

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

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOIOLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

Joan Newton-Roland, Attorney-In-Fact for Ms. Olivia Newton,)
the Chinese Construction Company (CCC), and all others under)
their auspices.....Appellants)

VERSUS)

APPEAL)

Augustus D. Kormah, of the City of Boston, by and thru his)
Attorney-In-Fact, Jeremiah Kormah, of the City of Paynesville)
Republic of LiberiaAppellee)

GROWING OUT OF THE CASE:)

Augustus D. Kormah, of the City of Boston, by and thru his)
Attorney-In-Fact, Jeremiah Kormah, of the City of Paynesville)
Republic of LiberiaPlaintiff)

VERSUS)

ACTION OF EJECTMENT)

Joan Newton-Roland, Attorney-In-Fact for Ms. Olivia Newton,)
the Chinese Construction Company (CCC), and all others under)
their Auspices.....Defendants)

Heard: November 16, 2021

Decided: December 15, 2022

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal is the outcome of a final ruling rendered by the Sixth Judicial Circuit, Civil Law Court, Montserrado County, in an action of ejectment, wherein the jury returned a verdict of liable against the appellant herein, Joan Newton-Roland, and in favor of the appellee herein, Augustus D. Kormah.

The records show that on May 25, 2004, the appellee, Augustus D. Kormah, filed a four (4) count action of ejectment before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellant, Ms. Olivia Newton, by and through her Attorney-In-Fact, Joan Newton-Roland, and the Chinese Construction Company (CCC), alleging that he is the owner of a parcel of land situated in the vicinity of the Bonjal Community, Paynesville City, Montserrado County, consisting of three and one-half lots of land; that the appellant unlawfully and wrongfully entered upon his property and illegally utilized same by carrying construction thereon; that he notified the appellant of her illegal possession of his property,

but she refused to relinquish her illegal possession and occupation of said property to the detriment and injury of the appellee.

On April 7, 2014, the appellant filed a five count answer averting *inter alia* that she is the legitimate owner of the subject property by virtue of lawful purchase from the Administrators of the Intestate Estate of Fohn Kendeh in 2010.

Subsequently on April 25, 2014, the appellant withdrew her answer and three days later, that is, on April 28, 2014, filed a five count amended answer substantially maintaining the same allegations and denials contained in her original answer.

On May 8, 2014, the appellee filed an amended reply, affirming the averments contained in his complaint, thereby resting pleadings.

We observe that throughout the exchange of pleadings, no mention is made of the Chinese Construction Company (CCC) by both parties, although it is named as a co-defendant in the appellee's complaint, neither was any pleading ever filed by said company. Further, we see no indication of service of pleadings on the said CCC, hence we shall consider said entity not to have been brought under the jurisdiction of the trial court.

Proceeding with the facts, the records show that following a jury trial, a verdict was returned in favor of the appellee, Augustus D. Kormah, and same was confirmed by the trial court, adjudging the appellant liable for the illegal occupation and wrongful withholding of the appellee's property, and ordered the appellant ejected and ousted therefrom. The appellant noted exceptions to the trial court's final ruling and announced an appeal to the Supreme Court, hence the present appeal.

The appellant presented a bill of exceptions containing twenty (26) counts of alleged errors imputed to the trial judge for our review and determination. In consonance with the settled principle of law enounced by this Court in several of its Opinions, that it need not pass on every issue raised in a bill of exceptions or the briefs filed by the parties, but only those that are germane to the determination of a case, *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53(2000); *Vargas v. Morns*, 39 LLR 18, 24 (1998); *LAMCO J.V. v. TRADEVCO*, 26 LLR 554 (1978), we have determined, after carefully reviewing the contentions advanced by the appellant in her bill of exceptions, that the core issue for our determination is whether the evidence adduced at trial by the appellee in support of his claim to ownership of the disputed property is sufficient to warrant the verdict of liable against the appellant.

We therefore revert to the records to examine the probative value of the evidence presented by the appellee to determine if same warranted a verdict in his favor.

The appellee's first witness, Jeremiah Kormah, who is also the appellee's attorney-in-fact, testified on direct examination that in July, 2006, the subject property was offered for sale to the appellee by the Kendeh family by and thru its administratrixes Ma Gbessay Kendeh, Kulah Kendeh, Bendu Kendeh, Tenneh Kendeh, and Kamah Kendeh; that the subject property consisting of three and one-half lots was surveyed by James S. Fred, a registered land surveyor, upon the instruction and authority of the Kendeh family; that following the survey, he personally paid the sum of Four Thousand Six Hundred United States Dollars to

the administratrixes of the Kendeh Estate in behalf of the appellee; that the deed covering the surveyed parcel of land was signed by Ma Gbessay and Ma Kulah who affixed their thumb prints against their inscribed names on the deed.

The witness further testified that he visited the disputed property sometime in 2010 at which time he realized that the appellee's cornerstone bearing initials "ABK" had been removed from around the perimeter of the subject property; that he contacted Ma Gbessay regarding the removal of the appellee's cornerstone, and she informed him that one of their daughters, Jartu, had resold the subject property to the appellant; that he came to know the appellant as the person claiming the subject property when she instituted an action of summary proceedings to recover possession of real property against the appellee at the Paynesville Magisterial Court; that the appellee subsequently instituted an action of ejectment against the appellant because she continued to exercise possession over the property even though she had been duly notified that the appellee was the legitimate owner of said property by virtue of purchase from the Kendeh family.

On cross examination, the appellee's first witness recounted his testimony to the effect that the deed issued to the appellee for the subject property was signed by Ma Gbessay and Ma Kulah.

The appellee's second witness, Benjamin Kolako, testified on direct examination that he accompanied the appellee during the survey of and subsequent payment for the subject property; that the payment was made to Ma Gbessay and Ma Kulah after which they signed and issued the appellee a title deed for the said property; and that he also signed the deed as a witness for the appellee. Thereafter the appellee identified his signature affixed to the title deed.

The appellee's third witness, James Fred, who had been subpoenaed based on request of the appellee, testified that in July, 2006, he was authorized by the Kendeh's family to conduct a survey of the subject property in favor of the appellee; that following the survey, he prepared the deed and presented it to the Kendeh family in the presence of the appellee; that on the same day, the appellee paid for the property and the Kendeh family signed and issued him the deed for the said property.

Following the conclusion of appellee's third witness' testimony, the appellee rested with the production of evidence and prayed that his deed and other instruments which had been pleaded and testified to by the witnesses be admitted into evidence.

In rebuttal of the appellee's title deed and his ownership of the disputed property, the appellant presented five (5) witnesses in persons of Jemil Wah, Ma Gbessay Kendeh, Lamie Kendeh, Kulah Kendeh, and Joan Newton-Roland to testify in her behalf.

The appellant's first witness on both direct and cross examination testified *inter alia*, that he is a grandchild of Ma Bendu, one the appellant's grantors, and that he was hired by the appellant in 2009 as a caretaker for the subject property.

We note here that the testimony offered by the appellant's first witness is too remote to perceive its materiality to the issue in dispute. It is the law that all evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the

allegations or denials of the parties, or it must relate to the extent of the damages. *Civil Procedure Law*, Rev. Code 1:25.4; *Suah-Belleh v. Oniyama*, Supreme Court Opinion, October Term, A. D. 2014. Hence, we shall disregard this testimony as though it was never made a part of the records.

The second witness, Ma Gbessay Kendeh, testified that she does not know the appellant or his attorney-in-fact; that she did not convey title for any part of the Kendeh Estate to the appellee. On cross examination, when questioned as to her familiarity with Ben Kolako, the appellee's second witness responded that she did not know Mr. Kolako, thus prompting the appellee's counsel to inform the court that he would present a rebuttal to said testimony.

Although witness Ma Gbessay Kendeh had earlier testified that she did not convey any property to the appellee, when further questioned on cross examination, as to whether she signed the appellee's deed as it is indicated thereon, she responded that she did not know. We quote verbatim hereunder, the question posed to witness Gbessay and the answer she provided:

Question: "... by that answer, Madam Witness, you also signed the deed issued Augustus Kormah along with the other administrators including your brother Lamie. Not so?"

Answer: "I don't know papa"

It is worth noting that the appellant's second witness, according to the appellee, is one of the administrators that signed his deed; that although she did not sign the appellant's deed, she is one of the executors of the instrument which disavowed the sale of the subject property to the appellee.

The appellant's third and fourth witnesses in persons of Lamie Kendeh and Kula Kendeh, respectively, testified *inter alia* that they along with other administrators sold the subject property to the appellant; and, that they do not know the appellee. However, on cross examination, witness Kula Kendeh testified that she did not sign the document purporting to disavow the sale of the disputed parcel of land to the appellee. We quote the question posed to the witness Kula Kendeh and her response;

Question: "Madam Witness, did you at any point in time remember signing any paper to say no land was sold to Augustus Kormah?"

Answer: "I [didn't] sign that kind of paper; only the woman paper I signed".

The above testimony contradicts the very instrument which was purportedly signed by Kula Kendeh, disavowing the sale of the subject property to the appellee, because she admits that she never signed any instrument of said nature. These variances taint the authenticity of the instrument which the appellant relies on as proof that the appellee's deed purportedly issued and signed by the administrators of the Kendeh Estate is a product of fraud.

It is settled law in this jurisdiction that all admissions made by a party or his agent acting within the scope of his authority are admissible and conclusive evidence against such party, *Civil Procedure Law*, Rev. Code 1:25.8; *W v Nbolonda*, Supreme Court Opinion, March

Term, 2014. Hence, we will not give any credence to an instrument that has already been berated and discredited by one of its purported executors.

The appellant's fifth witness, Joan Newton-Roland, testified *inter alia*, that she is the sister of the appellant; that the appellant appointed her as her attorney-in-fact to protect her interest in the subject property; that she has been taking care of the appellant's property since August 27, 2010; that she placed other persons on the land to help take care of the property.

On cross examination, witness Joan Newton-Roland testified to the effect that she was not present during the purchase or survey of the subject property but was aware of the document purportedly signed by the administrators of the Kendeh estate in persons of Ma Gbessay Kendeh, Lamine Kendeh, Bendu Kendeh, and Kulah Kendeh, to the effect that they did not sell any land to the appellee. Following the testimony by witness Newton- Roland, the appellant rested with the production of evidence.

Thereafter, the appellee presented his rebuttal witness, in person of Jeremiah Kormah, who testified that Ma Gbessay did know Ben Kolako; that Ben had also bought property from the Kendeh family which was the reason why he had recommended that the appellee buy his property from the same family.

Given the scope of the testimonies by both the appellant and appellee along with their respective witnesses, and their species of documentary evidence, this Court must now determine whether or not the appellee's title is superior to that of the appellant.

In making a determination of title to real property, this Court has consistently and unequivocally held that the onus to prove title to real property rests exclusively on the plaintiff; hence, it is inconsequential that the defendant fails to prove title to the property, the subject of litigation, or that the defendant's title is defective, for same cannot serve to vest title in the plaintiff, without the plaintiff first having to demonstrate legally and to the satisfaction of the court that he or she does have legal title to the property claimed by him or her. *Watamal ct al v. Keita et al.*, Supreme Court Opinion, October Term, 2013; *The Intestate Estate of the Late karman Dassen v. Bawo, Captan ct al.*, Supreme Court Opinion, March Term, 2012.

Furthermore, the Supreme Court has recurrently opined that while a deed generally evidences title to real property, the mere exhibition of a title deed by a plaintiff, or for that matter by any party, claiming title to real property, does not by itself or in itself automatically prove that the plaintiff has title to the property in dispute, or vest title to the property in the plaintiff or in the other party, especially where the title is challenged. *Watamal, Id.*

It is trite law that the burden of proof in an ejectment case rests on the plaintiff and not the defendant; that the plaintiff in an action of ejectment must recover on the strength of his title and not on the weakness of the title of his adversary; that a defendant need not prove or show title until a plaintiff has first established title in himself; and that that mere allegations does not constitute proof, but same must be supported by the evidence to warrant a court or jury accepting it as true. *Levin v. Jtivico Supermarket* 24LLR 187, 194 (1975); *Dasusen and Kargou v. Coleman*, 36LLR 102, 103(1989), *The Heirs of the Late Jesse R. Cooper v. The*

Augustus W. Cooper Estate, 39LLR 750, 757(1999); *Pentee v. Tulay* 40LLR, 207 215 (2000), *Knuckles v. TRADEVCO* 40LLR 511 525(2001), *Sayon et al., v. The 14th Episcopal District, A.M.E Church*, Supreme Court Opinion, March Term A.D. 2017.

We note that both the appellant and the appellee's title deeds originate from the same grantor. This Court says that where two parties claiming title to a disputed parcel of land have the same grantor, the party with the older deed which is duly perfected has superior title. *Suah-Belleh v. Oniyama*, Supreme Court Opinion, October Term, 2015; *Mananaai v. Momo*, Supreme Court Opinion, March Term, 2012; *Lartey et al. v. Corhel et al.*, 36 LLR 255 (1989)

The records indicate that the appellee's deed is dated July 22, 2006; that it was probated on July 25, 2006, and registered in volume 08B-06, pages 133-134 on July 27, 2006. Furthermore, the appellee adduced a document from the CNDRA captioned "Letter of Confirmation" to the effect that his deed is filed with said institution. We quote below the letter of confirmation, to wit:

"R-1/DS-CNDRA/6/'014

May 6, 2014

LETTER OF CONFIRMATION

This above titled certificate is herewith issued after a thorough and diligent search into our documentary holdings concerning a legal instrument (Administrator's Deed) from Bendu, Kula, Tenneh, Gbessay, Lamie and Gbotoe Kande to Augustus B. Kormah, Sr., Lot No. N/N, situated at Bonjal, Paynesville, Montserrado County. And said instrument was legally probated the 25th day of July, A. D. 2006 and registered in volume 08B-06, pages 133-134, and filed within the National Archives, Montserrado County.

At the end of our research, there is evidence of existence of the above Administrator's Deed. Therefore, the Letter of Confirmation is herewith issued.

Given under my hands and seal of the Center for National Documents & Records this 6th day of May, A. D. 2014

Mustapha K. Wesseh
REGISTRAR OF DEEDS & TITLE DOCUMENTS"

On the other hand, the appellant's deed is dated August 24, 2010, probated on August 25, 2010. The records are unclear as to the date of registration with the Center for National Documents & Records (CNDRA).

In our review of the facts as presented by the parties, the appellee brought witnesses to testify that he bought the disputed property in 2006 from the administrators of the Kendeh Estate, and that two of the appellant's witnesses, Ma Gbessay anti Kula Kendeh, signed his deed. Ma Gbessay, although signed a document disavowing the administrators' sale of the disputed property to the appellee, on cross examination, she could not recall whether she signed the appellee's deed; Kula Kendeh, who also denied signing the appellee's deed,

stated that she did not sign the Kendeh's instrument disavowing the sale of the land to the appellee, although the said instrument bears her finger print against her printed name.

This Court has held that “in the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, observe the demeanor of the witnesses, and determine the credibility to be given to the testimonies of witnesses produced by the parties in support of their respective claims; and that where the jury has reached a conclusion after having considered the evidence which is sufficient to support a verdict, the decision should not be disturbed by the Court, given that jury is the exclusive judge of the evidence, and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence. *Benson v. Sawyer*, Supreme Court Opinion, October Term A.D. 2015, *St. Stephen v. Gbedzee*, Supreme court opinion, March Term A.D. 2013; *Forleh et al. v. Republic*, 42 LLR 23 (2004); *Liberian Tractor and Equipment Company (LIBTRACO) v. Perry*, 38 LLR 119 (1995); *Momolu v. Cummings*, 38 LLR 307, 374 (1996); *Munnah and Sommah v. Republic*, 35 LLR 40 (1988); *Gbassage v. Holt*, 24 LLR 293, 296 (1975); *American Life Insurance Company, Inc. v. Holder*, 29 LLR 143 (1981).

By virtue of the fact that the appellee purchased the subject property in July 22, 2006, probated and registered his deed on July 25, 2006 and July 27, 2006 respectively, whereas the appellant purchased the same property on August 24, 2010, and probated her deed on August 25, 2010, but without any indication on the said deed that it was registered with the CNDRA in keeping with law, indicates that the appellant acquired the subject property subsequent to the appellee's purchase of the said property and perfection of his deed. Therefore, and in keeping with the laws cited herein, we hold that the appellee's deed is superior to that of the appellant's.

Moreover, the jury having determined that the appellee sufficiently proved the superiority of his tile deed to that of the appellant, and absent any display of prejudice by the jury against the appellant, or abuse of their discretion in reviewing and determining the credibility of the evidence submitted by the respective parties in substantiation of their case, we hold that the verdict returned in favor of the appellee is in conformity with law and shall not be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, confirming the verdict of the jury is hereby affirmed. The appellant is ordered ejected, ousted, and evicted from the subject property. The Clerk of this Court is ordered to send a mandate to the trial court, commanding the judge presiding therein 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.

Affirmed

When this case was called for hearing, Counsellors Ambrose Taplah and Morris M. Davis, Jr., of the Kemp and Associates Legal and Consultancy Chambers, Inc., and Counselor Morris Y. Massaquoi of the Henries Law Firm, appeared for the Informant. Counsellor Jallah A. Barbu, (Dr.), of the Public Interest Law Office, appeared for the Respondent.