IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

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

The Intestate Estate of Charles Johnston, by and thru its Administrator, Charles Johnston, II, and all illegal occupants, of the City of Buchanan, Grand Bassa County, R.L. ……..…….. Appellant	)	
VERSUS	)	APPEAL
The Testate Estate of Susan A. Miller, by and thru its Executrix, Ida B. Ajavon, also of the City of Buchanan, Grand Bassa County, R.L. … ……..…… Appellees	)	
GROWING OUT OF THE CASE	)	
The testate estate of Susan A. Miller, by and thru its Executrix, Ida B. Ajavon, also of the City of Buchanan, Grand Bassa County, R.L. ……..…… Plaintiff	)	
VERSUS	)	ACTION OF EJECTMENT
The Intestate Estate of Charles Johnston, by and thru its Administrator, Charles Johnston, II, and all illegal occupants, of the City of Buchanan, Grand Bassa County, R.L. ……..……..…. Defendants	)	

HEARD: November 20, 2019 DEDIDED: September 3, 2020

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case involves real property dispute between the Testate Estate of Susan A. Miller, the appellee, and the Intestate Estate of Charles Johnston and other illegal occupants on the properties, the appellants. The properties being contested are Lots # 91 and 93, lying and situated between Gardner and Church Streets, in the City of Buchanan, Grand Bassa County.

The executor of the Testate Estate of Susan A. Miller commenced this ejectment action on July 2, 2015, before the Second Judicial Circuit, Grand Bassa County, laying claims to both parcels of land and alleging that the appellants are wrongfully withholding the properties and denying the appellee possession and quiet enjoyment thereof. The appellee alleged that the decedent of the appellee, Susan A. Miller, acquired title to the two lots in

1962, through a valid purchase from Madam Jane Timeley Capehart, a relative of hers; that in 1978, Susan A. Miller entered into a twenty year lease agreement with the Liberian Amusement, Ltd. by and thru its President, Mr. George A. Padmore; that the lease agreement was to commence in 1982 and terminate in 2002; that the Liberian Amusement, Ltd., lessee, upon commencement of the lease, established and operated the Grand Odeon Cinema and other entertainment businesses on the premises until it ceased to operate in 1998, when it wrote Susan A. Miller that it was turning over the premises to her due to unfavorable business climate brought about by the civil war. The appellee further stated that Susan A. Miller quietly enjoyed the use and control of the properties from the time she purchased them in 1962, up to and including her departure for exile in the 1990's with no interference from anyone; that the Co-appellant Charles Johnston, II, who happened to be a surveyor in Grand Bassa County, took advantage of her absence and illegally entered the properties and asserted ownership thereto. The appellee prayed the trial court to oust and evict the appellants from the disputed properties, and to award the appellee damages in the amount of Two hundred and fifty thousand United States Dollars (US$250,000.00).

The records reveal that the appellants refused service of the summons and complaint and did not file an answer in response to the appellee's complaint. The court upon motion of the appellee ruled the appellants to bare denial, and upon hearing the case, the jury brought a verdict of liable against the appellants whose appeal is now being reviewed.

The facts gleaned from the files of the case are that Susan A. Miller, the appellee's decedent, filed an action of ejectment against the Co-appellant Charles Johnston, II, *et al.* in 2009, in her own name, captioning her case, "Susan A. Miller of the City of Buchanan versus Johnston, et al., of the City Of Buchanan". She withdrew her complaint on May 13, 2010, with reservation to re-file, but died in 2013 without filing her amended complaint. Subsequently, on May 22, 2014, her estate filed a complaint captioned, "The Testate Estate of Susan A. Miller, by and thru its executrix, Ida B. Ajavon of the City of Monrovia versus Charles Johnston, by and thru its administrator, Charles Johnston, II, of the City of Buchanan, Grand Bassa County, Republic of Liberia, and all other occupants."

The appellants answer to the appellee's complaint of May 22, 2014, raised several issues: that the complaint was a fit subject for dismissal because the appellee had filed its complaint on May 22, 2014, and had venued the action

in the August A.D. 2014 Term of court instead of the May Term 2014; that the appellee had wrongly designated the parties in its complaint since the defendants named by the appellee were different from that named by Susan A. Miller in her action filed in 2009, which made the appellee's complaint ambiguous and uncertain as to the designated defendants; that assuming that the defendant, the intestate estate of Charles Johnston, was the same designated party defendant in the previous suit filed by Susan A. Miller before the lower court in 2009, said action filed by Susan A. Miller was *lis pendens,* undecided by the court. The appellants further stated that when a party dies while a suit is pending, the deceased party must be substituted within the period of one year following the demise of said party through a motion for substitution of party either by a moving party or by the court *sua sponte*. However, in the instant case, as per the appellee's annexed death certificate of Susan Miller who was the plaintiff in the previous case, the statutory period of one year had since lapsed and there was no motion filed by the appellee applying for an extension of time based on excusable neglect which had to be heard and granted by the court; that same not having been done and the previous action still pending, the appellee's complaint of May 22, 2014, designating new party defendants should be dismissed. Besides, the appellants asserted that the appellee showed no evidence that when Susan A. Miller withdrew her complaint on May 13, 2010, she paid court cost as required by statute. The appellants then filed a motion along with its answer to have the appellee's complaint of May 22, 2014 stricken, based on the reasons above stated, and for all the legal errors enumerated, the appellants prayed the trial court to strike and dismiss the appellee's complaint.

The appellee filed reply to the appellants answer and resistance to the appellants' motion to dismiss. The trial court heard argument on the motion to dismiss and ruled denying the motion stating therein that the designation of the party defendants in the appellee's complaint was based on a misnomer; that the court was already operating in its May Term when the complaint was filed; and that the appellants' motion was based on mere technicality. The judge ruled upholding the appellee's response to the appellants answer and motion to dismiss

On March 25, 2015, the appellee filed a motion for newly discovered evidence. It asserted that after several requests made to both the Ministry of Foreign Affairs and the Center for National Documents and Archives (CNDRA) to authenticate the deeds and other documents relied on by the parties to establish their title and claim to the property, the Ministry of

Foreign Affairs had issued certificates of non-discovery regarding the certified copy of the appellants' deed and an alleged lease agreement between James E. Johnston and Joseph S. Dennis; that the certified recorder of 1974 and 1989 did not reflect the appellants certified deed and lease agreement proffered. On the other hand, the documents proffered by the appellee were authenticated by the Ministry of Foreign Affairs. The appellants having attached documents alleged to have been fraudulent to their pleading, the appellee sought to admit the Certificate of Non-Discovery from the Foreign Ministry into evidence. The appellee prayed the court to grant the motion for newly discovered evidence to have these Certificates form a part of the proceedings and to also approve the withdrawal and re-filing of the pleadings in the proceedings.

The appellants resisted the motion for newly discovered evidence stating that the title documents proffered by them belong to the decedent of their estate and were valid, genuine and legal with said certified copies issued to the co-respondent Charles Johnston, II; and which the appellants were prepared to prove at trial. Besides, the appellants asked, if assuming without admitting that the averments made by the appellee were true, why then did the appellee rush with haste to file its ejectment action against the appellants instead of waiting for the title search from the National Archives before filing the suit?; that the appellee's motion was not filed in good faith but intended to delay and baffle justice as the certificates relating to the nonexistence of the co-appellant's documents could not serve as conclusive evidence in deciding the pending ejectment action in the appellee's favor as it attempted to portray, and could not serve as evidence capable of bringing the ejectment action between the parties to a finality in appellee's favor as said newly discovered evidence was nothing but a product of fraud and deception for which the court must have them stricken.

At the call of the case on May 18, 2015, the counsel for the appellee prayed the court to correct the records of the proceedings relative to the caption of the case that it had previously prayed for and which the previous judge inadvertently failed to do when he ruled on the appellants' motion to strike the appellee's complaint and held that the appellants grounds to dismiss the complaint was based on a misnomer and mere technicality.

On May 25, 2015, the trial judge ruled on the motion for the admissibility of newly discovered evidence, holding that the case was an ejectment action where a party litigant must prevail on the strength of his title. He ordered that the parties re-plead for a determination of the plaintiff's newly discovered evidence.

Based on the judge's ruling of May 25, 2015, we see that the appellee issued out a new Writ of Summons on June 2, 2015, with a complaint attached thereto indicating that the appellee had rather filed an action anew. Upon service on the co-appellant, Charles Johnston, II, he refused receipt of the document from the sheriff. The appellee, determined to have the appellants served, applied to the court for a re-summons. The resummons was issued but the appellants again refused receipt of the papers. Thereafter, an assignment for a pre-trial conference was issued by the court but the appellants refused service of the paper and told the sheriff to take the notice of assignment to their lawyer. The court then ruled the appellants to bare denial.

The records reveal that the appellants thereafter filed quite a number of motions restating the same issues that they had raised in their answer to the appellee's complaint of May 22, 2014. For example, the appellants filed on March 11, 2016, after the filing of the new action on June 2, 2015, another motion to dismiss the appellee's action of ejectment again raising the issue that the appellee had failed to make application to the court to substitute Susan Miller who had filed the ejectment action in 2009 and while the action remain pending before the court she died on October 4, 2013. The appellants prayed the court to out-rightly dismiss the original suit filed by Susan Miller along with all ancillary actions filed with it.

This March 11, 2016 motion, the appellee contended, was belated as the action now before the court was a new action filed by the appellee based on the court's instruction to re-plead and which the appellants failed to adhere to and were placed on bare denial. The appellee further insisted that there was no impropriety in its withdrawals and subsequent filing of their complaint on June 2, 2015. The appellee stated that the appellants merely intended to have the case delayed.

The case was ruled to trial with a petit jury duly selected and sworn to hear evidence. The trial progressed until the appellee rested with evidence, after which the appellants prayed the court for continuance. The request was granted; however, before the court resumed hearing in the matter, the appellee's counsel filed a bill of information which averments in essence was a complaint alleging jury tampering by the appellants. The averments alleged that Co-appellant Charles Johnson, II, and his counsel had met with the entire jury panel at a fruit farm in Buchanan.

The appellants vehemently denied the allegations, but upon an investigation conducted by the court, it was found that the appellants had tampered with

the entire jury panel. For that reason, the judge discontinued the trial, disbanded the jury, and ordered a new trial.

The appellants thereafter filed another motion; this time, for change of place of trial. The motion alleged that there was local prejudice, hate and envy, against the appellants in Buchanan where the trial was venued; that it was therefore impossible for the appellants to be accorded an impartial trial in Buchanan.

Resisting the motion, the appellee contended that it was vague, as it merely attributed vices to the people of Buchanan against the appellants but failed to provide instances where said vices were meted against the appellants as alleged in the motion. The motion was heard and denied by the court on grounds that the motion was belated, as trial of the case had long commenced and progressed as far as the resting of evidence by the appellee; that all that was left was for the appellants to take the stand and produce their evidence; and that the disbandment of the jury which led to a new trial was due to the appellants own act of tampering with the jury.

The appellants excepted to the ruling and gave notice to take advantage of the law controlling, but the records contain no evidence that a remedial process was pursued for a review of the ruling.

When Judge Yamei Quiqui Gbeisay took up assignment with the Second Judicial Circuit Court during the November 2017 Term, a new trial jury was duly selected and sworn to hear evidence in the case. On November 30, 2017, the appellee proceeded with the production of evidence in support of its case. The appellee brought forth two regular witnesses and a rebuttal witness to testify in support of its case.

The appellee's first witness, Wede W. Parker, stated that she knew both the decedents of the rival estates, Susan A. Miller and Charles Johnston, and that Susan A. Miller was her aunt. She testified that Susan A. Miller bought the properties in 1962 and probated her title deeds in the same year; that the land was empty but Rasamy Brothers leased the property and built a cinema thereon; that the property was subsequently leased to the Liberian Amusement Limited in 1978, and due to the civil war in the country, Mr. George Padmore, CEO of Liberian Amusement Limited, returned the property to Susan A. Miller in 1998, and shortly thereafter, Susan A. Miller like many Liberians fled for her life; that when Susan returned in 2001, Co-appellant Charles Johnston had illegally entered upon the property and wrongfully withheld it, and that his conduct worried Susan A. Miller and caused her emotional distress which prompted her to return to the United States only to

come back to Liberia and die in 2013. The witness also testified to the first ejectment proceedings initiated by Susan A. Miller and the circumstances that necessitated the withdrawals and subsequent re-filling by her estate.

The appellee's second witness, Charles Cole, testified that he met the late Susan A. Miller, when he worked for the Liberian Amusement Limited; that he entered the company as a "poster boy" and operator in 1972, and with time he rose to the ranks of central office bookkeeper, and cinema manager. He further stated that his company had a lease agreement with Susan A. Miller for the property in issue and that his boss, Mr. George Padmore, CEO of Liberian Amusement Limited, wrote a letter to Susan A. Miller in 1998, stating that Liberian Amusement Limited was returning the leased properties due to crisis in the country. The witness identified the lease agreement and the letter addressed to Madam Susan A. Miller in 1998, and confirmed the signature of Mr. George Padmore on both instruments. He was asked on cross-examination whether he ever interacted with Co-Appellant Charles Johnson, II in relation to the property and he stated, "no". He further stated that throughout his employment with the Liberian Amusement Limited and at which time they occupied and used the premises for their business operations he did not observe any dispute involving the property.

The appellee's witnesses having testified to several instruments of relevance to the appellee's case, the trial had them duly admitted to constitute the appellee's documentary evidence, details of which are outlined below:

i) Susan A. Miller's title deeds for the two lots and upon proper foundation, photocopies of the deeds were admitted into evidence, as the original deeds could not be found.

ii) Susan A. Miller's lease agreement with the Liberian Amusement Limited was also admitted into evidence.

iii) The letter written in 1998 by Mr. George Padmore to the effect that Liberian Amusement Limited was returning the leased properties to Susan A. Miller also forms part of the appellee's evidence.

iv) Certificates of authentication and non-discovery issued by the Ministry of Foreign Affairs on request made by the appellee and the certificates of discovery which confirmed the existence of the appellee's deeds.

The appellee rested with evidence in toto and submitted its side of the case to final argument. Thereafter, the attention of the trial shifted to the appellants for the production of evidence in denial of the appellee's allegations that they were illegally and wrongfully withholding the property.

Testifying as appellants' first witness, Co-appellant Charles Johnston, II, introduced himself as an employee of the Bureau of Survey, where he served as an Assistant Resident Cadaster. He stated that he knew Ida Ajavon, the executrix of the testate estate of Susan A. Miller, but that the property in question belonged to his late grandfather, Charles H. Johnston, whom he claimed acquired several properties including the one at issue prior to his death; that Rasamy Brothers erected a cinema building on the subject property in 1966; that through the influence of his late uncle, Joshua Harmon, then Senator of Grand Bassa County, the Armed Forces of Liberia built a barracks on the property and occupied it for a while; that somewhere between 1998 and 1999, he (the witness) filed a summary proceeding to recover possession of real property against the Government of Liberia, and on the strength of the judgment he obtained in that case the Army was evicted and he was placed in possession of the property.

As to his kinship with Susan A. Miller, Co-appellant Charles Johnston, II stated that he considered her his aunt in the sense that she lived with his grandfather, Charles H. Johnston.

During cross-examination, he was asked by appellee's counsel as to who operated the cinema on the premises from 1966 until the war in 1998, and when he responded "George Padmore", the appellee's counsel gave notice to produce a rebuttal witness who would prove otherwise.

The appellants second witness, John J. Manuel, testified that after the 1980 coup, his father, the late Napoleon Manuel, was given several deeds for safekeeping by the co-appellant's father, to whom he referred to as Oldman Charles Johnston; that somewhere around 1992, Oldman Charles Johnston passed away and after the burial, the witness' father, Napoleon Manuel, gave the deeds to a cousin of the deceased named Madam Cummings in the presence of the witness.

Appellants' third witness, Nathaniel Georgie, an eighty-eight year old man, testified that he knew Susan A. Miller, Ida Ajavon and Charles Johnston, II, and the late Charles Johnston, grandfather of the co-appellant. The witness stated that he lived with the wife of the Co-appellant Charles Johnston's grandfather when he was fifteen years of age; that while he was there, Susan A. Miller was sent from Joshua Harmon's home to stay with the Johnstons; that both of them lived there until he (the witness) was of age and left around 1935; that during the time he lived there, he knew Old-man Johnston to be the owner of the property in dispute, but he did not see him with any deed for the place.

Appellants' fourth witness**,** Abraham Kraingar, also stated that he knew Charles Johnston, II, and Ida Ajavon. He testified that when he was six years old his father sent him to live with Charles Johnston who happened to be his father's friend. At the time, the property in question had three buildings that were being occupied by "white people"; that when the "white people" moved out of the premises, he recalled seeing government personnel in the buildings; that he spent twenty five years with the Johnstons and moved out when his mother passed away. Abraham Kraingar stated, like the third witness, that he did not see the Johnstons with any deed for the property but he was of the impression that they owned the property.

Pursuant to the appellee's notice that it would proffer a rebuttal to statements made by the appellants' first witness, Charles Johnston, II, that George Padmore operated the cinema on the premises from 1966 to 1998 unabated, the appellee brought in Madam Wede Parker who stated that George Padmore's company entered a lease agreement with her late aunt Susan A. Miller in 1978, but started operating the cinema in 1980s. The rebuttal witness' point was that it was not possible for George Padmore to have commenced operations on the property before 1978, as that period pre-dated the lease between George Padmore's company and Susan A. Miller which was executed in 1978 and actual possession of the property taken by Mr. Padmore in 1982. After the rebuttal, the appellee submitted its case for post-trial argument.

The hearing having been concluded, the jury retired to its room of deliberation and returned a unanimous verdict of liable against the appellants, to which the appellants excepted and filed a motion for a new trial. On the same day, the appellee also filed a motion for sequestration of rent alleging that the Co-appellant Charles Johnston, II, had been receiving rental payment from tenants placed on the property by him since 1999 up to the filing of the motion. The motion was heard and granted by the trial court on December 21, 2017. The trial court ordered that all rents be paid into an escrow account, opened by the clerk of court.

On December 28, 2017, the trial judge denied the appellants motion for a new trial and confirmed the verdict of the jury, entering a final judgment thereon adjudging the appellants liable.

Not satisfied with the trial court's final judgment, the appellants appealed to the Supreme Court for a review and reversal of the said judgment.

In the bill of exceptions, the appellants allege that the trial judge committed several errors, where if not, a contrary outcome would have ensued from the trial. We herewith state the bill of exceptions:

> "AND NOW COMES DEFENDANT/MOVANT/APPELLANT in the above entitled cause of action which having excepted to Your Honor's final ruling/judgment, announce an appeal therefrom to the Honorable Supreme Court of the Republic of Liberia, sitting in its March Term, A.D. 2018, now submit this Bill of Exception as the second jurisdictional step for the perfection of this appeal, as follows to wit:

1. Because Your Honor inadvertently erred when you upheld the verdict of the jury which based its verdict on the mere witnesses, Madam Wede Parker and one Mr. Cole respective testimonies without the principal witness, Madam Ida Ajavon's Testimony in Chief, who was asserting the claim of ownership to the disputed piece of real property to take the witness stand and testify in support of her allegation against the defendant/movant/appellant; in that, by operation of law and procedure in this jurisdiction the mere witnesses can only buttress the testimony of the principal witness to substantiate the principal witness' claim of ownership to the litigated property.

2. That Your Honor also inadvertently erred when you denied movant's/defendant's application for Subpoena duces tecum for the Director of Archive at the Ministry of Foreign Affairs of the Republic of Liberia, the custodian of all public document, to testify to the existence of defendant's/movant's Title Deed which existence was challenged by Plaintiff/Respondent as provided for under our law practice and procedures in this jurisdiction.

3. And because Your Honor committed a reversible error to entertain a new law suit prayed for by the Plaintiff/Respondent/Appellee in these proceedings without the filing of a voluntary discontinuance agreement signed by both Plaintiff and Defendant and/or a court order which said action of Your Honor contravenes the "Doctrine of Lis Pendis" and therefore, operates against Plaintiff/Respondent as required by the Liberian law.

4. That Your Honor also committed the reversible error to entertain a new law suit prayed for by the Plaintiff/Respondent when the Plaintiff/Respondent/Appellee failed, refused and neglected to file a motion for substitution of party following the death of Madam Susan Miller, the purported owner of the disputed property for the continuation of the previous Action of Ejectment filed against Defendant/Movant/Appellant by the said Madam Susan Miller.

5. That Your Honor erred when you denied Defendant/Movant motion for new trial to uphold the jury's verdict when the evidence was not weighted by preponderance of evidence due to the failure and neglect of the prime witness, Madam Ida Ajavon, to take the

witness stand to prove the claim of ownership of the Testate Estate of the late Susan A. Miller to the property in dispute.

6. That Your Honor was in error to have rendered judgment in favor of Plaintiff despite the corroboration of Defendant's witness' testimonies that they knew Charles Johnston, I to be on the property where there were three buildings constructed thereon."

Before addressing the appellants' bill of exceptions, we must mention here that as this appeal was pending before the Supreme Court, the appellee filed a motion for substitution of party, stating that Ida B. Ajavon, the executrix of the appellee's estate, had died and the appellee sought to have the deceased substituted by Wede Parker who had been duly appointed as administrator cum testamento annexo of the estate.

The appellants filed a resistance to the motion, contending that as Ida B. Ajavon was not brought into the case by a motion for substitution of party, she was technically not a part of the case, and as such, the idea of having the deceased executrix substituted was a legal nullity.

We disagree with the appellants' contention that Ida Ajavon was technically not a part of the case since she did not file a motion for substitution of party after the death of Susan A. Miller. The Court notes from the records that Susan A. Miller, the appellee decedent, filed an action of ejectment in 2009 against the estate of Charles Johnston, and that she later withdrew her complaint and did not file an amended complaint until her death in 2013. In 2014, the Estate of Susan A. Miller by and thru its executrix, Ida B. Ajavon, filed a complaint not headed an amended complaint, with the names of the defendants in the caption stated slightly different: *"Intestate Estate of Charles Johnston by and thru its administrator, Charles Johnston, II, of the City of Buchanan, Grand Bassa County, R.L. and all other occupants"*, instead of that stated in Susan A. Miller's complaint: *"Charles Johnston by and thru his administrator, Charles Johnston, II, of the City of Buchanan, Grand Bassa County, R.L., and all other Occupants".*

The appellee raised the issues of *lis pendis* and the irregular means of substitution of Susan A. Miller in several motions filed before the court, but we see from the records that during a motion filed by the appellee for newly discovered evidence, the trial judge, in granting the motion, ordered the parties to re-plead and the appellee, the Testate Estate of Susan A. Miller by and thru her Executrix, Ida B. Ajavon, opted to discontinue the previous actions and file a new action in June 2015. This new action commenced on June 2, 2015, with the consent of the court that issued a resummons when

the Co-appellant Charles Johnston refused the receipt of the papers served on him by the sheriff. The action was filed by Ida B. Ajavon, acting in a representative capacity as Executrix of the Testate Estate of Susan A. Miller before her death and it is that action now on review before this Court. Seeking her substitution on account of her death is consistent with section 5.36.4 of the Civil Procedure Law which states that if the event requiring substitution occurs after judgment is entered in any action in which an appeal is noticed, application for substitution shall be made to the trial court before the appeal is perfected and to the appellate court thereafter. Ida B. Ajavon having died June 2, 2018, and the appeal perfected on February 15, 2018, the application to substitute her was properly venued before the Supreme Court. We therefore see no reason to deny the motion for substitution; hence, we proceed to determine the contentions raised in the appellants' bill of exceptions in light of the evidence adduced at the trial by the parties.

Reverting to the appellants' bill of exceptions, the first contention is that the trial judge erred when he upheld the jury's verdict which was based on the testimonies of "mere or secondary witnesses" of the appellee. By this allegation, the appellants are of the view that Ida B. Ajavon ought to have testified substantiating the appellee's claim of ownership to the disputed property since she was the executrix of the testate estate of Susan A. Miller, and after which Wede Parker and Charles Cole could testify as the appellee's "secondary witnesses" for the purpose of corroboration. Ida B. Ajavon's failure to testify, the appellants contend, rendered Wede Parker and Charles Cole's testimonies irrelevant, since there was nothing to be corroborated or buttressed by their testimonies.

The Court says that this claim is not only a novelty but it lacks merits in its entirety. As was correctly stated by the trial judge in his final ruling, nothing in the law compels a plaintiff, or one who files a law suit, to be witness in the case, and Ida Ajavon, a mere executrix was therefore under no obligation to testify at the trial. In fact, Ida Ajavon filed the suit in a representative capacity as the executrix of the Testate Estate of Susan A. Miller. The testimonies given by the appellee's regular witnesses did not need to serve the purpose of complementing a prior testimony; they were to be analyzed on their own, in search of the truth. Therefore, the Court cannot sustain the contention of the appellants as contained in count 1 of the bill of exceptions.

The appellants' second complaint in the bill of exceptions is that the trial judge refused to grant the appellants' application for a subpoena *duces tecum,* by which they sought to have the Director of Archives, as custodian of all public documents, come to testify to the existence of the appellants' title deed in order to disprove the appellee's claim that the deed did not exist.

It must be noted that because the appellants were on bare denial, they could not have introduced any affirmative matter. When a party in a case is ruled to bare denial, he may produce evidence in support of his denial but is not allowed to introduce any affirmative matter (1LCLR, 9.1.2.);*Roberts v. Enaimba Business and Consulting Firm,* 28 LLR 272, 275 (1979); *Nat'l Africa First Pentecostal Church V. Davies at al,* Supreme Court Opinion, March Term 2009. The appellants failure to file an answer and attached their title deed thereto meant that they could not introduce evidence with respect to their title deed in keeping with the principle of notice. The appellants not having done so, the application made for a subpoena *duces tecum,* to have the Director of Archives testify to the existence of the appellants' title deed, was legally untenable as that would have operated against the legal effect of the bare denial. In light of the bare denial, the best avenue of defense left to the appellants was to cast a doubt on the appellee's evidence, especially by impeaching the credibility of the appellee's witnesses by way of cross-examination.

Counts 3 and 4 of the bill of exceptions allege that the trial judge was in error to have entertained a new action by the appellee because the said appellee did not file a voluntary discontinuance agreement signed by all the parties or obtain a court order of discontinuance; and that the trial judge erred when he permitted the appellee's new action of ejectment because the appellee had failed and neglected to file a motion for substitution of party following the death of Susan A. Miller for the continuation of the previous action of ejectment filed by her (Susan A. Miller).

In addressing the appellants' contentions as contained in counts 3 and 4 of the bill of exceptions, this Court takes judicial cognizance of section 11.6 of the Civil Procedure Law and the requirements provided therein for discontinuance of actions. Section 11.6.2 permits a party to discontinue an action upon an order obtained from the court when pleadings have rested but the case is not yet submitted to the court or jury, and under section

11.6.3, a stipulation signed by all the parties when the case has been submitted to the court or jury for determination of the facts.

In the instant case, when the appellee filed a motion to admit its newly discovered evidence from the Ministry of Foreign Affairs, the trial judge in his ruling on the motion ordered the parties to re-plead. The appellee instead opted to file a new action in which the court acquiesced by its issuance of a summons and resummons, which were served on the Co-appellant Charles Johnston who refused to accept service on him. Under the facts and circumstances herein the issuance and reissuance of summons by the trial court amounted to an order of discontinuance of matters previously filed by the appellee regarding the disputed properties in keeping with section 11.6(2) of the Civil Procedure Law.

Also our Civil Procedure Law, Section 5.36(2) states that a court may *sua sponte* order substitution of a party in any case in which the interests of justice requires. The appellants had raised this issue of substitution from the inception of the appellee's filing of its first complaint on May 22, 2014. The trial court ruled against this contention of the appellants and referred to their objection as being technical and the case was ruled to trial. This action being an ejectment action, the court acted in the interest of justice to have allowed the appellee to pursue its decedent's claim to the disputed properties in an effort to establish the true title holder of the properties. We therefore deny Counts 3 and 4 of the appellants' bill of exceptions.

Count 5 of the bill of exceptions alleges that the trial judge's denial of the appellants' motion for new trial was erroneous on the basis that the appellee's evidence was not weighty enough because Ida B. Ajavon failed to take the witness stand to prove the claim of ownership of the testate estate of Susan A. Miller.

The substance of the appellants' contention is that Ida B. Ajavon was under legal compulsion to testify at trial since she instituted the action in the name of the testate estate of Susan A. Miller, and that her failure to so testify rendered the appellee's evidence legally insufficient. As we previously stated in this opinion, nothing in our law compels an executor to testify in a suit instituted by her for and on behalf of an estate. An executor acts as an agent or representative of an estate in prosecuting or defending a suit brought by or against said estate. More besides, the testimonies adduced at trial are to be weighed by the jury in light of the attending circumstances of the case, and a determination made by the jury as to the credibility to be accorded each species of testimony provided.

Furthermore, this Court has held that a motion for new trial, being an issue of law, and argument being an effort to convince the trial judge, the granting or denying thereof is absolutely discretionary on the part of the trial court, except and unless it is shown that the trial court abused its discretion. In the absence of such showing, the motion will be legally and properly denied. *Blamoh-Collins v. Collins,* 30 LLR 195, 199-200 (1982); *Insurance Company of Africa/INTRUSCO Corporation v. Fantastic Store,* 32 LLR 336, 383 (1984); *R.L. v. His Honor Kaba et al.* Supreme Court Opinion, October Term 2014. We affirm the principle enunciated above and hold that, under the facts and circumstances of the present case, the trial judge's denial of the appellants' motion for new trial did not constitute an abuse of his judicial discretion.

Count 6 of the bill of exceptions avers that the trial judge acted erroneously when he rendered judgment in favor of the appellee despite the corroboration of the appellants' witnesses' testimonies that they knew Charles Johnston to be on the property.

By this allegation, the appellants tend to impress upon the Court that their witnesses' testimonies were cogent and convincing enough to have warranted a judgment in their favor. The nature of this contention necessitates a clinical perusal of the appellants' entire evidence in order to determine whether or not it has merits.

Co-appellant Charles Johnston, II, himself, the appellant's first witness, testified to the occupation of the premises by the army through the influence of his late uncle, Joshua Harmon and their subsequent eviction from the property. When asked by the appellee's counsel on cross-examination to state the time the army left the premises, his response was that he did not know the time because he was still young. Interestingly, Co-appellant Charles Johnston, II, who was born on April 16, 1953, stated at trial that he fully understood events of 1963-1966 when he testified that Rasamy Brothers built the Cinema on the disputed property in 1966. The question which this answer brings to a reasonable mind is, if the co-appellant could fully relate events which occurred at the tender age of 13 in 1966, how come he could not speak to the departure of the army which occurred around 1998-1999 when he had attained the age of 45? The co-appellant also testified during cross examination that George Padmore operated the cinema on the disputed premises from 1966 until the war in 1998. This testimony was rebutted by the appellee's witness, Wede Parker, who stated on the contrary that George Padmore started operating the cinema in 1980

pursuant to a lease agreement executed between him and Susan A. Miller in 1978.

A certain amount of light must be further thrown upon Co-appellant Charles Johnston's account that his uncle, Senator Harmon, had a great deal of influence over his grandfather, and that the uncle used said influence and brought the government of Liberia on the property during the period testified to by the witness. Assuming arguendo, that this account represents the truth, it does not prove or disprove that his great grandfather had legitimate title to the property, considering that the recurrent mischief of strangers illegally meddling with others' property, and it cannot be said that it was impossible for the co-appellant and his uncle to have wrongfully interfered with the appellee's property at some points in time.

In the case of the appellants' second witness, John J. Manuel, he testified to his late father receiving Oldman Charles Johnson's original title deeds for safekeeping after the 1980 Coup. The records, however, revealed that the title deeds, which were not pleaded by the appellants but referenced in the appellants' testimony, were certified copies issued by the Ministry of Foreign Affairs on July 20, 1974. The question then is why would Oldman Charles Johnston obtain certified copies in 1974 when he still had his original title deeds in 1980? Certainly, there can be no reasonable explanation to this anomaly other than mischief on the part of the appellants.

The appellants' third and fourth witnesses essentially testified that they and Susan A. Miller lived as foster children with the Oldman, Charles Johnston, and that they were of the impression that Charles Johnston owned the disputed properties even though they never saw him with any title deed for the properties. This does not help the appellants' case in any way, as the witnesses could not and did not definitively say that the appellants' decedent, Charles Johnston, owned the properties.

It is settled law in this jurisdiction that the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence. *Civil Procedure Law, 1LCLR,* 25.6.1; *Morgan v. Barclay,* 42 LLR 259, 272 (2004).

The appellants' contention in count 7 of the bill of exceptions is that the trial judge erred in entering judgment in favor of the appellee on ground that the appellee failed to establish the chain of title as required under Liberian property law.

We shall address the appellants' allegation by undertaking a review of the evidence presented by the appellees in order to determine whether the appellee's evidence conclusively established the appellee's claims to the property.

We recognize and adhere to the principle established by this Court that in determining title contest, the burden of proof rests exclusively on the plaintiff, and that failure of the defendant to show sufficient title to a property that is the subject of litigation cannot serve to vest title in the plaintiff. *WATAMAL et al v. Keita et al.,* Supreme Court Opinion, October Term 2012; *The Intestate Estate of the late Karman Dassen v. Bawo, Captan et al.,* Supreme Court Opinion, March Term 2012; *Neil v. Kandakai,* 17 LLR 590, 596 (1966); *Cooper v. Gissie et al.,* 28 LLR 202, 203 (1979); *Donzo v. Tate,* 39 LLR 72, 80 (1998).

The appellee's first witness, Wede Parker, testified that Susan A. Miller bought the properties in 1962, and duly probated and registered her deeds in the same year; that Rasmany Brothers leased the property and built a cinema thereon; that the property was subsequently leased to the Liberia Amusement Ltd. in 1978; that due to the civil war in the country, Mr. George Padmore, CEO of Liberia Amusement Limited, returned the property to Susan A. Miller in 1998. The witness testified to and identified the lease agreement executed between the Liberia Amusement Center and Susan A. Miller for the properties, and also the letter written by George Padmore to Susan A. Miller turning over the leased premises due to unfavorable business climate caused by the outbreak of the civil war in 1998.

Appellee's second witness, Charles Cole, testified that he was employed with the Liberian Amusement Limited, from 1972 to the late 1990's, and his terms of reference included planning the daily programs of all cinemas that were operated by the company. The witness testified that he worked with Mr. George Padmore throughout his time at the Liberian Amusement Limited; the witness also identified the signature of Mr. George Padmore on both the lease agreement executed between the Liberian Amusement Limited as well as the letter addressed to Susan A. Miller by Mr. Padmore turning over the leased premises. Under our law, handwriting maybe proved by the oath of a person acquainted with the handwriting of the person whose it is alleged to be, either from having seen him write or from having corresponded or transacted business with him; or it may be proved by comparison of undoubted writings of the person proved not to have been written after the dispute arose or under suspicious circumstances. *Civil*

Procedure Law, 1LCLR, 25.17; *Prime Africa Incorporated v. Pealat Liberia Incorporated,* Supreme Court Opinion, March Term 2011; *Royal Stationery Store v. The Intestate Estate of McKeever,* Supreme Court Opinion, October Term, 2012; *Nebo v. R.L.,* 29 LLR 326, 329 (1981). Given that the witness worked with Mr. George Padmore for a period spanning about a decade it was therefore not impossible that he was familiar with Mr. Padmore's penmanship and signature.

In addition to the testimonies offered by the appellee's two witnesses, the appellee also admitted into evidence the certificates of discovery of its title deeds and the lease agreement between Susan A. Miller and the Liberia Amusement Ltd, and the certificate of non-discovery of the appellants' certified deed and lease agreement between James E. Johnston and Joseph S. Dennis from the Archives. It is of importance to clarify that because the appellants were ruled to bare denial, the certified copies of their deed did not constitute the evidence in this case. However, the certificate of non-discovery proffered by the appellee denied the existence of appellants' deed and the issuance of the certified copy they proffered. Under the rules of evidence, the certificates are admissible as both public and business records, as they were duly issued under seal by a public institution vested with statutory authority to do so, which issued the certified copies within in the regular course of business.

Our Civil Procedure Law, section 25.10 (2) – PROOF OF LACK OF RECORD - states:

> "A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of such a specified tenor is found to exist in the records of his office, accompanied by a certificate … is admissible as evidence that the records of his office contain no such record or entry."

The archives not having found any records of the deed on which the appellants relied and which if pleaded would have been the best defense to the allegations contained in the appellee's complaint, no tapestry of facts and circumstances could suffice to crush the appellee's case.

Of equal importance, it must be remarked that it is difficult to imagine that the co-appellant, a professional surveyor who worked and lived in Buchanan, and knew that his grandfather owned the property far before the 1960's, would sit by and watched Susan A. Miller possess and assert full ownership of the property for more than thirty seven years, and only took steps to take over the property when she left in 1999 because of the Civil Crisis.

The trial jury having listened to the evidence adduced by both parties at the trial and considered the weight and credibility to be accorded every species of evidence, and returned a unanimous verdict of liable against the appellants, this Court is not inclined to disturb said verdict as it the law that a jury's verdict will not be disturbed unless it is manifestly against the weight of the evidence adduced at trial. We therefore affirm and confirm the judgment of liable entered by the trial court confirming the trial jury's verdict.

We must next address the issue of damages prayed for by the appellee in its complaint.

In its complaint filed, the appellee prayed for damages in the amount of Two Hundred Fifty Thousand United States Dollars (US$250,000.00) for the appellants' wrongful withholding and leasing of the appellee's property.

The Supreme Court has held that when a party in an ejectment action claims a specific amount as general damages such claim falls within the category of special damages and the proof thereof is controlled by the rule of evidence governing special damages. In other words evidence must be produced during trial to substantiate the claim for damages made. *Dopoe v. City Supermarket,* 34 LLR 343, 353 (1987); *Lerchel v. Eid,* 34 LLR 648, 664 (1988); *Firestone Liberia, Inc. v. Kollie,* Supreme Court Opinion, March Term 2012.

This Court has also held that it is mandatory that a party seeking award of general damages on account of wrong and injuries allegedly sustained must provide evidence of the magnitude of the injuries suffered as a basis to enable the court to gauge the size of the award to be appropriately granted. *Teahjay v. Dweh et al.,* Supreme Court Opinion, October Term, 2013.

A perusal of the trial court's records shows that the appellee did not testify or bring evidence as to the damages claimed by it, neither did any of the appellee's witnesses bring forth evidence to substantiate the claim that the appellants wrongful withholding of the disputed properties might have contributed to Susan A. Miller emotional stress and thereby caused her death. Though the appellee witness, Wede W. Parker, testified to Susan A. Miller emotional stress when she came back to Liberia and saw that the appellants had taken possession of her properties and the Co-appellant Charles Johnston, II, insistence that the property was that of his grandfather, and annexed to appellee's complaint a death certificate stating that Susan A. Miller died of hypertension, the certificate was not testified to, identified, marked, and confirmed, and hence does not constitute the

evidence in this case. More besides, the death certificate reveals that Susan A. Miller (1922-2013) died at the age of 91. To attach responsibility for her death to the appellants would be overly speculative. We therefore hold that the appellee did not prove special damages to warrant the amount of Two hundred and Fifty Thousand United States Dollars as it claimed for damages.

However, the law in this jurisdiction provides for recovery of damages in an ejectment action. Our Civil Procedure Law, Rev. Code (1974), 1:62.3 succinctly states: "In a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession."(*Liberia Trading Corp. v. Samuel B. Cole,* 20 LLR 100, 102 (1970) *Teahjay V. Dweh, et al*, Supreme Court Opinion, October Term, 2013). The appellee might not have produced evidence during trial to substantiate the amount of damages claimed, but damages attached as a result of the appellants' wrongful withholding of the appellee's properties.

The appellee evidence proved that Susan A. Miller left Liberia in 1999, due to the civil crisis; that thereafter, the Co-appellant Charles Johnston, II, moved onto her properties and took possession thereof, leasing them to the other co-appellants; that Susan A. Miller returned in 2001 and tried to reclaim her properties but the appellants refused to leave the properties which led Susan to filed an ejectment action against them in 2009, but she died in 2013 while her action was pending; that this successful action was brought by her testate estate in 2015, and when the hearing was concluded, the jury came with its verdict finding the appellants liable and the appellee filed a motion for sequestration of rent. The motion was heard and granted by the trial court on December 21, 2017.

This Court says that pursuant to the rule that the Supreme Court can enter the judgment that the lower court should have entered, we hold that the appellants are liable to the appellee in the amount of Ten Thousand United States Dollars (US$10,000.00) for the wrongful withholding of the appellee's properties and that all rents sequestrated by order of the trial court since December 21, 2017 be paid over to the Testate Estate of Susan A. Miller/appellee by and through its lawful executrix.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Clerk is ordered to send a mandate to the lower court mandating the judge presiding therein to resume jurisdiction over this case and to enforce the Judgment. Costs of these proceedings are ruled against the appellants.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR WELLINGTON G. BEDELL, SR., OF THE GARLAWULO AND ASSOCIATES LAW FIRM APPEARED FOR THE APPELLANTS. COUNSELLOR ABRAHAM JOHNSON ELDINE APPEARED FOR THE APPELLEE.