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

Philip Glago Jacob Dahnpunu, Sarah Hakah, and others to be identified of the City of Careysburg, Wheada Town Community, Montserrado County, Liberia..... .....Appellants	)	
Versus	)	**APPEAL**
Michael N. Wisseh by and through His Attorneys-in-fact Opatee Peters & Dorothy Morris Smith of the City of Monrovia, Montserrado County, Liberia.....Appellee	)	
GROWING OUT OF THE CASE:	)	
Michael N. Wisseh by and through His Attorneys-in-fact Opatee Peters & Dorothy Morris Smith of the City of Monrovia, Montserrado County, Liberia.....Plaintiff	)	
Versus	)	ACTION OF EJECTMENT
Philip Glago Jacob Dahnpunu, Sarah Hakah, and others to be identified of the City of Careyburg, Wheada Town Community, Montserrado County, Liberia .....Defendants	)	

HEARD: April 6, 2022 DECIDED: September 5, 2022

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The present appeal emanates from an action of ejectment filed on March 5, 2014, before the Sixth Judicial Circuit, Civil Law Court, Montserrado County by the appellee Michael N. Wisseh through his attorneys-in-fact, Opatee Peters and Dorothy Morris Smith. The appellee alleged in his complaint that he is the bonafide title holder of One Hundred Acre (100) of land lying and situated in Wheada Town, Lower Careysburg; that he purchased the land in 1989 from the administrators of an Aborigine Grant of eight (800) acres of land from the Republic of Liberia to Gabriel A. Pitman *et al.;* that the appellants have illegally entered on and began selling his land and upon being told to desist have remained stubborn and intransigent.

The appellee further stated that in 2013, he received a complaint from his employee residing on the property that the appellants had entered on his land

and destroyed the crops planted thereon and had begun planting cornerstones on portion of the land; that in order to confirm whether the appellants were indeed encroaching on his property, the appellee averred that he requested a re-survey of his hundred acres of land; that on the day of the re-survey, the appellants appeared and vehemently stopped and obstructed the process, bringing in a group of gangsters who made threat of bloodshed and threatened to destroy the surveyor's equipment if he insisted on surveying the land. The appellee complained that this behavior of the appellants was a gross violation of his fundamental rights as provided under Article 20(a) and 22(a) of the 1986 Constitution of Liberia and has caused him mental distress and anguish as he has been unable to bring in his investors from the Bahamas to undertake their investment plan, causing him to lose financially. The appellee in his prayer demanded the sum of Three Hundred Thousand United States Dollars, (US$300,000.00) as general damages; One Hundred Thousand United States Dollars (US$100,000,00) as special damages, and Fifty Thousand United States Dollars (US$50,000,00) as punitive damages to serve as deterrent to the appellants. The appellee also prayed the court to order the appellants ousted, ejected and removed from his property, and to have the appellants pay all damages and cost in the proceeding.

The appellee attached to his complaint a certified copy of an Aborigine Grant Deed from the Republic of Liberia to Gabriel A. Pitman *et al.* for eight (800) acres of land situated at Lower Careysburg, Montserrado County, dated April 5, 1903; Letters of Administration from the Monthly and Probate Court of Montserrado County, issued to the administrators of the intestate estate of Gabriel A. Pitman et al, dated March 17, 1989; Court Decree of Sale of real property, dated October 11, 1989, and an Administrator Deed, dated on November 29, 1989.

Upon been served with the summons, the appellants filed their answer in which they prayed the court to deny and dismiss the appellee's complaint because the instruments relied on by him with the exception of the aborigine deed are all fraudulent in terms of their authenticity; that the names of the administrators for the Estate are wrongly spelt on the Letters of Administration and Decree of Sale proffered by the appellee; that assuming that mistakes were made in the preparation of the documents, it was not possible for the same probate judge to have signed these documents with the names of the administrators of the state wrongly written, and this made the appellee's documents questionable. The appellants also stated that the Administrator Deed attached to the appellee complaint is dismissible because on the face of the deed the property is conveyed by only two of the administrators of the

Estate, while the deed is signed by three of the four administrators. Assuming that the sale was really done by these three administrators, the conclusion is that the family representing Begar Dia Dpoi who did not sign the appellee's document was not aware and never benefited from the transaction; thus, a breach of condition of the alleged Letters of Administration and the purported Decree of Sale.

The appellants further questioned the signatures of the administrators on the appellee's deed, averring that from the petition of the supplementary Decree of Sale, with the exception of Zoegar Barclay, the rest of the three administrators could not read and write the English language; that this is evident by the fact that only Zoegar Barclay signed while the rest of the administrators have finger prints before their names, meaning that they were unlettered. However, on the face of the appellee's Deed, only Gboh-Tee Karh is believed not to read and write and instead of writing out his name completely and correctly for him to affixed his thumb, his name is signed; that it is apparent also by the writing on the deed that the alleged administrators' names were all written by the same person. Further on the letters of administration, it is written Luvenia V. Ash Thompson, while on the decree of sale it is written Luvenia V. Thompson. The appellants denied that the appellee owned property in the area and alleged that his deed was obtained through fraud; that assuming without admitting that a sale really took place, said sale was illegal and did not meet the requirement of the law.

The appellants stated further that appellee's claim for damages is a joke since making an investment plan is not an investment; that the appellee did not attach to his complaint any such plan, and the loss that the appellee is requesting compensation for is not specific and itemized in order to know the extent of damages done to him. The appellants therefore prayed the court to dismiss the appellee's complaint for reasons alleged in their answer.

The appellee filed his reply generally denying the appellants entire answer and confirming that he is the actual and true owner of the disputed property as exhibited by the attachments to his complaint. He further prayed the court to oust and evict the appellants from his property.

The lower court had a trial during its June Term 2015, and at the conclusion of the trial, the jury returned a verdict of liable against the appellants, awarding to the appellee, Fifteen Thousand United States Dollars (US$15,000) as general damages, Five Thousand United States Dollars (US$5,000) as special damages, and Two Thousand United States Dollars (US$2,000) as punitive damages.

The appellants thereafter filed a motion for a new trial alleging amongst others that the denial of their application for *subpoena duces tecum* for the Probate Court Clerk to produce the actual records in possession of the court concerning the case greatly affected the outcome of the liable verdict.

The judge heard the motion and denied same and affirmed the jury's verdict in his final ruling, holding that once the jury had determined that the evidence was sufficient in law to make an informed determination, the court was impotent to question said verdict.

The appellants excepted to the judge's final ruling and filed a bill of exceptions stating inter alia that the judge committed reversible errors: (a) when he confirmed the verdict that was contrary to the weight of the evidence adduced at the trial; (b) when he give an award that did not correspond with the evidence produced at the trial, nor was a single evidence produced linking the appellants collectively or individually to the obstruction of the appellee's right to the property or that appellants participated in the sale of the disputed property; (c) that had the Judge charged the jury on the historical fact as requested by the appellants, that is, that the presiding judge of the Monthly and Probate Court of Montserrado County from April 1987 to 1990 was Judge Harper Soe Bailey and not Judge Luvenia V. Ash Thompson as reflected on the Letters of Administration and the Decree of Sale presented by the appellee, the jury would not have come up with the verdict of liable; (d) that there were four administrators on the Letters of Administration and Decree of Sale proffered by the appellee but only two allegedly conveyed the property to the
appellee; and three signed the deed. The appellants therefore prayed that the lower court final ruling be reversed.

Did the trial judge err when he disallowed the appellants' application to have the Probate Court Clerk brought in to testify to the documents issued by the Probate Court for the Gabriel A. Pittman et al. Intestate Estate, or to take judicial notice of the historical fact of Judge Luvina V. Ash-Thompson service at the Monthly and Probate Court for Montserrado County?

In support of his title to the one hundred acres of land allegedly purchased from the administrators of the Intestate Estate of Gabriel A. Pitman, et al., the appellee presented three general witnesses and two rebuttal witnesses to testify on his behalf during the trial in the court below.

Appellee's first witness, Mr. Opatee Peters, one of his Attorneys-in-fact, testified that on November 29, 1989, the appellee who lives in the Bahamas bought one hundred (100) acres of land from the administrators of the

Intestate Estate of Gabriel A. Pitman, et al.; that after the purchase, there

was no problem with the land while the administrators who sold the land to the appellee were alive and even after the death of these administrators, the second group of administrators headed by one Miatta also had no problem with the appellee; that these previous administrators respected the appellee's right to the land and looked after the land for him; that in the year A.D. 2000, the appellee had him take one Mr. J. Diayeh Neaweah to reside on the property as the caretaker to ensure that appellee had a presence on the property; that Mr. Neaweah was introduced to the town people and the Chief who all welcomed him; that all went well until the new administrators took charge of the Estate; that despite the presence of appellee's representative on the land, the appellants began to encroach on portion of the land, selling same to people who are building even as the case is in court. The witness testified further that when the encroachment by the appellants were brought to the appellee's knowledge, the appellee requested the surveyor who had previously surveyed the land when it was bought to do a re-survey of the land to establish whether the appellants were indeed encroaching thereon; that announcements of the survey were circulated for July 18, 2013, but the appellants wrote that because they were preparing for the Independence Day (July 26) celebration, they were unable to be present and requested that the survey be postponed until the first week in August. The witness stated that they went to see the appellants after the first week in August to set a date for the survey but the appellants became intransigent, insisting that the appellee's documents be given to them to take and study; that he (witness) refused and told the appellants that the documents had only been brought for the appellants to review as they had requested. With the insistence of the appellants that the witness give the appellee's documents to them, the witness said that they left and thereafter put up another survey announcement. It was upon his return with the surveyor to carry out the re-survey that the appellants threatened them, and on the phone also threatened the appellee's counsellor, so they decided to leave because they did not want to get involved in a conflict with the appellants. The appellee thereafter sent the witness and Dorothy Morris-Smith a power-of-attorney to proceed to institute an action against the appellants on his behalf and to have the appellants ejected from the property.

The appellee's second witness, Mr. Matthew B. Tarr, a land surveyor of thirty years who is said to have conducted the survey of the disputed property in 1989 for the appellee, confirmed Mr. Opatee Peters' testimony that he was prevented from carrying out a re-survey of the appellee's land after it was reported that the appellants had begun to encroach thereon. He verified that he prepared the appellee's deed for the one hundred acres of land in 1989,

and confirmed that the administrators of the Estate at the time did sign the deed in his presence.

Mr. J. Diayeh Neaweah who was taken by Mr. Opatee Peters to live on the land to enforce the appellee's possession of the land, testified as the appellee's third witness. He testified that he was taken by Mr. Opatee Peters to stay on the appellee's one hundred acres of land in Wheada Town; that when he was taken there, he was introduced to the Town's Chief who hosted him and one of the townsmen, Koko, took him to various points to show him the appellee's cornerstone. He stated that from 2000 when he was taken to the land up to early 2013, there was no confusion until he began to carry out some farming activities on the land; that it was when the appellants started cutting palm and sticks on the land and whenever he complained, the appellants would tell him that the property was owned by the Bassa people and not the Nimba people, so the appellee did not own property there; that the action of the appellants blew up into a conflict between him and the appellants and he called Mr. Opatee Peters to mediate in the matter. At the meeting, the elders explained to Mr. Opatee Peters that what made them angry was that he was not allowing them to do anything on the appellee's land; that one of the elders in the meeting, call Pewee, told him that he was right because if he (Pewee) was taking care of the appellee's land, he would not allow anyone to take things from it. The witness stated that the appellants persisted on going on the land, cutting down his cassava plants, digging up his potatoes, etc. and rooting up the appellee's corner stones and selling the property to others.

Thereafter, the appellee rested with oral evidence and gave notice that he would bring rebuttal witnesses, if needed.

The appellee admitted the following instruments into evidence: an Aborigines grant deed of 800 acres of land to Gabriel A. Pitman et al. of Wheada Town, Lower Careysburg District; Letters of Administration signed by Luvenia V. Ash-Thompson, Judge, Monthly and Probate Court, March 17, 1989; Court's Decree of Sale of Real Property, dated October 11, 1989, signed by Luvenia V. Thompson, Judge, People's Monthly and Probate Court; a deed issued by Zoe-gar Barclay and Day-dyugar Gbah, conveying land to Michael N. Wisseh, and signed by Zoe-gar Barclay, Gboh-tee Karr and Bargar Dya-Kpoi. The appellee also put into evidence two receipts, one dated September 8, 1989, for Twenty Thousand Dollars ($20,000), signed Zoe-gar Barclay and Gboh-tee Karr; another dated November 29, 1989 for Forty Thousand Dollars ($40,000), signed by Zoe-gar Barclay.

The appellants then took the stand and brought forth three witnesses. The witnesses in essence testified that the appellee was taken to Wheada Town by Mr. Matthew B. Tarr, who was hired by the former administrators of the Estate to survey and demarcate the town's land; that when the appellee and Mr. Tarr came, the appellee expressed interest in buying one hundred acres of the town's land and the administrators of the Estate negotiated with him for payment of four hundred dollars per lot, but the appellee kept insisting on paying one hundred dollars a lot so the negotiation broke down and the appellee and Mr. Tarr left; that it was not until 2013, that the appellee representative came again with the surveyor, Matthew B. Tarr, and informed them that he wanted to conduct a re-survey of one hundred acres of the town's land, claiming that the appellee had bought the land from the administrators of the estate in 1989. The witnesses said that they requested for the appellee's documents showing his ownership of the land that he alleged to have bought from the former administrators of the Estate, but the representative of the appellee refused to give them the documents. The individuals listed as administrators on the appellee's title instrument, the appellants said, had denied selling the property to the appellee and that they (appellants) had gone to the Probate Court to ascertain whether these individuals obtained Letters of Administration and a Decree of Sale for Real Property, in 1989 from the Probate Court, but the clerk of the Probate Court told them that these documents were not issued by the court and that in fact Judge Luvenia Ash Thompson was not the Probate Court Judge in 1989; therefore, she could not have signed the Letters of Administration and the Decree of Sale for Real Property proffered by the appellee. The appellants allege that the appellee's documents are product of fraud.

The appellants' witnesses further stated that the appellee's deed shows that only two of the four Administrators, reflected in the Letters of Administration and Decree of Sale of Real Property proffered by the appellee, sold the property to the appellee as evidence on the deed; that of the four administrators, only one of them could read and write and therefore it was a surprise to see that all the administrators' names were written and by one who seemed to be the same person. The appellants rested with evidence and prayed the court to deny the claim of the appellee.

We note that the Aborigine deed proffered by the appellee was a grant by the Government of Liberia for eight hundred acres of land to the tribal people of Wheada Town and it was held in common by the various families who were natives and inhabitants of the Town. Conveyed to Gabriel A. Pitman, et al.,

this grant of land has over the years been administered as an intestate estate with representatives of each family of the town serving as Co-administrators.

The crux of the appellants' argument on appeal is that the administrators of the estate did not obtain Letters of Administration and Decree of Sale in 1989 and that the documents presented by the appellee are fraudulent. According to the appellee, the documents said to have been obtained from the probate court and upon which the sale of the one hundred acres of land to the appellee was predicated, that is, the Letters of Administration and Decree of Sale were all fraudulent since they were signed by Judge Luvenia V. Ash Thompson who was not the Judge of the Monthly and Probate Court of Montserrado at the time these documents were allegedly issued by the court; that had the trial judge charged the jury on the historical facts raised by the appellants, that is, whether Judge Luvenia V. Ash Thompson served as judge of the Monthly & Probate Court for Montserrado County from April 1987 to 1990, the jury most probably would not have returned a liable verdict against them.

The records show that one of the appellants' witnesses on the direct examination responded to a question regarding the issue of fraud raised in the appellants' answer as follow:

> Q. "Mr. Witness, in your testimony, you said that the Letters of Administration and the Court Decree of Sale are fraudulent, do you confirm and affirm that statement? "
>
> A. "Yes."

Predicated upon this answer the counsel for the appellants made the following applications:

> "At this stage, counsel for defendant request court for *subpoena duces tecum* to be served on the clerk of the Probate Court to produce the following records; the Letters of Administration and Court's Decree of Sale of Real Property that was issued in the name of the intestate estate of the late Gabriel Pitman from 1982 to 2002, and the petition on the record of said court that has been filed on behalf of the administrators for Letters of Administration and also for Decree of Sale of said Estate. Submit."

Counsel for the appellee (plaintiff) resisted the application of the appellants' counsel as following:

> "The request lacks legal basis as the witness on the stand and or the counsel for the defendants did not raise any such issue in his responsive pleadings and or pleaded any counter letter of administration to the effect, if any, as alleged. A mere allegation does not constitute or warrant ground for granting an application. Counsel for plaintiff says that the issue of contention which the parties in these proceeding have agreed to is whether or not there is 100 aces owned by Michael Wesseh, and/or whether or not the estate administrators sold 100 acres. And for a request to be served is a fishing expedition which opportunity

> counsel for the defendant has to have interested for an affidavit if same was but not admitting that the allegation has made was legal and pleaded same before this court to warrant the subpoena of any such record, counsel says that the application is made in bad faith so as to delay the proceedings because the witness on the stand make no reference to any documents and or administrator that he may have succeeded for the estate to warrant this court to subpoena the records of the probate court as prayed for by the counsel for the defendants. Wherefore and in view of the foregoing, counsel request your Honor to deny the application and order the counsel for the defendant to proceed as pleaded and deny the request of the said counsel and order the matter proceed with. And submit."

.Ruling on the application and the resistance thereto, the Court held as follows:

> "Under our practice and procedure for an instrument to be made a part of the evidences in a trial it must have been pleaded and/or notices for the production of the same given during trial. In the instance case the court observes that the instruments that the defendant is attempting to subpoena were not pleaded and no notice was given for their production by the defendant during the trial. It is true that the defendant in their answer raises the issue of the authenticity of the plaintiff's authority and title. But no notice was given that instruments would be subpoena from the probate court to establish the same. Under our practice, notice is the cardinal requirement and where no such notice is given the court will allow the parties to spring surprises on the adversary. The application for subpoena is hereby ordered denied. AND **SO ORDERED."**

This Court finds the ruling of the trial judge erroneous. Upon been served with the summons, the appellants filed their answer in which they prayed the court to deny and dismiss the appellee's complaint because the instruments relied on by him with the exception of the aborigine deed were all fraudulent in terms of their authenticity; that it was not possible for the same probate judge to have signed these documents with the names of the administrators of the Estate wrongly written, and this made the appellee's documents questionable. The judge in denying the appellants application to subpoena documents that were issued by the probate court for the Estate, stated that the appellants in their answer raised the issue of the authenticity of the plaintiff's authority and title but that no notice was given by the appellants in their answer stating that instruments would be subpoenaed from the probate court to establish the fraud alleged.

This Court has held that issue of fraud must be specifically proven at trial. The documents proffered by the appellee to establish his purchase and title of ownership to the land was pertinent in establishing the appellee's title and right of possession to the land as claimed. Where the Letters of Administration and the Decree of Sale proffered were said to have been issued by the probate court and were challenged by the appellants and alleged to be fraudulent, the

judge was required by law to allow the appellants challenging the validity of these instruments to present their evidence of proof. It is the probate court that authorizes the appointment of person(s) to administer an intestate estate, and for those appointed to dispose of the intestate property. Therefore, for person(s) to administer an intestate estate and dispose of property of the said estate, proof must be established of said authorization by the probate court; absence said appointment and authorization by the Probate court, any sale transaction affecting the estate is *null and void ab initio: Tetteh v. Stubblefield,* 15 LLR 3 (1962),_*Caulcrick v Lewis et al,* 22 LLR 37, 43 (1971), *Mendohdou et al v. Geahdoe et al,* 39 LLR 742 (1999).

It was pertinent to the ejectment action for the judge to have allowed the appellants' application requiring the clerk of the Monthly and Probate Court of Montserrado County to be subpoenaed so as to testify to the documents issued by the Probate Court in regard to the intestate estate of Gabriel A. Pittman et el. Further, the jury was deprived of weighing on an important piece of evidence that had the probability of affecting its verdict when the judge did not place in his charge to the jury the historical fact of the time Judge Thompson served as judge of the Monthly and Probate Court of Montserrado County as required by the appellants.

The law provides that courts shall take judicial notice of public and historical facts that are so well known as not to be the subject of reasonable dispute (1LCL Revised section 25.2). Judges who have presided over our courts and the time during which they presided are matter of public records. The historical record of the Monthly and Probate Court for Montserrado County clearly established that Her Honor Luvenia V. Ash-Thompson did not preside over the Monthly and Probate Court for Montserrado County in the year 1989, and therefore could not have legally signed the Letters of Administration and Decree of Sale proffered by the appellee for the intestate estate of Gabriel A. Pittman et al. for the sale of portion of said estate in 1989; hence, the documents proffered by the appellee as proof of his authority to purchase from the said estate cannot legally be said to have transferred title from the intestate estate.

Ordinarily, this Court, like the judge, would have left the findings with the jury since it's the law extant that juries are the triers of facts and are to determine and decide the factual issues upon the evidence adduced at trial: *(Ketter v. Jones et al.,* 41 LLR 81 (2002); *Liberia Tractor and Equipment Company v Perry,* 38 LLR 119, 127 (1995). However, this Court has held that where the verdict of the jury is not in harmony with the evidence or so utterly defies the

evidence in the case, the court will set aside the verdict and reverse the judgment, and will give such judgment as should have been given by the trial court. *Watamal et al v. Keita et al.,* Supreme Court Opinion, October Term 2012.

Our diligent perusal of the historical records of the Probate Court for Montserrado County indicate that the following Judges presided over the court for the period spanning 1985-1990:

Her Honor Luvenia V. Ash-Thompson (1985-May 1986)
His Honor Napoleon B. Thorpe (May 1986-Dec 1986)
His Honor Joseph M. Kennedy (Dec. 1986-1987)
His Honor Harper S. Bailey (1987-1990)

This record incontrovertibly shows that Her Honor Luvenia V. Ash-Thompson was not presiding over the Probate Court for Montserrado County in 1989, therefore she could not have signed the instruments proffered by the appellee for the administration of the intestate estate of Gabriel Pittman et al. or the disposition of the property of the intestate estate.

As stated supra, in cases of intestate estates, the appointment of administrator (s) by the Probate Court is a conclusive evidence of authority of said administrator (s) to administer an intestate estate, and the sale of portion of such intestate property can be made by the administrator(s) of the estate only by authorization of the Probate Court. Where such authority is found to be lacking, the transaction is void. In this case, the documents upon which the appellee alleges is his authorization to acquire title to the disputed property, been found to be fraudulent by this court his right of ownership to the property crumbles.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the lower court is reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to the Judgment emanating from this Opinion. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR S. L. LOFEN KANEAH, JR. OF THE NACH LEGAL SERVICES, INC. APPEARED FOR THE APPELLANTS. COUNSELLOR ALHAJI SWALIHO A. SESAY OF THE SESAY, JOHNSON AND ASSOCIATES LAW CHAMBERS APPEARED FOR THE APPELLEE.