

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, 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

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Phillip Toe, Emmanuel, Emmanuel Nagbe)  
Theodosia Nagbe, of the City of Monrovia)  
Liberia.....Appellants )

Versus )

**APPEAL**

Ellen Free of the City of Monrovia, )  
Montserrado County, Liberia. . . . Appellee )

**GROWING OUT OF THE CASE:** )

Ellen Free of the City of Monrovia, )  
Montserrado County, Liberia .....Plaintiff )

Versus )

**SUMMARY PROCEEDINGS TO  
RECOVER POSSESSION OF REAL  
PROPERTY**

Phillip Toe, Emmanuel Nabge, Theodosia )  
Nagbe, also of the City of Monrovia )  
Liberia.....Defendants )

Heard: April 12, 2022

Decided: August 4, 2022

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The essential facts of this case are that on June 26, 2018, the appellee, Ellen Free, through her attorney-in-fact, Lewis Free, filed a complaint of summary proceedings to recover possession of real property before the Monrovia City Court against the appellants Phillip Toe, Emmanuel Nagbe and Theodosia Nagbe, stating that the said appellants were wrongfully withholding and occupying her property lying and situated in Gbangay Town, Airfield, and Monrovia. The appellee prayed the court to oust and evict the appellants because they were undesirable tenants and were duly notified to vacate the premises but refused to abide by the notice to vacate. The appellee also prayed the court to award her US\$300.00 as general damages for the appellants' wrongful withholding of her property in addition to the costs of the proceedings.

When the case was called for hearing before the Magisterial Court, the appellants counsel, filed a motion to dismiss the appellee's complaint on ground that title to the property was in issue; hence, summary proceedings to recover possession of real property would not lie. The appellants averred in their motion to dismiss that their title to the property is based on alleged purchase by them of the property from one Amanda Freeman who acted on behalf of the appellee and for which purchase they hold receipts issued by her. The records of the transaction for the purchase of the property, the appellants contend, constitutes possessory right and proof of ownership of the property which removes the case from the realm of summary proceedings to recover possession of real property.

His Honor J. Kennedy Peabody, Stipendiary Magistrate of the Monrovia City Court, heard arguments on the motion to dismiss and thereafter granted the motion, ordering the dismissal of the appellee's complaint on grounds that title was in issue and the proper forum for the adjudication of the case was the Sixth Judicial Circuit Court, Montserrado County. Appellee Ellen Free excepted to the ruling and announced an appeal to the Sixth Judicial Circuit Court.

His Honor Yussif D. Kaba then presiding by assignment over the Sixth Judicial Circuit Court, granted the appellee's appeal and reversed the ruling entered by the Monrovia City Court. Judge Kaba held that the appellants failed to show any proof that the person from whom they were allegedly purchasing the disputed property had authority from the appellee to sell the property. Judge Kaba concluded that it not being-disputed that the appellee Ellen Free is the

owner of the property, and there being no showing that she authorized the sale of the property to the appellants, Magistrate J. Kennedy Peabody erred by dismissing the appellee's complaint of summary proceeding to recover possession of real property..

Dissatisfied with Judge Kaba's ruling, the appellants excepted thereto and filed an appeal to this Court for final appellate review. The appellants' six-count bill of exceptions is quoted below:

1. That this court erred and committed reversible error when you ruled that Amanda Freeman who was the representative of Ellen Free was not instructed and did not have the authority to sell the property in question because the subject property had a caretaker in person of Amanda Freeman who collected rents for and on behalf of Ellen Free. It was Amanda Freeman who collected rents for Ellen Free while Ellen Free was in the United States of America. After years of rent collections, Ellen Free communicated with the co-appellee (now co-appellant) Theodosia Nagbe that she had now decided to sell the subject property and the arrangement was reached and agreed that the appellees, now appellants could purchase the property for the

amount of US\$10,000.00, evident by the receipts exhibited by the appellees now appellants. The evidence shows that Ellen Free through Amanda Freeman collected the purchased amounts for the sale of the subject property in question and receipts were obtained by the appellees now appellants.

2. Your Honor also committed reversible error when you ruled that title was not in issue because the appellees paid real cash to Amanda Freeman under the directions of Ellen Free as she usually directed the tenants and later grantees to pay the purchase amount for the subject property which money was transferred to Ellen Free as she usually received her rents from the appellees now appellants. Your Honor erred that title is not at issue when evidence exhibited showed receipts for the amount paid for the purchase of the land which appellees now appellants and the Ellen Free benefits her full amount for the sale of the property in dispute. It will not be in the interest of justice and fairness and equity for Ellen Free to take away the appellees' now appellants' money for the sale transactions and at the same time to re-acquire the subject property in question.
3. Your Honor also erred when you failed to consider the content of the receipts issued by Amanda Freeman Taylor on behalf of Ellen Free, which Ellen Free did not deny these receipts issued to the appellees now appellants. The records show that these amounts paid for the purchase of the disputed property in question cover 1999 to 2003. Appellees now appellants say that what the records reflect is purchased of land agreement between the parties and the purchase being made and the appellees now appellants in possession of the said property for 19 (nineteen) years without any molestation shows that there was a business transaction which was consummated by the parties and that agreement is binding as a matter of law.
4. Your Honor also erred and committed reversible error when you ignored the evidence and the facts that the co-appellee (now co-appellant) Theodosia Nabge together with her husband, the late Gbakanama J. Gbamakollie, Sr. had been paying for the disputed property in question when her husband, Gbakanama J. Gbamakollie, Sr., died which the burden had been on the co-appellee (now co-appellant); Theodosia Nagbe for full payment and part payments were being made by co-appellee now co-appellant, Theodosia Nagbe. The only remedy that could have been available to Ellen Free would have been action of debt if any, not Summary Proceedings to Recover Possession of Real Property. It is our law extent in this jurisdiction that contracts and agreements of parties must be strictly followed and enforced by court of law.
5. That. Your Honor also committed reversible error to ignore the possessory. Rights of the appellees now appellants and their constructive title evident by the purchase receipts for the disputed property in question in that the language in the receipts clearly maintain that part-payment for the purchase of house in the amount with stipulated balance to be paid at later dates by the co-appellee now co-appellant, Theodosia Nagbe. The appellee throughout in the

proceeding did not deny or disapprove the averments made by the appellees now appellants in these proceedings.

6. That Your Honor erred and committed reversible error to overturn the ruling of the Stipendiary Magistrate His Honor J. Kennedy Peabody because the rationale behind the Stipendiary Magistrate ruling is that because the evidence produced for the dismissal of the Summary Proceeding to Recover Possession of Real Property action showed that there was a purchase agreement for the subject property and the parties agreed on the term on which Ellen Free had received portions of the amount for the property and it had been 19 years since the transaction, and there was no rejection from Ellen Free. Moreover, Ellen Free did not deny the averments made by the appellees now appellant in this review action. The Magistrate was not in error because contracts are binding and enforceable by courts of law once it was at arm's length and clearly show the will and intent of the parties to the agreement. The Magistrate was not in error because the appellees now appellants enjoyed possessory right for 19 years since the date of the beginning of the purchase and constructive title was established evident by the receipts for the purchase of the property, and moreover, Ellen Free re-acquiring ownership of the property will not be in the interest of justice and equity because she had received pay and benefited from same. The Magistrate was not in error to decide that title was at issue because the receipts exhibited by the appellees *now* appellants show that ownership of the property was agreed by the parties to be turned over the appellees now appellants and possession was completed and constructive title was consummated evident by the receipts for payment of the property.

As garnered from the bill of exceptions above, the appellants do not deny that Ellen Free; the appellee, is the owner of the property in dispute. Their contention, instead is that they have possessory right to the property, since the appellee had communicated with and instructed Amanda Freeman, the caretaker of the property, who collected rents for and on her behalf, to sell the property; that the appellee benefitted from the proceeds of the sale made by Amanda Freeman; that the receipts of payments for the property vested constructive title and ownership of the property in them. Therefore, the appellants assert, Magistrate J. Kennedy Peabody did not err in ruling that title was in issue in the case.

In their brief filed before this Court; the appellants' forcefully advance the position that this Court should recognize and give legal validity to the receipts issued to them by Amanda Freeman for the alleged purchase of the disputed property as evidence of title.

The appellee on the other hand denies that she gave Amanda Freeman the authority to sell her property; that Amanda Freeman had no authority to act for and on behalf of her (appellee) for the sale of her property; thus, any

purported sale executed between Amanda Freeman and the appellants was of no legal effect and could not deprive the appellee of her property. We quote below the appellee's resistance to the appellants' motion to dismiss in the Magisterial court:

"In resisting movant's motion counsel for respondent says the following:

1. That title is at issue as claimed by the counsel for movant/defendant is untenable. Counsel for movant says that the property, subject of this proceeding was sold to movant but counsel failed to show any documents with respect to the transactions or sale contract entered into by and between movant and respondent;
2. Counsel says that under our law any transactions involving real property must be in writing, especially so, a contract involving the sale of real property must be in writing. Counsel for movants failed to show such documents. Counsel further says that movants were tenants of the respondent and has stayed long on respondent's property to the extent that they failed to pay respondent rent.
3. Respondent says that movant having not shown any contractual agreement with respect to the disputed property issue of title cannot lie.

Wherefore, and in view of the foregoing, counsel prays Your Honor and this Honorable Court to dismiss and deny movant's motion and orders the action of summary proceedings to real property proceeded with. And respectfully submits."

The issue presented for our determination is whether the appellants can claim purchase of the appellee's property from Amanda Freeman without showing any titled instrument or legal authority from the appellee to Amanda Freeman to sell the property.

This Court notes that the appellants do not dispute that the property subject of this dispute is owned by the appellee Ellen Free; The appellants also do not dispute that it was the appellee who placed them on the property prior to her departure to the United States of America. The appellants' central contention and indeed the basis of the controversy giving rise to this appeal is that Amanda Freeman whom the appellee left in charge of the property to collect rent: had subsequently informed appellants that the appellee had authorized her to sell the property to them and that they had commenced making payments for the purchase of the property.

It is the law in this jurisdiction that before any person can hold himself out as an agent or attorney of another to sell his principal's real property, he should receive a power-of-attorney and same should be notarized and in the case of a foreign national, probated and registered. *National Panasonic Showroom v. Moham.*, 31 LLR 582, 585 (1983); *Bryant v. African Produce Company*, 6 LLR

27, 30 (1937); *Kollie v. Kaba et al.*, Supreme Court Opinion, October Term, 2009. A power-of-attorney, as defined by this Court, is an instrument in writing by which one person, as principal, appoints another as his/her agent and confers upon the agent the authority to perform certain specified acts or kinds of acts on behalf of the principal. *St Joseph Construction Co. v ARC Group Inc.* Supreme Court Opinion, October Term, 2009. The Supreme Court has further held that when the alleged agency relationship relates to authority to dispose of real property, the power of attorney establishing the relationship or conferring the title of attorney-in-fact must specifically state that the agent has the authority not just to manage the property, but to dispose of the property and convey title to another. *Benson v. Sawyer*, Supreme Court Opinion, October Term, 2015.

Further, it is the law in this jurisdiction that all transactions relating to real property be in writing. *LAC v. ADC*, Supreme Court Opinion, October Term, 2011; *Massaquoi et. al. v. R.L.*, 8 LLR- 112 (1943). It is also a further requirement in this jurisdiction that instruments relating to the sale of real property describe in detail and specificity the realty that is subject of the sale.

The first receipt of the alleged payment made for the purchase of the property and proffered by the appellants, reads as follows:

"RECEIPT# 62499

Received -from Mr. Gbakanama J. Gbamakollie, Sr. the full and just sum of One Thousand Five Hundred United States Dollar (US\$1,500.00) against Ten Thousand United States Dollars (US \$10,000:00) he is due to pay for one house with land located in Sinkor, Airfield. The balance US\$8,500.00 is to be paid according to installments plan to be arranged at a later date.

Signed in the City of Monrovia on this 24<sup>th</sup> day of

June, 1999 BY: \_\_\_\_\_

MS. AMANDA FREEMAN  
ON BEHALF OF MS. ELLEN FREE"

Importantly, the receipt does not provide the legal capacity of Amanda Freeman to execute such sale on behalf of the appellee and it does not specifically layout the metes and bound of the property being sold, contrary to the law cited above. Our law provides that only an attorney-in-fact granted with the specific authority to dispose of real property is legally qualified to execute a sales agreement for real property on behalf of his/her principal.

Our jurisprudence relating to real property has never given recognition to receipts as evidence of title to real property. A receipt may only be used in an

equitable action to compel the performance of an agreement. In this jurisdiction, the best evidence of title to real property is a title deed conveyed by the owner of the property or a person legally acting on the owner's behalf, or a written sales contract duly probated and registered. We therefore find no justifiable basis for recognizing and giving legal validity to a new species of title called constructive title, evidenced by receipts that do not meet the requirements of law and as urged upon us by the appellants.

There is no evidence exhibited by the appellants that Amanda Freeman was legally authorized by the appellee to dispose of her property. In the absence of such authorization the alleged sale is *null and void ab initio*.

The appellants' insistence that because Amanda Freeman had the authority of the appellee to act as caretaker of the property and had been receiving rental payments on behalf of the appellee, her alleged sale of the property to the appellants was done with the authority and acquiescence of the appellee is untenable in law. As stated, authority to sell must have been given by the appellee in writing to Amanda Freeman.

We therefore hold that there being no written document by the appellee, expressly conferring authority on Amanda Freeman to act as appellee's attorney-in-fact in regard to the sale of the appellee's property, and the appellants having shown only receipts allegedly issued by Amanda Freeman as evidence of their title to the property, their claim to the property is illegal and *void ab initio*.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling entered by the Sixth Judicial Circuit, Civil Law Court, Montserrado County is affirmed; The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and give effect to this judgment. Costs are ruled against the appellants. IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR ATHUR T. JOHNSON REPRESENTED THE APPELLANTS. COUNSELLORS PATRICK JAPPAH NAH AND JOYCE REEVES WOODS REPRESENTED THE APPELLEE.