petition that said Will did not name her mother as executrix and as such the transaction that resulted into the sale of the property was without legal merits.

Counsellor J. Emmanuel Berry who represented the appellant in the case before Judge James C.R. Flomo at the same Second Judicial Circuit had argued that the transfer to the appellee and others by Mrs. Serina Tucker was null and void as she was eighty five years of age and of an unsound mind, and that in a Will left by the her father, appellant's grandfather, he named Serena Tucker's sister as the owner of said parcel of land now occupied by the appellee contrary to the appellant's claim in this ejectment action that the disputed property was Willed to Serina Tucker by her (Serina Tucker's) father, and Serena Tucker in turn deeded the property to the appellant in 1988. This meant that the appellant could not have gotten the property from her mother in 1988, when in 1997, she and her lawyer alleged that the disputed property was that of her aunt as per her grandfather's Will.

Under our laws, it is within the province of the jury to determine the weight of evidence and the credit to be given the witnesses. See *Civil Procedure Law revised (1974), Section 22.10.*

This principle of law was confirmed in the Supreme Court's Opinion, Benson v. Sawyer, Supreme Court Opinion, October Term A.D. 2015, wherein this Court held:

> "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 considered evidence which is sufficient to support a verdict, the decision should not be disturbed by the Court." Other cases which also support this principle are *St. Stephen v. Gbedzee, Supreme Court Opinion, March Term A.D. 2013; Momolu v. Cummings, 38 LLR 307, 314 (1996); Gbassage v. Holt, 24 LLR 293, 296 (1975).*

The Court has therefore opined that it will not set aside a jury verdict unless it is manifestly and palpably against the weight of the evidence. *Ledlow et al. v. Republic of Liberia,* 2 LLR 569, 581-582 (1925); *Fatorma v. R.L.,* Supreme Court Opinion, October Term 2014. In keeping with the above principle, and having thoroughly reviewed and considered the entire evidence in this case and found that the evidence presented at the trial by the appellant is characterized by inconsistency, fraud and contradictions, thereby casting doubt and uncertainty on the appellant's title, we find no legal reason to set aside the jury verdict. We therefore hold that the trial judge was correct when he confirmed the unanimous verdict returned by the jury.

In view of the above, we are of the opinion that the verdict of the jury in this ejectment case is in harmony with the evidence adduced at the trial; hence, the final judgment of the court below affirming the said verdict should not be disturbed. The judgment of the lower finding the appellee not liable is therefore confirmed.

The Clerk of this Court is hereby ordered to send a mandate to the Court below to resume jurisdiction and give effect to this Judgment. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.