IN THE HONOURABLE 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. WOLOKOLIE….ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE……...ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YUSSIF D. KABA…….ASSOCIATE JUSTICE

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| Faith Mission International Church of Somalia Drive opposite Deport-Old LPRC Junction Gardnersville, Montserrado County, Liberia …… Appellant | ) |
| Versus | ) APPEAL |
| The Intestate Estate of James B.Marshall, by and thru its Administrator, Willima Mantor and Clifford Berning, Administrators, de, Bonis Non of the City of Monrovia, Liberia ……..... Appellee | ) |
| **GROWING OUT OF THE CASE:** | ) |
| The Intestate Estate of James B.Marshall, by and thru its Administrator, Willima Mantor and Clifford Berning, Administrators, de, Bonis Non of the City of Monrovia, Liberia ……..... Plaintiff | ) |
| VERSUS | ) ACTION OF EJECTMENT |
| Faith Mission International Church of Somalia Drive opposite Deport-Old LPRC Junction Gardnersville, Montserrado County, Liberia ……. Defendant | ) |

Heard: April 12, 2022 Decided: January 25, 2023

MR. JUSTICE YUSSIF KABA DELIVERED THE OPINION OF THE COURT

On September 24, 2011, the Intestate Estate of James B. Marshall, appellee herein, instituted an action of ejectment against the Faith Mission International Church, appellant herein, for a piece of land lying and situated in Gardnersville, Montserrado County. The appellee alleged in its complaint that it initially filed an action of summary proceeding to recover possession of real property against the appellant in the Paynesville Magisterial Court; but, that the appellant produced a title deed purporting to have acquired its title from one Sampson Boah who owns

no property in the area. The appellee prayed the lower court to award it the amounts of US$100,000.00 as special damages, US$200,000.00 as general damages and US$50,000.00 as punitive damages, for the appellant's wrongful withholding of its property and to oust, evict and eject the appellant therefrom.

On September 28, 2011, the appellant filed its answer and averred in substance that the appellee conceded the ownership of the land to the appellant at the Paynesville Magisterial Court when the matter was first heard in that court; that since 1995, the appellant acquired ownership of the disputed property through an honorable purchase from Sampson Boah; and that the appellant had remained on the property openly and notoriously without molestation from anyone since that time. The appellant also denied that it wrongfully withholds the appellee's property and pleaded for an investigative survey. The appellant prayed the lower court to deny and dismiss the appellee's complaint.

After pleadings rested with the filing of appellee's reply, the parties through their respective counsels signed an arbitration agreement in which the parties acknowledged that the metes and bounds of their respective title deeds are different and that arbitration is the best way out of the ejectment suit. Following the signing of the arbitration agreement, on January 14, 2013, the lower court constituted a board of arbitration comprising the technical representatives of the parties and a chairman nominated by the Ministry of Lands and Mines. The certified records reveal that several notices for the conduct of the survey were duly served and published, but that the survey did not take place due to sequel of disruptions or the failure of the appellant and its technical representative to show up for the survey.

On June 9, 2016, the appellant filed a bill of information before the lower court informing the court that the administrator of the Intestate Estate of James B. Marshall, Willie K. Marshall, who instituted the cause against it died on November 13, 2013; and that the present representatives of the said estate lacked the legal capacity to continue the representation of the intestate estate. On June 23, 2016, the information having been assigned for a hearing, the appellee, by leave of court, spread on the records its returns and asserted that the appellee was adequately represented by its administrators to include William Mator who was in court. The lower court ruled that an evidentiary hearing be held and thereafter ordered the substitution of the administrator within one week of that ruling. The records

further show that William D. Mator and Clifford Berrian, administrators *de bonis non,* filed their motion for substitution of party on July 4, 2016. The appellant resisted the motion on the principal grounds that the letters of administration *de bonis non* dated August 5, 2015, attached to the motion bears the signature of His Honor J. Vinton Holder, Judge of the Monthly and Probate Court who was under suspension at the time and that there were no records with the said Monthly & Probate Court in support of the letters of administration *de bonis non* as evidenced by a clerk's certificate. After a hearing on the motion and the resistance thereto, the lower court granted the motion for substitution of party on ground that the failure of the clerk of the Monthly and Probate Court to locate the petition supporting the letters of administration *de bonis non* is not a sufficient proof of fraud. The appellant noted its exception to that ruling.

The records further show that on July 29, 2016, the lower court reconstituted the board of arbitration, this time increasing the number on the board from three to five members including the chairman, Samuel Danway and two technical representatives from each party. Surveyors Cyril S. Banya and Kempson Morray, Sr. were nominated and qualified for the appellant while surveyors Lawrence Henry and Henry Freeman represented the appellee. Thereafter, the lower court ordered the newly reconstituted arbitral board to proceed with the survey in keeping with its instructions including the instructions to have the survey conducted within three weeks and that the result therefrom shall be binding on the parties irrespective of their presence during the conduct of the survey.

A further search of the certified records shows that three survey notices dated September 5, 2016, October 6, 2016, and December 15, 2016, were all served and returned served, except that on the face of the latter notice, i.e., December 15, 2016, surveyor Cyril S. Banya did not sign the notice. Although the survey report bears no dates including the date of filing with the lower court, however, a memorandum dated July 17, 2019 appended to the report and under the signature of Samuel W. Danway, Jr., Chairman complained the appellant for not paying its share of the survey fees. Subsequently, the survey report was read in open court on August 28, 2019, during the June Term with the counsel of the appellant noting exceptions to the report.

On October 17, 2019, the appellee filed a bill of information before the lower court stating that the appellant had failed to file its objection to the survey report in time as evidenced by a clerk certificate obtained forty-four days after the reading of report. Consequently, the lower court ordered issued a notice of assignment for a hearing on the appellee's information on October 30, 2019 which notice was served and returned served on the parties. At the call of the case on the said October 30, 2019, the trial judge noted the unexcused absence of the appellant's counsel and ruled as follows:

> "The Informants have informed this court that the report of the Arbitration Team was submitted and filed before this court on February 9, 2016, and that the Defendant was given a period of time to file his objection within 30 days (thirty) as required by law which the defendant has failed and refused to do. The informants therefore pray that the failure of the defendant/respondent to file its objection amounts to a waiver of his right for which the Plaintiff/Informants have prayed this court to enforce and accept the findings of the Arbitration Team. The court has perused the case file and [found] no objection filed before this court. The failure of defendant to file his objection amount to accepting the report and therefore, this court hereby confirms and affirms said report. The report reveals and concludes as follows:
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> 1. That the undersigned surveyors agreed and conclude that the defendant church edifice is built on a different parcel of land owned by James B. Marshall according to deed information. Whereas taking that parcel of land to be the rightful parcel the church owned legally. Instead the parcel of land owned legally by the church according to deed is located directly opposite the church's edifice according to the church's deed information. It is regrettable that the church will build on different parcel of land; why? The interpretation of this report is that instead the defendant church building its edifice form it owned deeded property, the defendant church built is edifice on James B. Marshall's property. From this conclusion, it can be concluded

that the church used plaintiff's property and built structure thereon for which the church must be evicted and ousted.

Wherefore and in view of the foregoing, it is the ruling of this court that the defendant church is liable and that it has encroached on plaintiff, James B. Marshall's property and therefore be evicted as required by law. The clerk of this court is ordered to issue a Writ of Possession and place same into the hands of the Sheriff of this court to place Plaintiff, James B. Marshall in possession of his property. AND IT IS HEREBY SO ORDERED.

MATTER SUSPENDED.

GIVEN UNDER MY HANDS AND SEAL
OF THIS HONORABLE COURT THIS
30TH DAY OF OCTOBER A.D. 2019.

HIS HONOR ROLAND F. DAHN
ASSIGNED CIRCUIT JUDGE"

On December 5, 2019, that is, a little over one month, the appellant filed a motion to rescind the ruling contending that the lower court failed to appoint a counsel on behalf of the absent counsel of record for the purpose of announcing an appeal as a matter of right. Barely eleven days after the filing of its motion to rescind, on December 16, 2019, the appellant fled to the Justice presiding in Chambers of the Supreme Court via a petition for a writ of prohibition. The petition substantially alleged that the lower court's ruling entered on October 30, 2019 without the appointment of a counsel to announce an appeal couple with the fact that the lower court had refused to assign its motion to rescind for a hearing deprives the appellant its right to an appeal. The Justice in Chambers ordered a stay in the matter and having cited the parties to a conference, on January 3, 2020 ordered that the lower court resumes jurisdiction over the case and enter as a matter of record the appeal of the appellant from the final judgment, and proceed in keeping with law.

It is also worth noting that following the order of the Justice in Chambers as indicated herein, on January 9, 2020, surveyor Cyril S. Banya filed an "affidavit of disclaimer" before the lower court in which he substantially submitted that he had been sick for three years during which time he cannot remember or recall that the

survey was carried out; that he was called upon to sign the survey report which he did not participate in; that when the report was presented to him for his signature, he saw the signature of Kempson Murray who also represented his client (appellant); that he thought Kempson Murray had replaced him due to his protracted illness, but that he could not verified this position with his client because he had lost contact; that when his client found him and inquired whether he signed the survey report and he answered in the affirmative; that the client informed him that it did not change him and that no survey took place; and that they (client's representatives) do not know if Kempson Murray was on the report and that they "never engage[d] his services".

The appellant has assigned the following exceptions for review by this Court of last resort:

1. That the presiding and trial judge erred by granting the complainant/movant's motion for substitution of party based on the ground that same could be filed anytime for which defendant/respondent disagreed and objected and excepted to the fact that same should have been filed timely and reasonably after the death of the said Willie K. Marshall, administrator of the Intestate estate of the late James B. Marshall.

2. Appellant says that the trial judge further erred when he granted the substituted party, Willie K. Marshall right to substitute based on his capacity attached and exhibited, a letter of administrator De Bonis Non, which defendant/respondent alleged was a product of fraud since in fact same was acquired with no proof of a filling of petition; and more fraud to the fact that the time that same was filed was when His Honor, Judge of Probate Court, Vinton Holder was under suspension and that it was impossible and illegal to have acquired and secured any such legal document under the signature of Judge Vinton Holder, suspended Judge then (2015), Monthly and Probate Court for Montserrado County.

3. Appellant further says, that the trial judge erred and committed a reversible error by granting a Motion for substitution as same was untimely; and made only when defendant/respondent raised the issue that the said administrator was dead over a protractive period of time.

4. The trial judge also committed a reversible error when he granted and sustained the arbitration report objected to by Appellant/defendant when he failed to consider the presence and appearance of the appellant/defendant and their surveyor at the

time of the survey, giving the fact that their lawyer has notified the court of their absence and nonparticipation.

5. Further to the above, the trial judge erred by granting and sustaining said arbitration report even though appellant/defendant excepted to same with notice that neither his defendant now appellant nor the surveyor were properly notified.

6. Most importantly, appellant says the trial judge committed a reversible error, when appellant/defendant alleged and raised the issue of fraud on the part of the complainant now appellee, and same was never considered for trial or redirected to the trial of facts; for which renders the factual issues in conclusive, improper, reversible and undermined; same being raised, objected and excepted to by the Appellant/Defendant.

We certify a single issue as dispositive of the present appeal which is, whether the trial court's conclusion that the appellant waived its objection to the arbitration report is legally tenable as conclusive in a contest over title to real property?

But, before proceeding to address this issue, it is worth passing on the exception raised by the appellant that the trial court erred when it granted the motion for substitution of party. The appellant argued that it discovered the death of Willie K. Marshall who originally instituted the action of ejectment; that the present administrators belatedly filed their motion for substitution of party and that the letters of administration *de bonis non* proffered by the new administrators could not be supported by the records of the Monthly & Probate Court for Montserrado. In denying the contentions of the appellant, the trial court held that the fact that the clerk of the said Monthly & Probate Court could not find a petition in support of the letters administration, *id*, of itself is insufficient to dismiss or strike the said letters of administration.

In addressing this contention, we inquire as to the proper parties to the present suit. As clearly illustrated in the caption of this cause, the Intestate Estate of James B. Marshall instituted this cause by and thru its administrator, Willie K. Marshall against the Faith Mission International Church, also represented by Rev. Lawrence, Pastor, *et al*. It can be clearly seen from the caption that the proper parties to this suit are the Intestates Estate of James B. Marshall, and the Faith Mission International Church, both legal persons, created pursuant to the *Decedent and Estates Law* and *the Association Law of Liberia, Revised Code*, respectively; and

as such, the law provides that each of such legal person situated as the parties in this case, must be represented by natural persons who are agents or fiduciaries of the fictitious beings.

The records show that at the time the appellee filed the complaint against the appellant, the legal capacity of Willie K. Marshall as the representative of the appellee was never brought into question, but that it is after the death of the administrator that the appellant informed the lower court via a motion for newly discovered evidence. Consequently, the new administrators filed a motion to substitute their deceased predecessor. The appellant now interposed a challenge to the letters of administration submitted by the new administrators on grounds that the letters of administration *de bonis non* is a product of fraud. We ponder as to the legal efficacy of the appellant's challenge?

Firstly, we note that motion for substitution of parties, under the facts and circumstances of this case, was not needful because the proper parties to the suit are both legal persons whose status was not affected by the death of the appellee's administrator. After the death of the administrator, the successors in office were only required to file a notice of change of the legal representative for and on behalf of the intestate estate. The *Civil Procedure Law Revised Code: 1:5.31(1)* provides that "except as otherwise specifically provided by law, if any party to an action dies while such action is pending before any court in this Republic, the action may be continued by or against the executors, administrators, or other legal representative of the deceased party or parties in accordance with the provisions of this subchapter and the statutes relating to survival of actions." Substitution of party may also be made in the case of incompetency, assignment for the benefit of creditors, upon transfer of interest, and of public officers, pursuant to Chapter 5, subchapter C of *Civil Procedure Law Revised Code;* none of which is applicable in this case.

Secondly, the clear and unambiguous reading of the above quoted statute provides that the motion may be filed at any time during the pendency of an action upon the death of a natural party to a case. It follows that the contention of the appellant that the motion for substitution was belatedly filed is without the support of the law. And, finally, on this contention, this Court takes judicial notice that Judge J. Vinton Holder of sainted memory was suspended by the Supreme Court on August

10, 2015 that is, five days after the signing of the appellee's letters of administration *de bonis non*.

In addressing the allegation of fraud made by the appellant, the trial judge took cognizance of the fact that on many occasions while serving as an assigned judge in the Monthly & Probate for Montserrado County, the tracing of records proved to be a formidable challenge up to and including the time the appellant requested the clerk of said court for an authentication of the letters of administration *de bonis non.* On that basis, the lower court held that not locating the petition supportive of the letters of administration *de bonis non* is not a sufficient ground to set aside the said letters. We must add that the appellant's challenge to the letters of administration did not allege that the signature bearing on the letters is forged or that the said letters is not registered in keeping with law. Although the petition and the minutes of the proceeding are evidence that the letters of administration was legally issued by the Monthly & Probate court, it is our considered opinion that the appellant is not properly situated to have raised this question. This challenge lies within the prerogative of the heirs or legatees of the Intestate Estate of James B. Marshall who have the standing to question the administrators *de bonis non* and not a third-party stranger as the appellant so situated.

> "Standing to sue means the party has the sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justifiable controversy is presented to the court. The requirement of standing is satisfied if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation. The court says for a plaintiff to have a standing to sue, he must show that he personally has suffered some actual or threatened injury as a result of the putative illegal conduct of the defendant." *In re: Petition of Cox (Constitutionality of S. 17.1);36 LLR 837 (1990), Morgan v Barclay et al, 42 LLR 259 (2004), Her Excellency Madam Jewel Howard-Taylor v. Madam Alice Yeebahn et al, Supreme Court Opinion, March Term, A.D. 2019*

This Court says that the appellant not having raised sufficient legal reason for the setting aside of the letters of administration, *id*, we hold that the trial court did not err when it ordered the change of the appellee's administrator.

We now come to address the single issue whether the trial court's conclusion of law that the appellant waived its objection to the arbitration report is legally tenable as conclusive in a contest over title to real property?

To resolve this issue, it is important that we put into perspective the final ruling of the trial judge *vis-à-vis* the *Civil Procedure Law Revised Code: 1:64:11 (1) & (2)* which provides as follows:

> " (1) Grounds for vacating. Upon written motion of a party the court shall vacate an award where:
> (a) The award was procured by corruption, fraud, or other undue means, or…"
> (2) Time for application. An application under this section shall be made within thirty days after delivery of a copy of the award to the appellant except that if the application is predicated upon fraud or corruption, or other undue means, it shall be made within thirty days after such grounds are known or should have been known."

In its brief, the appellant has vehemently argued that after the reading of the survey report on August 28, 2019, it objected to the report. Our review of the certified records shows the following objection was interposed by the appellant's counsel after the reading of the survey report:

> "At this stage, counsel for the defendant object to the arbitration survey report just made by the chairman of the Liberia Land Authority signed by the number of surveyors who participated in the land investigation for reason that defendant, Faith International Church was not present nor it was informed properly after a long delay of the survey that same was about to be carried out. Counsel says that the property on which the church is built has a bono fide title deed and will be exhibited to this court in subsequent time. And respectfully submits

> The Court: the objection made by defendant is hereby noted, the defense counsel shall within statutory time file before this court its objection. And it is hereby so ordered."

The question we must ask is whether the objection interposed by the appellant after the reading of the survey report qualifies as the "application" for vacating an arbitral award within the contemplation of the *Civil Procedure Law Revised Code: 1:64.11(2).* Certainly not. What the appellant refers to as its objection was in effect noting exception on the record which ought to have been followed by a formal application or objection to the arbitration survey report stating the grounds to vacate award. The records do not show that the appellant filed a formal application in keeping with the trial court's order and the law.

Intriguingly, the records show that, on January 9, 2020, about four months after the reading of the survey report, the appellant procured a purported affidavit of disclaimer signed by surveyor Cyril S. Banya which affidavit attempts to suggest that no survey took place and that the affiant was unduly made to sign the survey report. We note not only that the appellant ought to have made the said affidavit a part of its formal objection to the survey report thereby according the appellee the opportunity to traverse and counter same, but that it is apparent on the face of the affidavit that the appellant solicited and induced surveyor Cyril S. Banya to sign the affidavit; and also accord the appellee the opportunity to confront the affiant during any investigation that may be have been conducted, growing out of the objection. Therefore, we are not inclined to give credence to the affidavit signed and submitted by surveyor Cyril S. Banya.

It is the law extant that a voluntary relinquishment of known right amounts to waiver which operates to preclude the subsequent assertion of the right waived or any claim based thereon. *Juah v Konneh et al 42 LLR 187 (2004)* This Court says that the appellant not having interposed an objection to the arbitration survey report pursuant to *Civil Procedure Law Revised Code: 1:64:11(2)*, the appellant waived its right to object to the said report and that the appellant, by operation of its waiver, is now estopped to assert any claim based on the said report. We so hold.

WHEREFORE and in view of the foregoing, the final ruling of the trial 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 enforce this Judgment. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case for hearing, Counsellor Molley M. Gray, Jr. of the Jones & Jones Law Firm appeared for the appellant. Counsellor James N. Kumeh appeared for the appellee.