

THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021.

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: YUSIF D. KABA..... ASSOCIATE JUSTICE

Sam Yekeson and all other occupants of the house)
located on Lot # 123, Mamba Point, Monrovia, Liberia)
.....Appellants)

VERSUS

The Intestate Estate of Joseph W.S. Barbour)
by and thru its Administrators, Wisseh Barbour, Juah)
Barbour and Stephen Clarke of the City of Monrovia,)
Liberia.....Appellee)

GROWING OUT OF THE CASE:

The Intestate Estate of Joseph W.S. Barbour)
by and thru its Administrators, Wisseh Barbour, Juah)
Barbour and Stephen Clarke of the City of Monrovia,)
LiberiaPlaintiff)

Versus

Sam Yekeson and all other occupants of the house)
located on Lot # 123, Mamba Point, Monrovia, Liberia)
.....Defendants)

APPEAL

ACTION:
SUMMARY PROCEEDINGS
TO RECOVER POSSESSION
OF REAL PROPERTY

Heard: November 25, 2020

Decided: August 11, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal is before us from a summary judgment entered by the Sixth Judicial Circuit, Civil Law Court for Montserrado County, sitting in its June Term A.D. 2016, in favor of the Intestate Estate of Joseph W.S. Barbour, the appellee herein and against Sam Yekeson, et al., the present appellants.

Although this appeal emanates from the Sixth Judicial Circuit, Montserrado County in an action of summary proceedings to recover possession of real property, we have determined that for clarity and understanding of our decision it is necessary to present the genesis of this case.

The records reveal that in 1931, the Government of Liberia conveyed to Joseph W.S. Barbour during his life time, by an Aborigines deed a piece of property containing one (1) town lot described as Lot No. 123 situated in Mamba Point, Monrovia; that in 1946 the late Joseph W.S. Barbour during his lifetime purchased

from the Government of Liberia in the name of his eldest son, Frank S.W. Barbour one (1) town Lot No. 162 also situated in Mamba Point, but adjacent to an area described in the deed as the Nonciature Legation; that in 1983, Joseph W.S. Barbour took on immortality and was survived by two (2) sons, namely Frank S.W. Barbour and Wisseh Barbour; that his eldest son, Frank S.W. Barbour obtained Letters of Administration to administer the Intestate Estate of their late father, which he did up to the date of his death in the year, 2003; and that one year after the demise of Frank S.W. Barbour, that is, on September 2, 2004, his daughter, Patricia Barbour obtained letters of Administration to administer the Intestate Estate of Frank S.W. Barbour.

The records from the probate court show that the Intestate Estate of Frank S.W. Barbour by and through its administratrix, Patricia Barbour entered into a twenty (20) year lease agreement with Counsellor Stephen B. Dunbar, Jr. who thereafter placed the present appellants in a building situated on the disputed property. Except for communications alluding to Counsellor Dunbar placing the appellants in possession of the disputed property by an agreement, the records are void of any agreement written or oral or any evidence by the appellants testifying as to the nature of their relationship with Counsellor Dunbar.

The records also show that with the demise of both Joseph W.S. Barbour and his eldest son, Frank S.W. Barbour, the surviving heir of Joseph W.S. Barbour, Wisseh Barbour then petitioned the Monthly and Probate Court, Montserrado County for letters of administration to manage the Intestate Estate of his father, Joseph W.S. Barbour particularly Lot No. 123. However, this application of Wisseh Barbour was challenged and objected to by the Intestate Estate of Frank S.W. Barbour, by and thru its administratrix, Patricia Barbour, on the basis that the late Joseph W.S. Barbour's Lot No. 123 does not exist; and that the entire property including the building thereon is the sole property of her late father, Frank S.W. Barbour, now the Intestate Estate of Frank S.W. Barbour and same is situated on lot no. 162. She attached a Public Land Sale deed with the metes and bounds describing Lot No. 162 situated in "Mamba Point, near the "Nonciature Legation."

We note that at the behest of the parties a Board of Arbitration was duly constituted by the Monthly and Probate Court for Montserrado County pursuant to Chapter 64 of the Civil Procedure Law, with the instruction to make a determination as to whether Lot No. 123 did exist. The arbitration was proceeded

with but with the participation of only two surveyors, the chairman and the representative of the Intestate Estate of Joseph W.S. Barbour and a report submitted and received by the trial court. The Frank S.W. Barbour Intestate Estate, filed objection to the said report on the basis of its non-participation in the arbitration process. The probate court denied the objection, following which the Frank Barbour Estate availed itself of the applicable remedial process before the Justice in Chambers, who heard the matter and ordered that the said estate be allowed to designate a surveyor and that a new survey be conducted. The trial court complied with the Chambers Justice's mandate, and upon the Frank S. W. Barbour Intestate Estate naming its surveyor to the Board of Arbitration, the second investigative survey was conducted and a report signed by all three (3) members of the Board was submitted to the trial court in favour of the Joseph W.S. Barbour Estate.

The arbitrators found that Lot No. 123 does exist within the Mamba Point area adjacent the United States Embassy; that the property and the building occupied by the appellants fall within Lot No. 123; that said property is seized by the Intestate Estate of Joseph W.S. Barbour; and that Frank S.W. Barbour's Lot No. 162 is a vacant and undeveloped property within the same Mamba Point vicinity. The Frank S.W. Barbour Estate objected to the arbitration report alleging fraud and undue influence but same was denied by the Monthly and Probate Court.

On April 21, 2006, the trial court rendered its final ruling upholding and incorporating therein the Board's Report and thereafter appointed Wisseh Barbour as the administrator of the Intestate Estate of Joseph W.S. Barbour as to lot no. 123, while also simultaneously confirming the administration and management of the Intestate Estate of Frank S.W. Barbour as to the undeveloped land, lot no. 162 by his daughter, Patricia Barbour.

We observe that although the Frank S.W. Barbour Intestate Estate noted exceptions to the final ruling of the Monthly and Probate Court for Montserrado County, however, did not appeal the final ruling for an appellate review thereof. In this regard, Intestate Estate of Frank S.W. Barbour is by law, bound by the Monthly and Probate Court's final judgment as it is deemed to have waived its right to an appeal and accepted the consequences of said waiver with regards to said judgment of April 21, 2006. This concluded the case before the Monthly and Probate Court

for Montserrado County and the issue surrounding Lots Nos. 123 and 162. *A.D.C Airlines v. Sannoh*, 39 LLR, 431, 444 (1999).

The records show that following the said final ruling of the Monthly and Probate Court for Montserrado County, that is, on June 1, 2006, Counsellor Stephen B. Dunbar, Jr., in an apparent move to comply with said final ruling and in order to avoid eviction from the building, entered into a twenty (20) year lease agreement with the Intestate Estate of Joseph W.S. Barbour represented by its appointed Administrator, Wisseh Barbour, thus a continuation of the appellants occupancy of the property, Lot No.123.

There is no indication in the records showing the cancellation of the lease agreement between Counsellor Dunbar and the Intestate Estate of Frank S.W. Barbour upon the signing of the lease with the Joseph W.S. Barbour's Estate, only that Counsellor Stephen B. Dunbar, Jr. continued to exercise control over the property until 2015, when he, Counsellor Dunbar and the Intestate Estate of Joseph W.S. Barbour mutually agreed to terminate the June 1, 2006 lease agreement. Surprisingly, it was not until May 11, 2015, almost nine (9) years later that Counsellor Stephen B. Dunbar, Jr. and the Intestate Estate of Frank S.W. Barbour terminated the lease of September 2, 2004. Whatever was the reason for the co-existence of the two leases, we will not burden this Opinion in searching for an answer. Suffice it to say, the appellants remained on the disputed property.

With the termination of all the lease agreements with Counsellor Dunbar who had earlier placed the present appellants in occupancy of the property, these appellants being without any grantor, automatically become mere intruders or squatters without any rights to the disputed property.

On March 24, 2016, the appellee, the Intestate Estate of Joseph W.S. Barbour, filed an action of summary proceedings in the Monrovia City Magisterial Court against the appellants to recover possession of the disputed property.

On March 31, 2016, the Intestate Estate of Frank S.W. Barbour by and through its administratrix, Patricia Barbour filed a motion to intervene in the summary proceedings and raised the self-same allegation of the non-existence of Lot No. 123 already passed upon by the Monthly and Probate Court, Montserrado County in its final judgment of April 21, 2006, from which the estate did not appeal; that the said property is seized of by the Intestate Estate of Frank S.W. Barbour which

is Lot No.162; and that the appellants were occupying the property at the behest of the said Intestate.

On May 4, 2016, Magistrate J. Kennedy Peabody, now Resident Circuit Judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, listened to oral arguments and thereafter dismissed the motion to intervene on grounds that the Intestate Estate of Frank S.W. Barbour lacked standing to intervene into the case since its property is Lot No. 162 and not Lot No.123, the subject of the action of summary proceedings to recover possession of real property. Although the May 4, 2016, ruling of Judge Peabody brought finality as to the motion to intervene by the Intestate Estate of Frank S.W. Barbour, again, the latter announced no appeal therefrom.

On June 30, 2016, the appellee filed a notice of voluntary discontinuance of its case before the Monrovia City Magisterial Court reserving the right to refile same in the Sixth Judicial Circuit, Civil Law Court, Montserrado County. The records show that this action by the appellee was due to the fact that the appellants objected to and challenged the territorial jurisdiction of the Monrovia City Magisterial Court over the locality of the disputed property. On the same date, that is on June 30, 2016, Judge Peabody granted and approved the notice of voluntary withdrawal, thus abating the case at the level of the Monrovia City Magisterial Court.

On July 1, 2016, the appellee Intestate Estate of Joseph W.S. Barbour filed a new action of summary proceedings to recover possession of real property this time in the Sixth Judicial Circuit, Civil Law Court, Montserrado County against the appellants, praying that court to evict the appellants from the disputed.

On July 11, 2016, the appellants filed their answer to the complaint alleging *inter alia* that they are tenants at will of the Intestate Estate of Frank S.W. Barbour; that they are care-takers of the property but paying rent to the Intestate Estate of Frank S.W. Barbour and were inclined to surrender the property to whomsoever the trial court declared as the legitimate owner.

On the same day, that is on July 11, 2016, the Intestate Estate of Frank S.W. Barbour by and through its administratrix, Patricia Barbour once again appeared by the filing of a motion to intervene along with an intervener's answer and for the

third time and as in the previous actions stated herein alleging that the disputed property does not exist.

On July 14, 2016, the appellee Intestate Estate of Joseph W.S. Barbour through its administrator, Wisseh Barbour filed its reply and resistance to the intervener's answer along with a motion for summary judgment. In its motion for summary judgment the appellee pleaded the records of the final judgment in its favor regarding Lot No. 123 from the Monthly and Probate Court for Montserrado County; and as such summary judgment will lie as a matter of law to have the appellants evicted from said lot. The appellee's motion for summary judgment is quoted herein below to wit:

“...And now comes movant and most respectfully prays Your Honor and this Honorable Court to grant this Motion and for cause showeth the following to wit:-

1. That chapter 11, section 11.3 of Civil Procedure Law under the caption, “Motion for Summary Judgment” at paragraph 3, provides as follows: ...”A Court shall grant Summary Judgment if it is satisfied that there is no genuine issue as to material fact and that the party in whose favor judgment is rendered is entitled to it as a matter of law...”
2. Further to count one above, Movant avers and says that she instituted Summary Proceedings to Recover Possession of Real Property against the Defendants in these proceedings, Sam Yekeson, et al for a house located on lot #123 in Mamba Point, Monrovia, Liberia, because these individuals have been on the property as mere caretakers while the Plaintiff was in search of Lessee.
3. Movant also avers and says that even though the Summons was served on the Defendants, the Defendants did not interpose any objection to the complaint, meaning that the Defendants admitted to all of the allegations that were contained in the complaint. Court is most respectfully requested to take judicial notice of its own records.
4. Movant avers and says that prior to the filing of the complaint before this Court; the same complaint was filed before the Monrovia City Court. The Defendants again did not interpose any objection, but the Intestate Estate of Frank W.S. Barbour filed a Motion to Intervene and told the Court that the Frank W.S. Barbour Intestate Estate placed the Defendants in possession of the property. The Motion was heard and denied, for reason that the Frank W.S. Barbour Intestate Estate property is located for lot #162 and that the complaint centered around lot #123. The City Court also relied on a determination made by the Monthly and Probate Court for Montserrado County, when that Court set up a Board of Arbitration to determine whether lots #123 and 162 were separate and distinct properties and the house in question was located on lot #123. As a result of that determination, Patricia

Barbour, et al were named Administrators and Administratrixes of the Intestate Estate of the late Frank W.S. Barbour for Lot #162, while the Movant in these proceedings was named Administrator for the Intestate Estate of his late father, Joseph W.S. Barbour for lot #123. The Court is respectfully requested to take judicial notice of the records.

5. Movant avers and says that under these circumstances, there is no genuine issue to warrant the taking of further evidence in this case, for which Your Honor is most respectfully prayed to grant this Summary Judgment, order the Defendants ejected, ousted and evicted from the Movant's property with cost against the Defendants.

WHEREFORE AND IN VIEW OF THE FOREGOING, Movant most respectfully prays Your Honor and this Honorable Court to grant the Movant's Motion for Summary Judgment against the Defendants in these proceedings, and order that the Defendants be ejected, ousted and evicted from the Movant's property with cost against the Defendants and also grant unto Movant any and all further relief that Your Honor may deem just, legal and equitable.

On July 15, 2016 the then Resident Judge of the Six Judicial Circuit, Civil Law Court, Montserrado County, Judge Yussif D. Kaba, now an Associate Justice of the Supreme Court, listened to oral arguments on the motion to intervene and the resistance thereto and denied the motion on the basis that the Monthly and Probate Court had already made a determination concerning the existence and location of Lot. No.123; and, that the said Lot No.123 is the property of the Intestate Estate of Joseph W.S. Barbour.

Thereafter, on July 18, 2016, the Sixth Judicial Circuit, Civil Law Court assigned the appellee's motion for summary judgment for hearing, but the appellants and their lawyer failed to appear, only transmitting a letter of excuse to the trial court. No resistance was filed to the motion for summary judgment. The appellee then spread a submission on the minutes of the trial court requesting the granting of the motion in its favor pursuant to the Civil Procedure Law 1:10.7 for the appellants' failure to appear and resist the motion. We note that notwithstanding the procedural missteps on the part of the appellants, the trial court reassigned the case to another date to accord the appellants an opportunity to attend and defend the cause.

The Civil Procedure Law, Rev Code 1:10.7 provides that "if a party making a motion fails to appear, the motion shall be denied provided the motion papers are submitted to the court. If a party does not appear to oppose a motion or fails to

furnish the papers demanded on due notice, the motion shall be granted on proof of due service of the notice and required papers.” The Supreme Court has held, that once a case has not been completed the counsel of record is bound to honor all assignments issued and served on him until the case is finally decided or he will be presumed to have abandoned the case.” Civil Procedure Law Rev. Code 1:42.1; *Vijayaraman et al., v Xoanon Liberia Ltd.*, 42 LLR 47,56 (2004); *The Intestate Estate of the late Alihaji Massaquoi v. A.M.E Church*, Supreme Court Opinion, October Term 2014. Given these provisions of the law, we hold here that the act of the trial judge to postpone the hearing on the motion for summary judgment was only a magnanimous gesture towards the appellants and nothing more.

On July 20, 2016, the date re-assigned for the hearing of the appellee’s motion for summary judgment, again the appellants and their lawyer failed to appear and still did not file resistance to said motion for summary judgment. We quote relevant portion of the trial court’s ruling on this issue, to wit:

“...THE COURT: The submission by the Movant’s counsel is noted. The court says that on Monday, the same being the 18th day of July 2016, when this matter was called for hearing, a letter over the signature of the counsel for the Respondent was brought to the attention of the court in which letter the said counsel informed the court that his sister-in-law has passed and therefore he was unable to appear for the hearing of the matter. After this being interpose by the counsel for the Movant, this court held that the passing of a sister-in-law was not grave enough to necessitate the definite postponement of a trial. The court therefore ordered that a subsequent notice of assignment be issued and serve on the said counsel for the hearing on today’s date. At the call of this matter on today’s date, the letter which is the subject of the movant’s counsel resistance was brought to the attention of this court in which the said same counsel again relying on the passing of the said same sister-in-law express his inability to be present for the hearing of these matter. The court observes that the Sheriff in his return stated that this lawyer was met in his law office and that he initially refused to sign for and receive these assignments, it was the staff of the law office that received the assignment finally. The court says that this act of the said lawyer is contemptuous, lawyer who show disrespect to the precepts of court are showing affront to the court. More beside if the passing of the sister-in-law of this lawyer was so grave and that this graveness could not stop him from going to his law office, the court finds it difficult to see why the same graveness will stop him from answering to an assignment from this court. The only interpretation the court can give to this behavior is that the said counsel is avoiding the hearing and determining of this matter thereby baffling and delaying the same for

unjustifiable reason. The court shall not permit itself to be a party to such an endeavor. The court shall therefore proceed with the hearing of this matter as per the notice of assignment; counsel for the movant may proceed to state his side of the case...”

On the same day, July 20, 2016, Judge Kaba entered his ruling on the motion for summary judgment and granted same taking judicial cognizance of the April 21, 2006 final judgment of the Monthly and Probate Court, Montserrado County that was in favor of the appellee; and that the appellants failure to appear and resist the motion warrants the granting of the motion for summary judgment as a matter of law. We also quote relevant portion of the trial court’s ruling, to wit:

“...This court takes judicial notice of the records in these proceedings. In the complaint the movant herein the plaintiff in the main suit is claiming ownership of a property subject to the dispute and attempting to evict and eject tenants who are occupying the said property. In answer to the complaint the tenants averred that their possession of the property the subject of the action was based upon understanding by and between the tenants and the Intestate Estate of Frank S.W. Barbour. In reaction to this answer the Intestate Estate of Frank S.W. Barbour filed an application to intervene in this matter, in the application the Intestate Estate of Frank S.W. Barbour averred that this property is owned by the Intestate Estate and by virtue of their ownership they placed the defendant herein on the said property and therefore their ownership will be affected should they not be permitted to intervene. The movant herein resisted this application for intervention in which the movant denied that the defendants in the main suit were placed on the property by the Intestate Estate of Frank S.W. Barbour. According to the movant this property was a subject of dispute by and between the movant herein and the Intestate Estate of Frank S.W. Barbour and that the Monthly and Probate Court, after a lengthy investigation, determined that the property is part and parcel of the movant’s estate. That based upon this determination by the Monthly and Probate Court, the movant herein leased this property to Cllr. Stephen Dunbar under the tenure of which lease agreement the defendant herein were placed in possession of the property. That at the expiration of that lease agreement which was executed by and between the movant herein and Cllr. Dunbar, the applicant to intervene entered upon the property and attempted to exercise control. During the hearing of the Motion to Intervene, it was the position of the applicant to intervene that the determination by the Monthly and Probate ought not to be given consideration by this court since it is this court that ought to make determination on matter of that nature. This court in its ruling held that it lacks the legal competence to review the ruling of the Monthly and Probate Court of Montserrado County since it exercise concurrent jurisdiction with that court and therefore the holding of that court if not reversed by the Supreme

Court becomes binding upon this court. Since it was the holding of the Monthly and Probate Court that the property subject of this investigation is a part and parcel of the Intestate Estate of the late Joseph Barbour, the movant herein, this court cannot review the same. Therefore, the court denied the right of intervention to the applicant to intervene on ground that the lease agreement between Cllr. Stephen Dunbar and the Movant herein under which the defendant in the main suit gained possession of the property was controlling. This lease agreement having expired, then the right of possession of the defendant has also extinguished and the applicant to intervene lacks the legal right to traverse possession of that property to the tenant-at-will of the movant herein.

Additionally, the law in this jurisdiction provides that if a Respondent to a motion fails to appear and or to file a resistance to the motion upon review of the motion, the court is duty bound to grant the same. In consideration of all that have been said herein and above, this court hereby order granted the Motion for Summary Judgment and by that the prayer contained in the plaintiff's complaint is hereby ordered granted and the defendant held liable. The clerk of this court is ordered to issue out a Writ of Possession and have same place in the hands of the Sheriff to have the defendant ousted and evicted from the property and the plaintiff be placed in possession thereof..."

The Court's appointed lawyer, Counsellor Wilfred Sayeh received the ruling on behalf of the appellants and their lawyer, noted exceptions and announced an appeal therefrom to the Honorable Supreme Court. Thereafter, on July 29, 2016, the appellants filed a six (6) count bill of exceptions basically alleging that the trial court denied them their right to due process when it entered final judgment in their absence; that the trial court ignored the law requiring the plaintiff to prove its case in an ejectment action; that the trial court disregarded the factual issues and the appellants' allegations to the effect that the property is seized by the Intestate Estate of Frank S.W. Barbour by virtue of a title deed which shows that the property is located on Lot No. 162. The six (6) count bill of exceptions which captures the appellants' contentions is quoted herein to wit:

DEFENDANTS' BILL OF EXCEPTIONS

And now come Defendant/Appellants in the above entitled cause of action and most respectfully submits this Bill of Exceptions for Your Honor's approval so as to enable Defendants/Appellants perfect their appeal to the Honorable Supreme Court, sitting in its October A.D. 2016 Term and showeth the following, to wit:

1. Your Honor committed a reversible error in this matter by hastily granting summary judgment in favor of the Plaintiffs in the absent of their counsel who filed a genuine excuse with the Court due to the

death of his sister-in-law who expired in his home while spending time with him. That Your Honor was erroneous in your ruling by denying Defendants/Appellants the opportunity to be heard. Under our jurisdiction, it is a settled legal principle that the law hears before it condemns and it is the same law which proceeds upon inquiry and renders judgment only after trial. The Supreme Court in one of its numerous opinions also states that..... “Nothing tends to be greater to disturb tranquility, to hinder industry, and to improve communities than the insecurity of property, personal or real, to prevent which courts of justice are established”.

2. Defendants/Appellants say they were not afforded the opportunity to be heard because Your Honor showed favor toward the Plaintiffs’ counsel by denying them their day in court which is a fundamental requirement of the law. The proof of Your Honor bias in this matter is that on the 14th day of July 2016 that Plaintiffs’ counsel filed his resistance, you issued two (2) notices of assignment sequentially for hearings on July 15, 2016 (Friday) and July 18, 2016 (Monday) on the motion to intervene filed by Defendants/Appellants counsel on behalf of their landlord, which you prejudicially denied and the so-called motion for summary judgment filed by Plaintiffs’ counsel which you abruptly upheld just to evict Defendants/Appellants from a property which is allegedly being claimed by Plaintiffs as Lot #123 whereas the property they occupy is on Lot #162.
3. Defendants/Appellants say Your Honor was in serious error when you denied them their day in court by granting summary judgment to the Plaintiffs whose claim of ownership was never proven but had a free ride at the mercy of Your Honor by evicting, ousting and dispossessing them. That further to count one (1) above, Your Honor erred and committed a reversible error when the Court failed to allow the Plaintiffs to prove its ownership of the property which it claimed to be lot #123. Defendants/Appellants say they are renting the property of lot #162 called house #119 at the Mamba Point, from the Intestate Estate of the late Frank S.W. Barbour by & thru its administrators to whom they paid a yearly rental for 2016. Defendants/Appellants say the issue of whether the property is on lot #123 or lot #162 is a genuine disputed issue of material fact which required a trial. Your Honor seriously erred when you hastily granted Plaintiffs’ motion for summary judgment.
4. Defendants/Appellants say Your Honor erred by ignoring the principle of law that obliges a plaintiff in an ejectment suit to always prove and recover the property on the strength of his title and not on the weakness of the defendant’s title. In the case at bar assuming without admitting Defendants/Appellants are without title to warrant possession of the subject property, does it excuse or prevent the plaintiffs from proving its ownership of the property? Defendants/Appellants say though they are mere tenants on the property, they indicated in their Answer to the Plaintiffs’ Complaint

that they were on the property at the behest of the administrators of the Frank Barbour Estate; and that the property they occupying Lot # 162 and not Lot #123.

5. That further to count three (3) above, Your Honor grossly erred by ignoring the averments of their Answer to Complaint. In their Answer which was never responded to or which averments were not traversed by the Plaintiffs, Defendants/Appellants contended that they were permitted to remain on the property by the administrators of the late Frank S.W. Barbour to whom they also pay their rentals. That Defendants/Appellants say in counts two (2) & three (3) of their Answer in response to Plaintiffs' Complaint indicated that they were placed on the property Counsellor Stephen B. Dunbar, Jr. (lessee) by way of a lease agreement executed in 2004 with the late Frank Barbour Estate. On May 11, 2015 Counsellor Dunbar, Jr. (lessee) cancelled the lease agreement with his lessor and introduced to us Patricia Barbour, Grace Barbour Nah and Patience Barbour Wilson, Administrators of the Frank Barbour Estate as owners of the property Lot #162, house #119, Mamba Point. Despite these salient contending points raised by Defendants/Appellants which require investigation since it was surrounding property matter, Your Honor disregarded all that and entered summary judgment for Plaintiffs who have even failed to respond to Defendants/Appellants. The Supreme Court has consistently held that....." No person shall be deprived of life, liberty, security of the person, property, privilege, or any other rights except at the outcome of a hearing and judgment consistent with provision lay down in the Constitution and in accordance with the due process of law".
6. Defendants/Appellants say Your Honor grossly erred when you overlooked the genuine issue of material fact in the case that required a trial. For example the Plaintiffs claimed that the property for which summary ejectment was instituted against the Defendants/Appellants is Lot #123 and the Defendants/Appellants contended in their Answer that the property they occupy is Lot #162 and is owned by their landlord, the Frank Barbour Estate which Your Honor deliberately disregarded and granted summary judgment in favor of Plaintiffs. Summary judgment was improper as there was a genuine issue of material fact in disputed requires taking of evidence.

Wherefore and in view of the foregoing, and for all the above reasons and errors committed specifically raised as contained in the bill of exceptions, Defendants/Appellants pray that Your Honor will most respectfully to approve this bill of exceptions, thereby enabling Defendants/Appellants to perfect their appeal and have the Honorable Supreme Court, Sitting in its October Term, A.D. 2016 to review Your Honor's erroneous ruling and make a determination therein and respectfully so pray and submit.

The above quoted bill of exceptions and the facts narrated herein present only one (1) issue dispositive of this appeal, to wit: whether or not the trial court committed reversible error when it granted the motion for summary judgment. We think not.

It is the law in vogue that a motion for summary judgment will be granted in instances where the court is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law". Civil Procedure Law, Rev Code 1:11.3(3) provides; *Dennis v. Philips* 21 LLR 506, 513 (1973); *Sio v. Sio* 35 LLR 92, 98 (1988); *Hussan v. Butler*, Supreme Court Opinion, October Term A.D. 2014; *Bettie v. Bettie*, Supreme Court Opinion, March Term, A.D. 2018.

In the present appeal, the following material facts were established:

- (1) That on April 21, 2006 the Monthly and Probate Court for Montserrado County entered a final ruling based upon an arbitration report signed by the appellant's grantor that Lot. No 123 exists within the Mamba Point area, adjacent the United States Embassy;
- (2) That the building being occupied by the appellants falls within Lot No. 123;
- (3) That the said Lot No. 123 is the property of the late Joseph W.S. Barbour and not the late Frank S.W. Barbour; and
- (4) That at the rendition of the April 21, 2006 final judgment of the Monthly and Probate Court for Montserrado County, and the failure of the Intestate Estate of Frank S.W. Barbour to appeal said judgment, same became binding and enforceable against the said estate.

The Supreme Court has held that if an appellant fails to take any of the mandatory jurisdictional steps to get his appeal properly before the Supreme Court, as in the instant case, then that right to appeal is deemed to have been waived. And, when so waived, the trial court's ruling should not be disturbed. *A.D.C Airlines v. Sannoh*, 39LLR, 431, 444 (1999).

Given the fact that the Intestate Estate of Frank S.W. Barbour waived its right to appeal, we cannot agree more with Judge Kaba' ruling on the appellees' motion for summary judgment in that he cannot review the April 21, 2006, final judgment of the Monthly and Probate Court, Montserrado County since he exercised concurrent jurisdiction with judge of said court. This position of the trial judge is in

consonance with plethora of Opinions that no judge has the power to review, modify or rescind any decision of a judge exercising concurrent jurisdiction on any point already passed upon by him, whether that decision is right or wrong. That authority lies only with the Supreme Court. *Gaga v. Pratt et al.*, 6 LLR 246, 254 (1938); *Republic of Liberia v. Aggrey*, 13 LLR 469, 479 (1960); *Kanawaty et al., v. King* 14 LLR 241, 242 (1960); *Kpotov. Kpoto*, 34 LLR 371, 382 (1981); *Sarnor v. Sherman*, Supreme Court Opinion March Term, 2012.

But more importantly, the Supreme Court has held that as regards real property a grantee is bound by a judgment abrogating the title of his grantor to a particular parcel of land. Thus, it been established that Lot No. 123 exists and the ownership thereof vested in the Joseph W.S. Barbour's Intestate Estate and not the Frank S.W. Barbour's Intestate Estate, the appellants' are automatically bound by said ruling of the Sixth Judicial Circuit, Montserrado County, thus have no right to continued occupancy of the disputed property.

As regards the issue of the trial court's alleged error in granting the appellee's motion for summary judgment, the Supreme Court has further held, "that where a question has become moot, a judgment or order may be affirmed without consideration of the merits of the case." *Duncan et al vs Cornomia*, 42 LLR, 309, (2004). Hence, the issue of the ownership and existence of lot no. 123 having been addressed by the Monthly and Probate Court, Montserrado County, and binding upon the purported grantors of the appellants and by extension, the appellants, and the latter own admission that they are willing to vacate and surrender the property to its legitimate owner declared by the trial court, make the issue of ownership to the disputed property moot and therefore no error committed by the trial court in granting the appellee's motion for summary judgment, and we so hold.

Before concluding this Opinion, we deem it necessary to strongly warn the lawyers representing the present appellants for their act in prolonging this case which was bought to finality by the rendition of the April 21, 2006 final judgment of the Monthly and Probate Court for Montserrado County and from which they failed to appeal said judgment to the Supreme Court. Rule 11 and 31 of the Rules of Court state thus:

Rule 11:

“A lawyer should endeavor to obtain full knowledge of his client’s case before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending contemplated litigation. Whenever the controversy will not admit of fair judgment, the client should be advised to avoid or to end the litigation and it is unprofessional for a lawyer to advise the institution or continuation of an unmeritorious suit.”

Rule 31:

“...a lawyer must decline to conduct a civil case, or make a defense when convinced it is intended merely to harass or to injure the opposite party or to work oppression or wrong...”

The records in this case show the lawyers for the appellants filing frivolous motions to intervene before the trial courts mentioned in this Opinion, even to the perfecting of this appeal before the Supreme Court and raising the self-same issues which were passed upon brought to finality by the probate court, and which they knew were untenable given the facts and circumstances of the present case. *Gaga v. Pratt et al.*, 6 LLR 246, 254 (1938); *Republic of Liberia v. Aggrey*, 13 LLR 469, 479 (1960); *Kanawaty et al., v. King* 14 LLR 241, 242 (1960); *Kpotov. Kpoto*, 34 LLR 371, 382 (1981); *Sarnor v. Sherman*, Supreme Court Opinion March Term, 2012. This act by the lawyers is unacceptable, wrong and must be discouraged at all cost, and a repetition of same, this Court will not hesitate to impose stringent penalty.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion for summary judgment entered by the Sixth Judicial Circuit, Civil Law Court, Montserrado County is hereby affirmed and the appellants are ordered evicted and ousted from the disputed property, Lot No. 123. The Clerk of this Court is hereby ordered to send a Mandate to the court below ordering the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

Appeal denied

When this case was called for hearing Counsellor Joseph M. Kollie, Sr. appeared for the appellants. Counsellors J. Bima Lansanah and Cooper W. Kruah, Sr. appeared for the appellee.