

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

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

Mrs. Kimberly Toure of the City of Paynesville,)
Liberia.....Appellant)
)
Versus) APPEAL
)

His Honor Scheaplor R. Dunbar, Assigned Circuit)
Judge, Civil Law Court, Sixth Judicial Circuit for)
Montserrado County, Republic of Liberia, Ms.)
Jocelia Taplah, Miinistry of Public Works,)
Roseline L. Barnes and Locross N. Kollie of the)
Monrovia.....Appellees)

GROWING OUT OF THE CASE:)
)

Mrs. Kimberly Toure of the City of Paynesville,)
Liberia.....Petitioner)
)
Versus) PETITION FOR JUDICIAL
) REVIEW

Ms. Jocelia Taplah, Miinistry of Public Works....)
.....1st Respondent)

And)
)

Roseline L. Barnes and Locross N. Kollie of the)
City of Paynesville.....2nd Respondents)

GROWING OUT OF THE CASE:)
)

In Re: The Matter Involving Roseline L. Barnes,)
Locross N. Kollie, Samuel Railey, Kim Toure,)
Felicia C. Dixon, Albert G. Dahn and all those)
similarly situated within the certain section of)
Thinkers' Village, Paynesville, Montserrado)
County, Republic of Liberia.)

Heard: April 7, 2022

Decided: August 4, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

The substantive facts that attended the taking of appeal by Mrs. Kimberly K. Toure, appellant herein, from the final ruling of the Assigned Circuit Judge of the Sixth Judicial Circuit Court for Montserrado County, His Honor Scheaplor R. Dunbar, are culled from the petition for judicial review filed on August 25, 2021 by the appellant, and the returns thereto filed by Roseline L. Barnes and Locross N. Kollie, appellees herein. The petition for judicial review, *inter alia*, alleges as follows:

- “1. Petitioner owns a property in Thinkers’ Village Community, Paynesville, Montserrado County, out of which a complaint was filed on December 17, 2019 by 2nd Respondent, Roseline L. Barnes to 1st Respondent, Ministry of Public of Works Zoning Department contending that said property was obstructing the alley ways and therefore preventing her ease of access to the street. According to Petitioner’s deed, there is absolutely no alley ways on her property connecting the Barnes property and that the driveway on Petitioner’s property was a self-creation to afford her clients easy access to the property. Petitioner further says that throughout her decade plus years of occupancy of the property, there has not been any claim of the existence of an alley by anyone, not even her grantor or the Barnes family who are her immediate neighbors. Petitioner herewith attached her title deed and her grantor’s deed to the property in Thinkers’ Village and marked exhibit “P/1” in bulk to form a part of this petition.

2. Further to count one (1) above, Petitioner says that there is no factual basis upon which 1st Respondent Ministry of Public Works Zoning Department relied [on] to arrive at a conclusion that an alley existed [on] Petitioner’s property. Petitioner also says that there are no technical details anywhere in 1st Respondent Ministry of Public of Works Zoning Department’s report to outline how the conclusion was reached, that

Petitioner had obstructed the alley ways by building structure therein; only that the report states ‘at the scene, following the measurement of the properties by the onsite investigation survey committee of the Ministry of Public Works, the committee observed that there exists a thirty foot (30ft) main street in the community, consistent with the deeds description. As a consequence of the revision of documentary evidence and the technical assessment conducted, the Hearing Committee has determined the following...” Attached and marked exhibit “P/2” in bulk is copy of an investigative survey report disputing the existence of an alley cutting across the Toure’s and Barnes properties.

3. That 1st Respondent Ministry of Public Works Zoning Department upon receipt of 2nd Respondent’s Roseline L. Barnes’ complaint, proceeded to call a conference of the parties and thereafter informed the parties of an onsite investigation survey scheduled for February 12, 2020. The said investigation survey was never conducted and no reason was given to the effect. Petitioner says that during the conference, no mention was made regarding the participation of the Liberia Land Authority nor was any introduction or reference made about their presence contrary to Section 54.2 (a) of the Liberia Land Authority Act of 2016 which states ‘Section 27,2 (d) of the Executive Law is amended to read: ‘to carry out and administer urban and town planning and land use rezoning in cooperation with the Liberia Land Authority consistent with Section 8,1 (h) of the Liberia Land Authority Act of 2016. 1st Respondent committed a reversal error to have proceeded singlehandedly in the absence of any cooperation with the Liberia Land Authority contrary to the law stated herein.
4. That further to the above and despite 1st Respondent Ministry of Public of Works Zoning Department’s failure to carry out the February 12, 2020 survey, a survey was conducted without the knowledge of Petitioner. Petitioner became aware of the survey

through a third party other than 1st Respondent Ministry of Public Work Zoning Department while the survey was ongoing. It is interesting to note that 1st Respondent Ministry of Public Works Zoning Department's final decision of June 12, 2020 subject of this litigation, was reached based on the said survey indicated herein. Petitioner brings to the attention of this court that the survey was conducted solely by 1st Respondent Ministry of Public Works Zoning Department, that no officer from the Liberia Land Authority was present or participated in the survey contrary to Section 52.4 and Section 54.2 (a) of the Liberia Land Authority Act of 2016.”

The appellees' returns to the petition for judicial review alleges, *inter alia*, as follows:

- “1. That respondent says, this matter involved issues relating to an alley, road or street in which the Ministry of Public Works in association with the Liberia Land Authority that are duly established by laws governing this Republic presided over the said matter and concluded in favor of the Respondent, Roseline L. Barnes and the people of Thinker Village for an easement to allow them passage to travel to their properties.

- 3 Respondent says as of count one to six of petitioner[‘s] petition, same are far from the truth. Parties involved in this proceeding were all served citations by the Zoning Department of Ministry of Public Works and all parties participated in the said hearing at the Zoning Department of the Ministry of Public Works of which decision was reached on June 12, 2020, that those who had structures within the meets and bounds of the said diagram were in violation of interfering with public easement and were warned to remove their structures and the petitioner was no exception to this ruling. Respondent says that all parties have complied with the said Ministry except the petitioner in this matter.

7. Respondent says as of count thirteen to count seventeen, that petition[er] is on [fishing] expedition with the sole aims of delaying the enforcement aspect of the administrative decision from the Ministry of Public Works which is done in bad faith by the petitioner.

The parties are in agreement that an onsite investigative survey was conducted. So we cull from the certified records the following report of the Ministry of Public Works' Committee as follows:

“At the scene, following the measurement of the properties by the onsite Investigative Survey Committee of the Ministry of Public Works, the committee observed that there exists a thirty foot (30ft) main street in the community, consistent with the deeds description.

As a consequence of the revision of documentary evidence and the technical assessment conducted, the Hearing Committee has determined the following:

1. A thirty foot (30ft) main street exists within the community concern;
2. That there exist a thirty (30ft) foot Main street perpendicular to the Barnes beach road;
3. That Kim Toure property is 30ft by 16ft directly situated with the Main Street;
4. That there is no access as of now to Miss Roseline Barnes property as spelled out in the complaint letter;
5. That the thirty (30ft) foot Main street perpendicular to the Barnes Beach Road extends about ninety (90ft) feet to a block which makes it impossible for the [complainant] to access her property.
6. That the thirty (30ft) foot Main street is also blocked by the Barnes property from the Tropicana Beach Road with a fence, water tower, and a dilapidated structure;

7. That a 6ft by 6ft. water tower and a 4ft by 4ft diameter well are fully within the thirty (30ft) Main street on the side of the Barnes property;
8. That a 12ft by 10ft unroofed dilapidated building is directly situated within the 30ft Main street.
9. That the Kemokais property indicates the same thirty (30ft) foot Main street as on the Barnes deeds;
10. That the Barnes' deed ends the Main Street on their property line, thereby giving them access and not others, which is not a standard.
11. That there is an ongoing construction, into the Main Street by the Toures;
12. That there are existing fences and water tower constructed with in the thirty (30ft) foot Main street by the Barnes;
13. That because of these structure(s) constructed within the Main Street, thereby denying dwellers access to their properties;
14. That all of the violating structure(s) named herein did not obtain permit from the zoning office prior to constructing their structure(s)''

It is worth noting that in an attempt to controvert the Ministry's findings quoted herein, the appellant hired the survey services of a firm to conduct a survey in January, 2021 after she received the survey report from the Ministry of Public Works. Our reading of the said survey report appears to confirm the existence of a 30 foot alley with obstructions thereon which report however served as the basis of the appellant's petition for judicial review. We also quote the relevant findings as follows:

“After the desk top analysis, field verification and mapping the following was observed:

- I. That both properties have one line in common; ie, the eastern line of Turmasi's 9.0 lots and the western line of the Barnes' Property; according to the bearings on the instruments.

- II. That both instruments indicate roads most of which are existing today.
- III. All of the roads/streets indicated in the instruments for Turmasi (Mrs. Kimberly K. Turay) and the Barnes do not pass through the properties.
- IV. The 30 foot street indicated on the Barnes' diagram is not opened. It can be seen from google that there are structures on the said 30 foot street." *North Pole Surveying and Engineering (Lib) Ltd*

This report was dated January 22, 2021 and signed by Henry T. Freeman, Registered Land Surveyor with License#077.

The petition for judicial review and the returns thereto were regularly heard and the trial court determined that Section 82.9(2) of the Administrative Procedure Act provides that "findings made by an agency with respect to questions of fact shall be conclusive on the court." The trial court also held that the decision under review grew out of an administrative fact-finding to the effect that the appellant and other adjoining property owners illegally constructed structures on a thirty foot main street thus depriving the appellees from accessing their properties. On the question of the Ministry of Public Works' authority to conduct such administrative fact-finding and decision, the trial court held that the said Ministry retains its authority over zoning regulations and violations complained thereof. The court noted that Section 54.2 of the Liberia Land Authority Act did not revoke that regulatory power of the Ministry as contended by the appellant. The trial court therefore ruled denying the appellant's petition on ground that she failed to allege sufficient grounds for setting aside of the administrative decision of the Ministry of Public Works on this matter. It is from this final ruling of the trial court that the appellant urges upon this Court to review and reverse.

Our review of the records and analysis of the parties' arguments, show that the appellant contends that the Ministry of Public Works lacks subject matter jurisdiction to hear and determine complaint of obstruction on alley after the coming into force of the Liberia Land Authority Act (2016); that she was not accorded her due process right when the Ministry of Public Works conducted a

survey without her knowledge and failed to serve her a report therefrom, (she however admits she was made aware of the survey by a third party while the survey was ongoing); and that there is no evidence to support the conclusion of the Ministry of Public Works to the effect that appellant is obstructing the appellees' right to access their properties from the street. The petitioner therefore prays this Court to set aside the final ruling of the trial court and order a new survey.

On the other hand, the appellees contend that the Ministry of Public Works is the lawful agency of Government to investigate complaint of obstruction of streets, roads or alley and that the Ministry properly assumed jurisdiction over this matter. The appellees also denied the appellant's allegation that she was denied her due process right of fair hearing because she was not made aware of the survey based upon which the Ministry of Public Works concluded its administrative decision and ordered her to remove the obstruction erected on the 30 foot main street, subject of the appellees' complaint.

This Court identifies two issues as dispositive of this case. (1) Whether Section 54.2 of the Liberia Land Authority Act concerns alley dispute which requires the Ministry of Public Works to cooperate with the Liberia Land Authority on the resolution such complaint? And, (2) whether the administrative decision of the Ministry of Public Works is supported by evidence of the existence of obstruction interfering with the appellees' access to the public street?

Before proceeding to consider our determination on the two issues presented in this case, we deem it necessary to address one collateral issue contended by the appellant; that is, the appellant contends that she was not accorded due process of law when the Ministry of Public Woks conducted the survey, but failed to serve her a copy of the survey report. Our review of the records reveals that when the appellees filed a petition for enforcement of the administrative decision, the appellant filed returns raising the same issue before the court below. After the investigation, the court below ordered the Ministry of Public Works to serve a copy of the survey report on the appellant so as to afford her the opportunity to seek judicial review of the administrative findings. The Ministry of Public Works in obedience to that order served a copy of the survey report on the appellant with a reconfirmation of its findings. It is also the appellant's contention that the

Ministry of Public Works' reconfirmation of its report without a hearing violates her due process right.

This Court says that due process of law is not only a constitutionally protected right, but that it has been recognized in this jurisdiction from the very inception of the Republic. Our case law contains a plethora of opinions expounding on due process of law and how its essential elements applied to different sets of facts. Notice and the opportunity to be heard and defend in orderly proceeding according to the nature of the case are essential elements of due process of the case. The second element has been interpreted in numerous opinions of this Court to require a court of competent jurisdiction sitting to hear the case as well as the opportunity for a defendant to confront witnesses or evidence produced against him. It is the rule that no one shall be personally bound until he has had his day in court or until he has been duly cited to appear, and he was afforded the opportunity to be heard. *Wolo v. Wolo* 5LLR 423 (1937), *Brown-Bull v. the Truth and Reconciliation Commission, Supreme Court Opinion, October Term, A.D. 2008*, *Liberia Telecommunication Authority v. West Africa Telecommunication, Inc., Supreme Court Opinion, March Term, A.D. 2009*, *Broh v. Hon. House of Rep. et al, Supreme Court Opinion, October Term, A.D. 2013*

The Supreme Court has oftentimes applied the essential elements test in all cases where the due process of law have been contended or affirmatively asserted by a party. In the instant case, our search of the certified records reveals that the Ministry of Public Works cited all parties including the appellant to a conference for a resolution of the complaint lodged by the appellees. In that conference, the parties including the appellant resolved to an onsite investigation to ascertain the facts as to the existence of an alley and any obstruction thereon. The records also show that the onsite investigation was conducted although the appellant contends that she was made aware of that investigation by a third party while the exercise was ongoing, the appellant however proceeded to commission her independent survey in order to counter the Ministry of Public Works report. The appellant's "exhibit P/2" containing her independent survey report was annexed to her petition for judicial review.

Now in applying the essential element test to the facts, we note that the appellant was duly cited to a meeting in which she was informed of a complaint against her;

that she agreed with other parties for the Ministry of Public Works to conduct an onsite investigation; that the onsite investigation was conducted by the said Ministry; that even though she was not initially served a copy of the Ministry's report, the error was cured when the lower court ordered the Ministry to serve a copy on her which order was obeyed by the Ministry; that as a consequence of the service of Ministry's report on her, the appellant hired the services of the North Pole Surveying and Engineering (Lib) Ltd that conducted independent survey and a report therefrom was made a part of the petition for judicial review; and the appellant had the opportunity to challenge the Ministry's findings in the lower court through that petition. Considering the facts outlined herein, it is our opinion that the essential elements of the due process of law were met in this case and that the appellant had her day in court. We must add that the appellant's challenge to the jurisdiction of the Ministry of Public Works to conduct the onsite investigation has also been determined, *infra*, to be wanting. We therefore hold that the appellant not having excepted and appealed the lower court's order to have her served a copy of the Ministry's report coupled with the fact that the Ministry did comply with that order which gave the appellant's opportunity to file a petition for judicial review, the appellant was concluded by the lower court's order; and she cannot now raise the same issue before the Supreme Court.

In addressing the first issue whether Section 54.2 of the Liberia Land Authority Act concerns alley dispute which requires the Ministry of Public Works to cooperate with the Liberia Land Authority on the resolution such complaint, we take recourse to Section 54.2 of the Liberia Land Authority Act (2016) and Section 27,2 of the Executive Law which it amends:

“The following laws are hereby amended as follows:

- a. Section 27.2(d) of the Executive Law is amended to read: ‘to carry out and administer urban and town planning, and land use rezoning in cooperation with the Liberia Land Authority consistent with Section 8.1 (b) of the Liberia Land Authority Act of 2016’

We note that the above quoted statute referenced another provision thereof, that is, Section 8.1 (b), to further the clear and unambiguous interpretation of the intent of

the Legislature as to the amendment of Section 27.2 (d) of the Executive Law. We also quote the said Section 8.1 (b) as follows:

“Promote, support, and ensure the development of land use plans and zoning schemes, and their implementation through municipalities, towns, and other local government structures”

As can be discerned from the above statute, the aspect of Section 27.2 that was affected by the amendment referred to in the Liberia Land Authority Act concerns itself with the execution and administration of urban and town planning and land use re-zoning rather than alley dispute.

As further to the above, Section 27.2 of the Executive Law provides as the function of the Ministry of Public Works the following:

“The Minister of Public Works shall have the duty---

(a) **To design, construct, improve and maintain, directly or by contract, all highways, streets, roads, bridges and storm sewers;**

(b) To be in charge of, either directly or by contract, the construction of sanitary sewers, hospitals, public buildings, and other public works which are built for other Ministries or agencies of the Government, exclusive of public authorities, and to cooperate with the representatives of such Ministries or agencies in planning and carrying out such construction.

(c) To provide engineering and architectural services for all Ministries or agencies of the Government;

(d) ***To carry out and administer urban and town planning and land use re-zoning;***

(e) To plan, in conjunction with the Ministry of Planning and Economic Affairs and the Public Utilities Authority, public works facilities and public utilities systems;

(f) To enforce constriction standards for non-governmental buildings;

(h) To administer the law with regard to issuance of licenses to electricians, plumbers and any other persons who are required by law to obtain licenses from this Ministry to carry on their occupations”
emphasis supplied

It can be said from the reading of the above statutes that Section 27.2 (d) of the Executive Law was not repealed contrary to the appellant’s claim; but that the Ministry of Public Works retains jurisdiction over zoning, urban and town planning and its administration in cooperation with the Liberia Land Authority. It is our further understanding that this amendment of the law seeks to harmonize the development of land use plans and re-zoning schemes and their implementations. However, the issue of interfering with Public Street thereby denying other users access to their properties concerns itself with fact-finding investigation using existing maps, and zoning regulations. This cannot be considered as re-zoning as provided for by the amendment in 2016 Liberia Land Authority Act. In the instant case, the appellees complained that the appellant has erected a fence on a 30 foot alley thereby denying them access to their properties. We do not see any clear provision of the Act, *ibid*, to the effect that the Ministry of Public Works cannot investigate an interference with public road, alley or street. To our mind, an onsite investigation to determine the existence of alley and obstruction thereon cannot be elevated to the clear meaning of Section 54.2 of the Liberia Land Authority Act of 2016; that is to “the development of land use plans and re-zoning schemes and their implementation”, therefore, the onsite investigation conducted by the Ministry of Public Works did not violate Section 54.2 of the Liberia Land Authority Act of 2016. We hold that the subject matter of the complaint lodged by the appellees was properly cognizable before the Ministry of Public Works.

In addressing the second issue whether the administrative decision of the Ministry of Public Works is supported by evidence of an existence of obstruction interfering with the appellees’ access to a public street, we note that both the Ministry of Public Works’ onsite investigative survey report and the appellant’s independent survey report, “exhibit P/2”, *supra*, show the existence of a 30 foot alley. Interestingly, the appellant refers to this 30 foot alley in count one (1) of her

petition for judicial review as a “self-creation” in order to ease access for her clients. This averment of the appellant contradicts her independent survey report which found that there is no alley on the appellant’s 26.5 lots of land. The independent survey report however indicated that the 30 foot alley indicated on the Barnes’ property has structures on it. It seems all too obvious that the appellant is admitting the existence of a 30 foot alley, albeit, avoiding the truth that her fence interferes with the main street to the Barnes’ property. We also note that the appellant’s own Google Map annexed to her report points to a 30 foot alley perpendicular to the Barnes’ property which gives this Court a reasonable conclusion of the truth contained the Ministry of Public Works’ survey report.

This Court says that the right to the easement of ingress and egress on one's legitimate property was fully recognized more than seven decades ago. *Witherspoon v. Browne*, 11 LLR 177 (1952); and affirmed in 2012 in the case *Cooper v. Lawrence*, Supreme Court Opinion, March, A.D.2012. In the two cases cited herein, this Court annunciated that “the easement of ingress and egress of an owner of real property abutting on a public street or highway is an interest in real property which not even the sovereign may take away without compensation, and which equity will protect against private injunction.” The Zoning Regulation defines a main street as “the street upon which the majority of the lots [within] a block are fronted or any street so designated by the Ministry of Public Works.” *Zoning Regulation: 1.3*

For reasons stated herein, this Court says that it is in full agreement with the lower court’s final ruling that the findings of an administrative agency is conclusive pursuant to Section 82.9(2) of the Executive Law absent fraud, arbitrariness and the violation of statute. *Orange Liberia, Inc. v. Liberia Telecommunication Authority*, Supreme Court Opinion, March Term, A.D. 2020.

This Court will be remiss were it to conclude this Opinion without pointing out the improper designation of Ms. Jocelia Taplah as the party respondent to the appellant’s petition for a judicial review. We note that Ms. Taplah as Directrix of the Zoning Department of the Ministry of Public Works is delegated by the Minister pursuant to section 27.2(d) to perform the duty of carrying out and administering “urban and town planning and land use re-zoning”. She was not acting in her personal capacity, rather she acted as an agent of the Ministry of

Public Works; as such the proper party respondent to the appellant's petition for a judicial review should have been the Ministry of Public Works. This notation is necessary because the *Civil Procedure Law Revised Code:1:5.5* directs and dictates that "when a public officer may sue and be used in his official capacity, he may be described as a party by his official title rather by name, subject to the power of the court to require that his name be added." An improper designation of a person in a representative capacity, as in the case of Ms. Jocelia Taplah, may be a ground for invoking *Civil Procedure Law Revised Code:1.11.2(b)*; that is, "that the court has not jurisdiction of the person". Henceforth, all lawyers appearing before this Court and subordinate courts must heed this notation.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the lower court is affirmed. 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. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Abraham Wade Simpson of the J. C. & Associates Legal Chambers, Inc. appeared for the appellant. Counsellor Kpoto Kpadeh Gizzie appeared for the appellees.