IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER 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 the late Konjay Comman represented by it Administrator, Moses Gbour of the Township of Johnsonville, Montserrado County, Republic of Liberia….. APPELLANT	)	
Versus	)	APPEAL
The Intestate Estate of the late Fahn Kai Korroh represented by its Administrators, Morris Norris Varney Pabai and Edward M. Rogers, all of the Township of Johnsonville, Montserrado Republic of Liberia …… APPELLEES	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of the late Konjay Comman represented by it Administrator, Moses Gbour of the Township of Johnsonville, Montserrado County, Republic of Liberia….. ….MOVANT	)	MOTION TO VACATE ARBITRATION AWARD
Versus	)	
The Intestate Estate of the late Fahn Kai Komoh represented by its Administrators, Morris Norris Varney Pabai and Edward M. Rogers, all of the Township of Johnsonville, Montserrado Republic of Liberia ……..… RESPONDENTS	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of the late Fahn Kai Komoh represented by its Administrators, Morris Norris Varney Pabai and Edward M. Rogers, all of the Township of Johnsonville, Montserrado Republic of Liberia ……..…… PLAINTIFF	)	APPLICATION/STIPULATION FOR ARBITRATION
Versus	)	
The Intestate Estate of the late KonjayComman represented by it Administrator, Moses Gbour of the Township of Johnsonville, Montserrado County, Republic of Liberia…..DEFENDANT	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of the late Fahn Kai Komoh represented by its Administrators, Morris Norris Varney Pabai and Edward M. Rogers, all of the Township of Johnsonville, Montserrado Republic of Liberia ….…… INFORMANTS	)	BILL OF INFORMATION
Versus	)	

The Intestate Estate of the late Konjay Comman represented by it Administrator, Moses Gbour of the Township of Johnsonville, Montserrado County, Republic of Liberia ……...…..RESPONDENT	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of the late Fahn Kai Komoh represented by its Administrators, Morris Norris Varney Pabai and Edward M. Rogers, all of the Township of Johnsonville, Montserrado Republic of Liberia ……..…… PLAINTIFF	)	ACTION OF EJECTMENT
Versus	)	
The Intestate Estate of the late Konjay Comman represented by it Administrator, Moses Gbour of the Township of Johnsonville, Montserrado County, Republic of Liberia…..DEFENDANT	)	

Heard: July 8, 2020 Decided: February 8, 2021

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

The genesis of this case on appeal is the filing of an action of ejectment by the Intestate Estate of the Fahn Kai Korroh, appellee, before the Civil Law, Sixth Judicial Circuit for Montserrado County, Republic of Liberia, against the Intestate Estate of Konjah Comman, appellant, during the June Term, A.D. 2013. The complaint filed by the appellee alleged as follows:

> "1. That plaintiff[s] aver and say that they are administrators of the Intestate Estate of their late Grandfather, the late Fahn Kai Korroh, who obtained Letters of Administration from the Monthly and Probate Court for Montserrado County duly probated and registered in Volume 11A-2010 at pages 133-134[.] Attached hereto and marked as Exhibit 'P/1' is a copy of the letters of administration to form a cogent part of Plaintiff's complaint and so prays.
>
> 2. That plaintiffs aver and say that their late Grandfather was the owner of Ninety (90) acres of land the property which is the subject of this litigation and the said property was obtained through a bona fide purchase from the Late Henry H. Garnett George in the year 1909, the same being described as follows:
>
> 'commencing at S. W. angle of lot no. 3 Range of Samuel Milton's 30-acre block and which is bounded by Anniah land (Natue) and running thence North 30 chains thence West 30 chains; thence South 30 chains thence, East 30 chains; thence South 30 chains; thence East 30 chains to the point of commencement and contains 90 acres of land and no more.'

Attached hereto and marked as Exhibit 'P/2' in bulk [is] copies of plaintiffs' title document to form cogent part of plaintiffs' complaint.

3. That further to count two (2) hereinabove, plaintiffs aver and say that in 1979, the Honorable Supreme Court of the Republic in its Final Judgment in the case Tarr vs. His Honor Frank Smith which grew out of the case Korroh vs. Tarr rendered a Judgment Without Opinion, in which they ruled in favor of the Korror's and their heirs, stating amongst other things that the said land which is the subject of litigation did belong to the plaintiffs' grandfather and heirs and as such the Korrohs were placed in possession of the disputed property which [is] the subject of this litigation. Attached hereto and marked as 'P/3' in bulk are copies of the Ruling of the Honorable Supreme Court in substantiation of this averment.

4. That plaintiffs say that the Defendants being fully aware of the plaintiffs' ownership and title of the aforesaid parcel of land wrongfully and illegally continue to hold possession to the damage of plaintiff[s].

5. That further to count four (4) hereinabove, plaintiffs aver and say that in spite of several written and verbal notices made on the defendants to peacefully and quietly vacate and to surrender to plaintiffs the aforesaid premises, defendants have without any color of right refused to do so, willfully and has ignored these notices thus bringing substantial property damage to the plaintiff[s], for which plaintiff[s] [are] seeking redress.

6. That further to count five (5) hereinabove, defendants have sold and [are] continuing to sell portions of the disputed property even after the intervention of the magistrates at the Barnersville Magisterial Court and the Commissioner of Johnsonville who on several occasions tried to bring this situation to an amicable solution, but same proved futile; hence plaintiffs were left with no alternative but to file the said suit before this Honorable Court. Attached are copies of communications and receipts of payment of taxes to form a cogent part of this complaint.

7. Plaintiffs further say that because the within named defendants are also asserting title to the property, which is the basis of this suit, plaintiffs maintain and contend that Ejectment is the proper cause of action in which parties can be afforded the opportunity before Your Honor and this Honorable Court to prove their respective titles; and so prays.

8. Plaintiffs further complain and say that because the within named defendants are without any legal title nor color of title to occupy their property for a protracted period of time and [have] sold and allowed persons to construct buildings upon plaintiffs' property which they have legitimately paid taxes for, plaintiffs here demand withheld rents for the said period in the amount of **US$75,000.00 (Seventy-Five Thousand United States Dollars),** same covering the unauthorized period of occupancy, the [public] embarrassment, and economic

frustration in their efforts in developing the said property for those many years.

9. That plaintiffs give notice that they have attached and signed an application stipulation for arbitration to their complaint so that when signed by both parties, Your Honor will approve and have the clerk of this court write the Ministry of Lands and Mines to [send] the name of a certified qualified surveyor to serve as chairman so that arbitration may be conducted to establish the true owner of the disputed property and so prays.

WHEREFORE AND IN VIEW OF THE FOREGOING, plaintiffs pray Your Honor and this Honorable Court as follows:

1. To hold defendants liable to plaintiffs and subsequently have said defendants ejected, ousted, dejected, and removed the said defendants from plaintiffs' property without a day, and so prays.

2. To hold the within named defendants liable to plaintiff for withholding of legitimate accrued rent in the amount of **US$75,000.00 (Seventy-Five Thousand United States Dollars),** which should have otherwise yielded to plaintiff for [their] property illegally occupied by defendants without any color of right and so prays. [And]

3. To grant unto plaintiffs any and all other relief that the end of justice shall demand and so pray."

The appellant timely filed its answer and traversed the appellee's allegations of facts as follows:

"1. Because as to the entire complaint, defendant says that same is far from actuality and should therefore be ignored and dismissed.
2. Also, because as to count one (1) of the complaint, defendant says that he is without knowledge and information sufficient to form a belief as to the truthfulness of the averment contained therein and therefore can neither deny nor confirm count one (1) of the complaint.
3. And also because as to counts one and two (1&2) of the complaint, the defendant says that they as the administrators obtained Letters of Administration from the Monthly and Probate Court for Montserrado County along with a decree of sale registered according to law hereto attached and marked as Exhibit 'D/1' to form a cogent part of this Answer. Counts one and two of the complaint should be ignored and the entire complaint dismissed.

4. Further to count three (3) above, defendants say and maintain that they are not with sufficient knowledge as to the truthfulness of plaintiffs' assertion and that their ownership of the subject property grew out of a legitimate transaction between the Fahn Kai of the Township of Johnsonville and their late Grand Father Konjah Comman for 115 acres of land in 1913 lying and situated in Johnsonville, Montserrado County, Republic of Liberia. Your Honor is respectfully requested to take judicial notice of defendants' title hereto attached and marked as Exhibit 'D/2' to form a cogent part of this Answer.

5. Also, because as to count three (3) of the complaint, defendants say that at no time the Honorable Supreme Court of the Republic of Liberia rendered final judgment against the Intestate Estate of the late Kanjah Comman concerning this 115 acres of land and there has been no ejectment action ever before the Honorable Supreme Court of Liberia involving the plaintiffs and defendants. Hence, count three (3) of the complaint should be ignored, and the entire complaint dismissed.

6. Further to count five (5) above, defendants say that plaintiffs' Exhibit marked as 'P/3' in bulk is quite a different case; additionally, the exhibits are [inconsistent] with the dates of the events which indicate that the plaintiffs intend to mislead this Honorable Court. From plaintiffs' Exhibit, 'P/3' in bulk, the judgment referred to was rendered on October 30, 1975, by the Civil Law Court, and the plaintiffs were put in possession on February 17, 1976. Additionally, the Supreme Court Opinion referred to says that the plaintiffs were put in possession on June 29, 1978, and lastly in 1980, the People's Civil Law Court for the Sixth Judicial Circuit sitting in its March Term, A.D. 1980 also put the plaintiffs in possession, and the defendant excepted to the ruling. Therefore, count three (3) of the complaint, along with the entire complaint, should be denied and dismissed.

7. And also because as to counts four, five, and six (4, 5, & 6) of the complaint, defendants say that at no time did they wrongfully, illegally hold possession of and damage plaintiffs' property. More besides, defendants cannot vacate property that they legitimately owned through genuine purchase. Hence, said counts should be ignored, and the entire complaint dismissed.

8. And also because as to the count seven (7) of the complaint, defendants say the same presents no triable issue.

9. And also because as to count eight (8) of the complaint, defendants maintain, confirm and affirm counts three, four, seven, and eight (3, 4, 7 & 8) of this Answer, therefore count eight (8) of the complaint should be ignored and the entire complaint dismissed. Defendants deny ever withholding plaintiffs' property but have been in control of its property.

10. And also because as to count nine (9) of the complaint, defendants say that once pleadings have rested, either party can file an application for an investigative survey or the lawyers for the two parties can draft and sign an application/stipulation for arbitration.
11. Defendants deny all and singular the allegations as contained in plaintiffs' complaint and those that were not made special traverse herein.

Wherefore and in view of the foregoing, defendants pray that Your Honor and this Honorable Court will ignore and dismiss plaintiffs' complaint, sustain defendants' answer, and grant unto defendants any and all further relief as Your Honor may deem just, legal and equitable in the premises."

Pleadings rested with the appellee's reply denying the allegations of facts as contained in the appellant's answer and reaffirming its allegations as contained in its complaint. After that, the trial court proceeded on the 23rd day of January 2014 to entertain arguments on law issues and ruled as follows:

> "On April 24, 2013, the plaintiff herein instituted an action of ejectment against defendant herein before this Honorable Court. The plaintiff alleged, among other things, that it has ninety (90) acres of land, which the defendant unlawfully encroached thereon. The plaintiff annexed to his complaint a title deed of 1909 containing ninety acres of land lying and located in the township of Johnsonville. It is contended by the plaintiff that it has prevailed in a case, Kolu versus Tarr, and was placed in possession of the subject property 1976; but that the defendant unlawfully encroached on said property.
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> A writ of summons was issued, served, and returned served. The defendant filed an eleven count answer contending, among other things, that in 1913 the grandfather in the person of the late John Kai deeded 115 acres of land to their grandfather Koyan [Konjay]. They annexed letter[s] of administration, a decree of sale, and a certified copy of the deed of 1913 allegedly signed by [Fahn] Kai containing 115 acres of land lying and located in the Township of Johnsonville.
>
> The plaintiff filed a reply upon which pleadings in this case rested. Count four of the reply alleges that the defendant sold and continued selling a portion of the disputed property without their consent and approval. The plaintiff prayed this Honorable Court to rule this case to arbitration to determine the complex issue as to the location of the disputed property and the extent of encroachment by the defendants.
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> This court says that the geographical location of the property, the encroachment, and the extent of the encroachment by the defendant is a complex issue that cannot be determined by the court and the jury. The board of arbitration comprising and constituting qualified and licensed surveyors has the expertise to determine the complex issue to aid this Honorable Court to determine the true owner of this property.
>
> We note the disparity as to the acres of land in both pleadings; that is to say, we note the deed of Mr. Fahn Kai of 1909 containing 90 acres of land and the deed of the defendant of 1913 containing 115 acres of land allegedly sold by the late Fahn Kai to Mr. Korroh. This court takes judicial notice that it is impossible and unthinkable that Mr. Fahn Kai will sell to Mr. Korroh 115 acres of land in 1913 when Mr. Fahn Kai himself, as per his deed, owns 90 acres of land.
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> WHEREFORE and in view of the foregoing, this matter is hereby ruled to an arbitration proceeding to determine the geographical location of the two properties, the encroachment, and the extent of encroachment by the defendant party since the plaintiff was put in possession of this property since 1976 by the Honorable Supreme Court of Liberia. AND IT SI HEREBY SO ORDERED. MATTER SUSPENDED.
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> GIVEN UNDER MY HAND AND SEAL OF COURT,

IN OPEN COURT THIS 23RD DAY OF JANUARY, A.D.2014

_____

JUDGE PETER W. GBENEWELEH
ASSIGNED CIRCUIT JUDGE
6TH JUDICIAL CIRCUIT COURT
REPUBLIC OF LIABEIR."

The transcribed records reveal that three months following the trial court ruling the case to arbitration, on the 24th day of April 2014, the appellee submitted the name Mr. Francis S. Fahnbulleh as its technical representative on the arbitral board.
After several conferences for nearly a year, the trial judge ordered and the appellant submitted on the 30th day of December 2014, Mr. Cyrus W. Mapleh as its technical representative. Earlier to the appellant's submission of its surveyor's name, on the 25th day of July 2014, the Ministry of Lands and Mines forwarded the name of Mr. Cyril S. Banya to chair the arbitral board in obedience to the trial court's order. The court, after that, qualified the members of the board of arbitration.

The records further reveal that on the 30th day of March 2015, the Chairman of the board filed a copy of a survey notice bearing the signature of surveyors Francis Fahnbulleh and Cyril S. Banya with the clerk of the trial court setting the date and time of the survey for Tuesday, the 7th day of April 2015 at the hour of 11:00 a.m. On the 1st day of May 2015, the board filed a survey report dated April 22, 2015, before the trial court. Upon regular notice of assignment, the board's chairman read the report with the noticed absence of the appellee's counsel. The trial court appointed Attorney Anthony D. Kollie, who received the survey report for and on behalf of the appellee. The appellant excepted to the report and gave notice that it will take advantage of the law controlling. The survey report being at the crux of our consideration for this appeal, we quote said the report in its entirety as follows:

"SURVEY REPORT

BACKGROUND

In an effort to settle land dispute in Monrovia, its environs, and parts of the country, the Land Service Office (LSO) of the Ministry of Lands, Mines and Energy is mandated to conduct an investigative survey by the request of courts, individuals, companies, organization, government ministries, and agencies.

The mandate given to the investigative team is to use the deeds and other relevant documents to verify and ascertain the legitimate owner of properties that are being claimed or encroached upon and to identify alleys when necessary or requested.

After the execution of all the rules pertaining to conduction, a survey that is (i.e.): (a) publishing of survey notice, in electronic and print media, (b) hand to hand delivery to all parties as well as adjoining property owners; the survey then commences.

Your Honour, in this case, we were instructed to demarcate the properties (land) of both parties; we physically cut the line of the encroached area and took the coordinates of the other points with GPS since it was the same land claimed by both parties.

OBSERVATIONS/FINDING

1. All the parties were present during the survey exercise except the technical representative (Cyrus Marpleh), who was supposed to have represented Moses Gbour. Mr. Marpleh denied knowing Moses Gbour, even though he was qualified to serve as Mr. Gbour's surveyor. Moses Gbour did not pay a cent towards the Arbitration Survey exercise when the instruction said so.

2. Moses Gbour presented a Warrant Deed from Fahn Kai to Konjah Comman and heirs, recorded in volume 30, page 1 registered in 191-76, Pages 335-336 in the records of the Archives of the Ministry of Foreign Affairs dated 1915 containing 115 acres of land, but showed no mother deed.

3. Moses Gbour refused to present Letters of Administration and Decree of Sale when I requested him to do so since he is an administrator of Konjah Comman.

4. Moses Gbour claimed 115 acres of land out of 90 acres, which result in -25 acres.

5. The Intestate Estate of the late Fahn Kai Korroh represented a Warranty Deed (mother deed) from H. Garnett George to Fahn Kai Korroh dated July 1909, containing 90 acres of land.

6. The site plan clearly shows that Konjah Comman encroached on Fahn Kai Korroh by 45 acres. Both deeds have different meets and bounds.

7. The administrators of Fahn Kai Korroh are in possession of another 150 acres of land deed from the Republic of Liberia, which is not part of the 90 acres probated and registered in volume 32, page 85

8. In 1978, the same 90 acres of land was claimed and encroached upon by the same family, and the Supreme Court of the Republic of Liberia ruled in favor of Fahn Kai Korroh in 1980. After the death of Fahn Kia Korroh, the heirs of Konjah Comman returned with another deed and abandoned the deed that was used in 1978-1980 when the Supreme Court ruled in favor of Fahn Kai Korroh.

9. The deed of the administrators of Fahn Kai Korroh is older than the deed of Konjah Camman.

CONCLUSION

Technically, the Supreme Court of the Republic ruled in favor of Fahn Kai Korroh in 1980 and put him in possession. The heirs of Konjah Camman are falsely claiming the 90 acres of land by manufacturing another deed to continue the fight for the land. The heirs of Konjah Camman has no genuine deed and documents in this case.

Signed:_____
Cyril S. Banya
Chairman
Signed:_____
Francis Fahnbulleh"

On the 8th of June, 2015, the appellant filed its three-count motion to vacate the arbitration award alleging the followings:

"3. That movant says [that] the award was procured by corruption, fraud or other undue means and the arbitrator making the award exceeded his powers for the following legal and factual reasons:

a. That after the qualification and instruction, the chairman unilaterally prepared the cost of the arbitration for the movant and respondents with two separate bills of cost for the same property to be surveyed. The court again is requested to take judicial notice of the records in these proceedings.

b. That after the preparation of the cost of the arbitration, the chairman, along with the respondents' surveyor and respondents to the exclusion of the movant's surveyor and movant, went on the property to do the reconnaissance, which was contrary to the instruction. When it was known that reconnaissance was conducted, the movant's surveyor contacted the chairman and asked why he (movant's surveyor) and movant were not informed of the reconnaissance and why he (chairman) arrived at the two (2) separate cost and also questioned the chairman as to how they (the surveyors0 will be paid.

c. That upon hearing of the survey notice and receiving a copy of the notice from adjacent parties, the movant immediately proceeded to his (movant's) surveyor and ascertained as to whether he was informed of the announcement. Movant's surveyor said that he was not aware of the notice announcement and was waiting for the chairman of the board so as to go on the property to conduct reconnaissance. This is the reason why his signature is not on the notice. Movant again requests the court to take judicial notice of the survey notice.

d. That movant resides on the property and on the day and time mentioned on the survey notice, the chairman and the respondents went on the adjacent property of the Intestate Estate of the late Aaron Pirtchard where they started the point of the survey, and they were stop[ped] by the administrators of the Intestate Estate; thereafter the chairman and the respondents left the property and up to [and] including the time of [the] filing of this motion there has been no

survey conducted the award submitted to this court was procured through fraud and corruption.

e. The movant says that from the survey report in its observation/finding in counts two and three (2&3), he was never present at any survey conducted by the chairman and could not present a warranty deed to the chairman, and at no time he refused to present letters of administration and court's decree of sale. Assuming that the movant was present and presented a warranty deed from Fahn Kai to Konjah Comman and heirs, but the chairman in his report said that the movant showed no mother deed while, in fact, the respondents are the grantors of the movant; therefore, the mother deed should be in possession of the respondents. Also, in count five (5) of the report, it states that the Intestate Estate of the late Fahn Kai presented a warranty deed (mother deed) from H. Garneet George to Fahn Kai Konneh. Movant says that the mother deed to the above warranty deed should be from someone else or the Republic of Liberia to H. Garnett George, is to show how bias the report is.

f. That movant says that at no time in the history of their property that the Honorable Supreme Court of the Republic of Liberia had ruled against them involving an action of ejectment in favor of Fahn Kai Konneh as claimed in count eight (8) of the report. Movant says that the report is a self-made report without a survey been conducted by the chairman and the respondents without been guided by the instruction given the parties by the court."

On the 16th day of July 2015, the appellee filed its returns to the appellant's motion to vacate arbitration denying the allegations as contained therein as follows:

"2. That as to count three (3) of movant['s] motion, respondents say that they are not aware of any fraud, corruption and undue means that characterized the survey because the announcement for the conduct of the survey was duly signed by the representative of the plaintiff and the chairman in person of Mr. Cyril Beyan who fully participated in the survey exercises ranging from reconnaissance to the conclusion of the survey. Respondents pray Your Honor to take judicial notice of the records of the case file in substantiation of the averment contained herein.

3. Further to count three (3) above, the parties submitted to an arbitration process, and Section 64.1 of our Civil Procedure Law provides as follows: that a written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable with regards to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract; in the instant case, the movant has not advanced such grounds as are provided for by law.

4. That there was no fraud, corruption, and any undue means proven by the movants in respect of the conduct of the survey whatsoever; since, in fact, the survey was conducted during the course of a normal working day in accordance with all the set rules and procedures with

> all the parties present except for the undue delay and absence of the defendant surveyor, who without any justifiable reason elected to absent so as to undermine the process. Further, when the cost of the survey was finalized by the chairman and the surveyors of both the plaintiff and defendant, the movants refused to pay a dime as his contribution for the conduct of the survey with respect to the chairman's fees as contained in the application/stipulation agreement. The act of movant clearly demonstrates that they intended to stage a challenge even though the survey was successful. The fact of the matter is that two (2) surveyors out of the three (3) participated in the survey is a ground to enforce the award, and such act is consistent with the law governing arbitration; accordingly, the frivolous motion to vacate arbitration award must be set aside, overruled, denied and dismissed, and that the award granted to the respondents must stand in the cause of genuine justice and so prays."

On the 13th day of January 2016, that is six months after the filing of the appellant's motion to vacate the arbitration award, and after two unsuccessful notices of assignment, the trial court entertained arguments, pro et con. We deem it necessary to reproduce the trial court's ruling as follows:

> "This matter is suspended and shall be re-assigned for the taking of evidence so that the court may determine the allegations made by the movants, including fraud, failure to notify the movant's technical representative, failure of the chairman of the board of arbitration and the respondent's technical representative to conduct the survey and the allegation that the adjoining property owner informed the chairman of the board of arbitration during his reconnaissance survey that the property in question was not located in that area. Additionally, evidence shall also be taken relative to the alleged unilateral conduct of the reconnaissance survey by the chairman of the board of arbitration."

Subsequently, the trial court issued out and duly served several notices of assignment on the parties for the hearing of evidence. We notice that the trial court failed to conduct a hearing on two such notices without a reason therefor, precisely on April 1, 2016, and June 24, 2016. We also notice that the trial court continued the hearing of evidence on the motion to vacate because of the absence of the appellee's counsel. At the call of the case on the 5th day of July 2016, by leave of the trial court, the appellant's counsel submitted, for the third time, an application for continuance in the matter on the grounds that the appellant was en route to court; that the appellant's surveyor could not be reached to appear for testimony; that the administrator of the Intestate Estate of Pirtchard, the adjoining estate, said to be a key witness, was out of the bailiwick of the court; and that because this case is a property matter, the appellant requests the last chance for continuance. The trial court chronicled the facts attending the proceedings of the case, denied the

application for continuance, and entered final ruling, subject of this appeal, as follows:

> " .... This court says that the latest request of movant's counsel for a continuance of this matter that he had contacted his client who he claimed on yesterday is en route is not only frivolous, but it is a fraudulent attempt by movant's counsel to mislead this court in his deliberate attempt to delay, baffle and obstruct the administration of justice in this case. But, how can movant's counsel be out of the [bailiwick] of this country less than 24 hours again and at the same time be en route from an unknown destination? This court says it is this kind of deliberate, unethical delay tactics by lawyers in this jurisdiction that had resulted in injustice to countless party litigants whose cases have lingered in this court for years needlessly, and this court will not condone any unprofessional and unethical conduct on the part of lawyers appearing before this court especially where the conduct tends to injure substantial rights of party litigants.
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> In his submission to this court for continuance in this matter, counsel the movant argues that this matter should be continued because it is a property case. His client's property rights are at stake as if to say the plaintiff's property rights are not at stake. This court says that where one man's right ends, there another man's right begins. That his client is no more entitled to property than the plaintiff because, under this Republic's Constitution, every man is entitled to property and not just counsel's client.
>
> As indicated earlier, this case was ruled to arbitration, and the board of arbitration submitted its findings. That report was challenged by the defendant/movant pursuant to Chapter 64, Section 64.11 of the Civil Procedure Law. Having challenged the arbitration report on the ground provided by Chapter 64, Section 64.11 of the Civil Procedure Law, the onus or the burden was on the movant to prove their allegation. However, the movant miserably failed to prove his allegations, as evidenced by his consistent absence from this court whenever this case was called to take evidence. Therefore, in this court's opinion and consistent with Chapter 11, Section 11.5 of the Civil Procedure Law provides: 'Want of prosecution. Where a claimant unreasonably neglects to proceed in the action of any party who may be liable to a separate judgment, the court on its own motion or upon the application of that party, on notice, may dismiss the claimant's pleadings on its term. Unless the order specified otherwise, the dismissal is not on its merit.'
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> In resisting the movant's submission for continuance, the respondent's counsel argues that the movant's failure to appear before the court on several occasions to prove his allegations as contained in the motion to vacate the arbitration award constitutes abandonment of the motion by the movant. This court concurs and holds that the failure of the movant on several occasions to appear before this court despite being duly notified to appear for the taking of evidence on the allegations constitutes a failure of the movant to prosecute the motion to vacate the arbitration award, and as such the movant is deemed to have abandoned his cause. Therefore, the motion to vacate the arbitration award is denied, and this court hereby accepts the arbitration award.

Accordingly, the property in dispute is hereby awarded to Fahn Kai Korroh as recommended or concluded by the board of arbitration, and Kai Korroh is hereby placed in possession of the said property. If the defendant is currently on the property, he is forthwith ejected and evicted.

GIVEN UNDER MY HANDS AND SEAL OF THIS COURT
THIS 6TH DAY OF JULY A. D. 2016.

_____

HIS HONOR JAHANNES Z. ZLAHN
RELIEVING JUDGE, SIXTH JUDICIAL
COURT, MONTSERRADO COUNTY
REPUBLIC OF LIBERIA".

From this final ruling of the trial court, the appellant enters exceptions and announced an appeal to the Supreme Court of Liberia. The appellant has assigned eight errors for the consideration of this Court of last resort. We quote the errors as follows:

"1. That Your Honor erred when you ruled, saying that: 'the arbitration survey report was read in open court on May 8, 2016, following the reading of arbitration survey report and because defendant's counsel was not present in court, this court then presided over by this judge during the March Term, A.D. 2015 of this court appointed Atty. Anthony D. Kollie to receive the ruling on the reading of the arbitration survey report on behalf of the absent counsel', while in truth and in fact that defendant was represented by two counsels on that day.

2. That Your Honor erred when you ruled: 'that on January 22, 2016, this court issued a notice of assignment notifying the parties or their legal counsels to appear before this Honorable Court on Friday, April 1, 2016, at 2:00 P.M. for the taking of evidence and despite the receipt of the notice of assignment at the call of the case, the case could not be proceeded with because of the absence of the defendant's counsel,' while in truth and in fact, defendant's counsel and defendant were present, but the case was never called.

3. That Your Honor erred when you ruled saying that: 'this court on the 9th day of May, A.D. 2016 issued here another assignment notifying the parties or their legal counsels to appear before this court on Friday, May 13, 2016, at 9:00 A.M. for the taking of evidence. Notwithstanding, the case again was not proceeded with because the movant was nowhere to be found', while in truth and fact the case was not called by Your because the Chairman of the Board of Arbitration was not in court.

4.That Your Honor erred when you ruled saying that: ' the latest request of movant's counsel for a continuance of this matter that he had contacted his client who he claimed on yesterday was en route is not only frivolous, but it is a fraudulent attempt by movant's counsel to mislead this court in his deliberate attempt to delay, baffle and obstruct the administration of justice in this case. But how can movant's counsel be out of the bailiwick of this country less than 24

hours again and at the same time be en route from an unknown destination?', while in truth and in fact at no time in that submission as to count three (3) that the movant was out of the bailiwick of the country but instead the administrator of the Intestate Estate of the late Pirtchard.

5. That Your Honor erred when you ruled saying that: 'this court concurs and holds that the failure of the movant on several occasions to appear before this court despite being duly notified to appear before this court for the taking of evidence on the allegations constitutes a failure of the movant to prosecute the motion to vacate the arbitration award and as such the movant is deemed to have abandoned his cause,' but while it is [true] that eight (8) assignments were issued, served and returned served, Your Honor did not take into consideration the number of times the movant was absent, the number of times the respondents were absent, the number of times the chairman and the two (2) arbitrators were absent and the number of times the respondent's counsel was absent before making the said ruling.

6. That Your Honor erred when you ruled saying that the 'constant absence of the movant amounts to abandonment,' you did not take into consideration that during the issuance of the eight (8) assignments, January 22, 2016, February 5, [2016], and June 24, 2016, there was no case called by the court and movant and counsel were present while on June 27, 2016, when the case was called, the respondents and their counsel were absent, while on May 13, 2016, the case was not called because the respondent's counsel informed Your Honor that the chairman of the Board of Arbitration was sick. While on April 1, 2016, both counsels were present, and you requested that the case file be brought to find out whether or not the Chairman signed for the assignment since in fact, you know the Chairman's signature. When the file was brought, you realized that someone else signed for the Chairman, and based on that, and the case was not called.

7. Your Honor committed reversible error when you ignored the submission of the movant's counsel on July 5, 2016, in count three (3) as it relates to the findings of the arbitration survey report as stated in eight (8) of the said report which shows that the Chairman making the award exceeded his power, which constitutes a ground for vacating an award.

8.Your Honor committed reversible error when you ignored the legal citation (1LCLLR Chapter 64, Section 64.11 (1a & c) as found on page 277 and the court's mandate to the surveyor and then the award to the arbitration of movant during the argument of the motion to vacate arbitration award which are genuine grounds to vacate award but rather chose to take evidence."

From the analysis of the facts and contentions of the parties couched in the certified records, the following issues are determinative of this appeal:

1. Whether under the facts and circumstances of this case, the appellant is deemed to have abandoned or failed to prosecute its motion to vacate arbitration award within the meaning of Civil Procedure Law Revised Code: 1:11.5?

2. Whether the arbitration survey report, on its face, should be set aside and the case remanded for a new survey?

The question of whether, under the facts and circumstances of this case, the appellant is deemed to have abandoned its motion to vacate arbitration award, should be considered in light of the factual circumstances and the applicability of *Civil Procedure Law Revised Code: 1:11.5* as premised by the final ruling of the trial court. The appellant had argued that out of eight notices of assignment, its counsel was absent once when he requested the trial court to continue taking of evidence for two weeks due to the absence of the appellant's witness from the bailiwick of the court. By parity, the appellant also argued that the appellee was absent from the taking of evidence on April 1, 2016, after service of timely notice. That on two occasions, the notices of assignment were issued, served and returned served, and the parties appeared for the hearing, but the trial court failed to proceed with the hearing of the motion to vacate without stating a reason; and that on another occasion the hearing of the motion was continued because the chairman on the board of arbitration was not present in court. Stated succinctly, the appellant has vehemently contended that the delay in taking evidence cannot singularly be attributed to the appellant; therefore, the appellant should not be deemed to have abandoned its motion to vacate the arbitration award.

In upholding the appellee's arguments that the appellant has failed to prosecute the motion to vacate, the trial court opined that the appellant's property interest in the disputed piece of land is as equally important as the appellee's interest. The trial court then squarely held the appellant liable for the delay in the taking of evidence. We disagree with the court's conclusion about the party responsible for the continuous delay that attended this case.

In support of our disagreement, we give the synopsis or catalog of the proceedings culminating to the July 5, 2016 final ruling of the court dismissing the appellant's motion as follows:

1. On May 1, 2015, the surveyors submitted the arbitration report to the trial court;
2. On May 8, 2015, the report was read in open court;

3. On June 8, 2015, that is the 29th day of the reading of the report, the appellant filed its motion to vacate arbitration award consistent with statute;
4. On July 16, 2015, that is 38 days after the filing of the appellant's motion, the appellee filed its returns to the motion;
5. The motion was assigned for hearing on August 10, 2015. The appellant sent in leave of absence on August 7, 2015, to allow its counsel to attend the August Term of Circuit Court's opening on the said August 10, 2015, at the 2nd Judicial Circuit for Grand Bassa County;
6. The motion was re-assigned for hearing on January 13, 2016, the parties appeared and argued, pro et con, and the trial court ruled reassigning the motion for the taking of evidence. We shall consider the legal soundness of this ruling later in this Opinion.
7. The motion was assigned for January 22, 2016, for the taking of evidence for the first time, but the appellant's counsel by leave of court requested a two week continuance because the appellant's witnesses were without the bailiwick of the City of Monrovia;
8. The motion was re-assigned for taking of evidence on April 1, 2016, the parties appeared according to the unrefuted claim of the appellant, but no hearing had;
9. On April 26, 2016, at the call of the motion for hearing, the appellant's counsel, by leave of court, submitted that he received the notice of assignment less than 24 hours; hence the matter was ordered continued;
10. On May 13, 2016, the appellant appeared for taking of evidence upon due notice, but the sheriff's returns indicated that the appellee's counsel was ill and will not be in court, so the court continued the matter;
11. On June 24, 2016, the parties appeared upon due notice according to the unrefuted claim of the appellant, but no hearing had;
12. On June 27, 2016, the appellant appeared for taking of evidence, but the matter was continued due to the absence of the appellee's counsel on the submission of the appellant's counsel;
13. Finally, on July 5, 2016, the motion was re-assigned. Still, by leave of court, the appellant's counsel submitted a request for a continuance for the last time to enable him to contact the appellant's witnesses. The court denied the application and entered a final ruling dismissing the appellant's motion, which forms the gravamen of this appeal.

Clearly, without belaboring the question, it can be seen from the above illustration of the facts appertaining to the dilatory attended by the taking of evidence on the

motion since January 22, 2016, that the appellant cannot be solely held liable. Therefore, it follows that the law, *Civil Procedure Law Revised Code: 1:11.5,* relied upon by the trial court to dismiss the appellant's motion, is inapplicable under the facts and circumstances of this case. We hold that the trial judge erred when he dismissed the appellant's motion to vacate the arbitration award for the reason of abandonment.

Along the same line of factual consideration and applicability of the law relied upon by the parties, this Court shall proceed to determine the last issue whether the arbitration survey report on its face should be set aside and the case remanded for a new survey. As indicated earlier in this Opinion, the motion to vacate the arbitration award was assigned and heard on the 13th day of January 2016. The trial judge ordered the motion reassigned for the taking of evidence because fraud, among other things, was alleged by the appellant in its motion. In its final ruling dismissing the appellant's motion, the trial court upheld the argument of the appellee that "a written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy,…"; that the arbitration award is valid and enforceable because the appellant has failed to prosecute its motion to vacate. In other words, the appellee contends that the appellant failed or neglected to prove any grounds to warrant the revocation of the arbitration award.

However, the appellant, in its brief, framed the question to be "whether or not count 1, 7, 8 and the conclusion of the survey report [are] contrary to Chapter 64, Section 64.11 (1) (a) and (c) [to] warrant taking of evidence?" In appreciation of the question presented by the appellant, we think it is worth considering these counts of the arbitration report highlighted by the appellant in its brief as follows:

> "1. All the parties were present during the survey exercise except the technical representative (Cyrus Marpleh) who was supposed to have represented Moses Gbour. Mr. Marpleh denied knowing Moses Gbour, even though he was qualified to serve as Mr. Gbour's surveyor. Moses Gbour did not pay a cent towards the Arbitration Survey exercise when the instruction said so.
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> 7. The administrators Fahn Kai Korroh are in possession of another 150 acres of land deed from the Republic of Liberia, which is not part of the 90 acres probated and registered in volume 32 page 85.
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> 8. In 1978, the same 90 acres of land was claimed and encroached upon by the same family, and the Supreme Court of the Republic of Liberia ruled in favor of Fahn Kai Korroh in 1980. After the death of

> Fahn Kia Korroh, the heirs of Konjah Comman returned with another deed and abandoned the deed that was used in 1978-1980 when the Supreme Court ruled in favor of Fahn Kai Korroh.
>
> CONCLUSION
>
> Technically, the Supreme Court of the Republic ruled in favor of Fahn Kai Korroh in 1980 and put him in possession. The heirs of Konjah Camman are falsely claiming the 90 acres of land by manufacturing another deed to continue the fight for the land. The heirs of Konjah Camman has no genuine deed and documents in this case."

Considering the report that the appellant's technical representative had notice of the date and time of the survey, but that the surveyor had deliberately refused to sign the same and elected to stay away from the conduct of the survey, as the survey report attempts to impress on the mind of this Court, the chairman of the board of arbitration ought to have timely informed the trial court of this fact. The chairman had sufficient time to have communicated to the trial court the alleged remark of Surveyor Cyrus Marpleh that he does not know the appellant even though the records show that he was nominated and qualified to represent the interest of the appellant. Notably, there is nothing in the records to show that the appellant, too, was apprised of its technical representative's refusal to obey the instruction of the trial court. In the face of these missing answers, we are left to wonder how the report growing out of such a survey should bind the appellant. We do not understand the trial court's decision to reassign the motion for the taking of evidence in the clear view of the admission in the report that the appellant's technical representative did not participate in the conduct of the survey. Therefore, count 1 of the arbitration report infers bias, prejudice, corruption, partiality, and fraud. This Court has held that "fraud need[s] not necessarily be proved by testimony but it can be inferred from the circumstances presented" *WATAMAL et al. v. Keita et al., Supreme Court Opinion, October Term, A. D. 2012.*

Based on the facts and circumstances gather from the records and given the protracted delay occasioned by these proceedings, this Court sees a compelling reason to set aside the arbitration award and order a new survey within four months as of the date this Opinion is handed down. In support of this conclusion, the *Civil Procedure Law Revised Code: 1:64.11* provides as follows:

> "Upon written motion of a party, the court shall vacate an award where:
>
> (a) The award was procured by corruption, fraud, or other undue means; or

(b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession; or there was corruption or misconduct in any of the arbitrators; or

(c) An arbitrator or the agency or person making the award exceeded his powers or rendered as award contrary to public policy or

(d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6".

We are of the considered opinion that the appellant's technical representative, having allegedly refused to collaborate with the other members of the arbitration board, the proper thing the chairman would have done was to postpone the conduct of the survey and timely communicate with the trial court the relevant facts. The chairman, not having demonstrated impartiality as the neutral arbitrator and the records having clearly shown that the appellant was not notified of the survey's date and time, the report growing out of the April 7, 2015 survey is a proper subject to vacate, and we so hold.

The cause is remanded to the lower court to expeditiously conduct a survey within three months upon the delivery of this Opinion. The lower court is ordered to give this cause preference all other cases appearing on its docket for term and promptly file returns as to the manner of execution of the Judgement of this Opinion.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is reversed and case is remanded for a new survey to be conducted within three months as of the date of this Opinion. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When the case was called for hearing, Counsellor Morris M. Davies of the Law Offices of Kemp and Associates, Inc. appeared for the appellant. Counsellor L. Koiboi Johnson of the Century Law Offices appeared for the appellee.