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. WOLOKOLIE……...ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE……..…….ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….….ASSOCIATE JUSTICE

Joseph S. Feahn by and thru His Attorney-In-Fact Meshach P. Songar of the City of Monrovia, Liberia…….. Appellant

Versus

Honorable Mardea T. Chenoweth, Resident Circuit Judge, 13th Judicial Circuit, Margibi County,Republic and Emmanuel L. Shaw of Kpia Kpracon Town, Marshall City, Margibi County, Republic of Liberia ….……Appellee

GROWING OUT OF THE CASE:

Emmanuel L. Shaw of Kpia Kpracon Town, Marshall City, Margibi County, Republic of Liberia ……. Informant

Versus

Joseph S. Feahn by and thru His Attorney-In-Fact Meshach P. Songar of the City of Monrovia, Liberia ……1st Respondent

And

The Chiefs, Elders and Youth Leaders represented by Moris Yarvogar and all those acting operating under Their Control, including those who bought properties From them, all of Kpia Kpracon Town, Marshall, Margibi County, Republic of Liberia ……2nd Respondent

GROWING OUT OF THE CASE:

Joseph S. Feahn by and thru His Attorney-In-Fact Meshach P. Songar of the City of Monrovia, Liberia……. ……..Movant

Versus

Honorable Mardea T. Chenoweth, Resident Circuit Judge, 13th Judicial Circuit, Margibi County, Republic Of Liberia …….Respondent

) APPEAL

) BILL OF INFORMATION

) MOTION FOR RELIEF FROM JUDGMENT

GROWING OUT OF THE CASE:	)	
	)	
Emmanuel L. Shaw of Kpia Kpracon Town,	)	
Marshall City, Margibi County, Republic of Liberia	)	
……. Plaintiff	)	
	)	ACTION OF
Versus	)	EJECTMENT
	)	
The Chiefs, Elders and Youth Leaders represented by	)	
Moris Yarvogar and all those acting operating under	)	
Their Control, including those who bought properties	)	
From them, all of Kpia Kpracon Town, Marshall,	)	
Margibi County, Republic of Liberia	)	
……..…..…..……..Defendants	)	

Heard: May 3, 2022 Decided January 25, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THIS COURT

This appeal grows out of a consolidated final ruling of the 13th Judicial Circuit Court for Margibi County rendered on October 26, 2015 denying a motion for relief from judgment filed by the appellant, Joseph S. Feahn and granting a bill of information filed by the appellee, Emmanuel I. Shaw, II.

The records show that on September 17, 2015, the appellant filed a twelve-count motion for relief from judgment and alleged, *inter alia*, that he is a citizen of Liberia with residence in the United States of America; that he appointed Mr. Meshach P. Songar, a student of the Tubman University in Maryland as his attorney-in-fact; that he is the owner of a parcel of land lying and situated within the Kpia Kparcon area, Margibi County which he acquired as the outcome of an honorable purchase; that without being served a summons thereby bringing him under the jurisdiction of the court, he was dispossessed of the property by the court on the strength of the writ of possession issued in favor of the appellee and that his property was subsequently destroyed; and that he became aware of the court's action two weeks after the destruction of his property. He therefore prayed the lower court, among other things, to grant his motion and to order that he be placed back in possession of his property.

On September 29, 2015, the appellee filed a resistance to the motion and on October 19, 2015, also filed a bill of information. Substantially, the resistance and

the bill of information challenged the jurisdiction of the court over the person of the appellee and over the subject matter raised therein in that without a main suit, the court cannot exercise jurisdiction over a motion which is an ancillary application; that assuming that the court would hear and determine the motion, however, the same ought to have been filed within a reasonable time and before a judge who heard the main suit and entered the ruling from which relief is sought by the motion; that the grantor of the movant having been served and brought under the jurisdiction of the court, the said grantor had a duty to have informed the movant of the said action; that the grantor of movant having been adjudged liable in the case involving the property which the said grantor sold to the movant herein, the movant is without a defense against the said action. The respondent therefore prayed, among things, that the motion be denied and dismissed.

Relative to the bill of information, the appellee again questioned the jurisdiction over his person and argued that the trial court having heard the matter out of which the motion for relief from judgment was filed and having heard the said matter, entered a final judgment which was not appealed from and the said ruling having been fully executed two years before the filing of the motion, the said court lost jurisdiction over the matter and cannot resurrect the same on the strength of a motion for relief from judgment. The bill of information also raised the issue of the incapacity of a judge to review the final ruling of his colleague of concurrent jurisdiction. The informant therefore prayed that the motion for relief from judgment be ordered stricken and that the information be granted.

Based on the consent of the parties, the trial judge ordered the consolidation of the motion for relief from judgment and the bill of information, conducted a hearing and entered the following final ruling:

> "The Informant/Respondent in these proceedings filled a Bill of Information and at the call of the Bill of Information for hearing on October 19, 2015, the informant informed court that the Motion to Relief from Judgment and the Bill of Information raised the same issues as contained in the Bill of Information and therefore prayed for consolidation; to which the counsel for respondent interposed no objection. The court then granted the request and consolidated all the issues.

The Movant filed a Motion to Relief from Judgment on September 17, 2015 seriously contending that he was never a party to an Action of Ejectment, because according to him, he was never served. He argued that since he was not a party to the proceedings against Morris Yarvogar and others who are after all his grantors against whom this court had rendered judgment, evicting, ejecting and removing them from the subject property, he should be repossessed.

In count one (1), Movant says that he is the owner of a parcel of land lying and situated within Kpia Kparcon area, Margibi County which property was seized upon the orders of this Honourable Court based on a judgment rendered in favor of Emmanuel L. Shaw in which the Movant was not a party and was also not served any precept to bring him under the jurisdiction of this court. Movant attached his title deed and letters of Administration. The movant's entire motion is subject around service and due process. He said he has been denied his day in court to have been summoned and afforded him the opportunity to appear and defend his property.

In counts 2, 3, and 4, Movant went further to say in his motion for Relief from Judgment that he resides in the United States of America and he appointed Mr. Meshach P. Songar, as his Attorney-In-Fact to administer the affairs of his properties in Liberia. He said his Attorney-In-Fact who is attending the Tubman University in Maryland County, Liberia was not informed. Therefore, he has not been a party to any suit for which his house had been destroyed and property seized and given to Co-Respondent Emmanuel L. Shaw in these proceedings.

In count five (5) of Movant's Motion, he submits and says that Co-Respondent Emmanuel L. Shaw allegedly filed an Action of Ejectment against Movant on November 1, A. D. 2010 but was never served and therefore was never brought under the jurisdiction of this court.

Whether or not the Movant was served and brought under the jurisdiction of this court for which the Motion for Relief from Judgment should be denied? Yes.

A careful perusal of the records before this court shows that the chiefs, Elders, Youth Leaders and all those acting and operating under their control, including all of those who bought properties from them, all of Kpia Kpracon Town, Margibi County, were represented by Morris Yarvogar. A Two (2) Count answer was filed by their legal Counsel, Cllr., Albert S. Sims, of the Sherman & Sherman Inc., which was later withdrawn and a 27 count Amended Answer was filed by the defendants including the movant herein. How can you file an answer when you are not served? Count 25 of which we hereunder quote for the benefit of this Ruling.

Count 25 states 'That as to count 7 of the Complaint Defendant deny selling any portion of property allegedly belonging to the Plaintiff, but rather whatever land defendants sold is their legitimate property, bought through honorable purchase from the Republic of Liberia.'

The Supreme Court of Liberia has held in the case: Harry Greaves vs. C.F. Whilhelm Jantzen, 24LLR 420 (1975) syl. 1, text at page 425 that: 'Lack of jurisdiction over the person is not a ground for a motion for relief from judgment; Syl. 2. The proper remedy for a person claiming he had not had his day in court by reason of the court's lack jurisdiction over him is by way of writ of error.'

The Answer that was filed by the grantors was filed for all including the movant who is a grantee of the people of Kpia Kracon Town represented by Morris Yarvogar who also signed the Administrator Deed of the Movant. The grantor and grantee were sued and answer was filed by the grantor including the grantee. The people of Kpia Kpracon Town, the grantor of the Movant filed answer for all of the defendants including the movants, through their legal counsel and were subsequently represented by Cllr. Dempster Brown who received and acknowledged all Notices of Assignment and failed to

appear. When an answer has been filed, then you have been brought under the jurisdiction of the court.

Whether the Motion to Relief from Judgment was timely file?
To this question, this court says No. Section 41.7 of our statute says a motion under this section shall be made within reasonable time after judgment is entered. Judgment has already been enforced. The statute says that the filing of a Motion for Relief from judgment does not stay the enforcement of the judgment.

In the instant case, the records before this court show that the judgment sought by the Movant to be relieved from judgment has been enforced since 2013, almost 2 years. The Movant argued that since he was not a party to the proceedings against Morris Yarvogar and others who are after all his grantors against whom this court has rendered judgment, he should repossessed.

The records also show that while the Ejectment Action was filed against Morris Yarvogar and the Elders, Chiefs, Youth Leaders including those who bought properties from them on November 17, 2010, the respondent in count Six (6) of their answer stated that the land in question belong to them and they have been residing on it for over 100 years.

On September 29, 2015 the Respondent/Informant filed his resistance to the Motion to Relief from judgment filed by the Movant.

Respondent says that once there is no case pending before a court of law, no party can file a motion because a motion is not a cause of action but rather an auxiliary process dealing specifically with issues of law.

In counts 3, 4 and 5, respondent submits that the purported motion is irregular and is a fatal and incurable error both in law and fact, and this court lacks both personal and subject matter jurisdiction to entertain same on grounds that there is no pendency of any cause of

action before this court out of which this motion grew. Respondent submits that the case caption which this motion referred to was finally determined by His Honour Peter W. Gbenewelleh on May 21, 2013 following a hearing and plaintiff was placed in possession of the property in question on July 2, 2013, thus terminating the entire cause of action. Respondent says and avers that the purported Motion to Relief from Judgment is filed in bad faith and intended to undermine and belittle the integrity of this court and His Honour Peter W. Gbenewelleh. Respondent further says in Chapter 41.7 (3) Relief from Judgment which the Movant relies upon states time for motion. A motion under this section shall be made within a reasonable time after judgment is entered which was not done; therefore, same should be denied and dismissed.

That as to count 2, 3 and 4 of the Motion, Respondent says the Movant's grantor Morris Yarvogar and his cohorts were sued on November 1, 2010 and brought under the jurisdiction of the court. They initially hired Sherman & Sherman Inc., who filed on their behalf their respective responsive pleadings. Respondent says Movant's grantors know or had reason to know that the property in question was a subject of court proceedings; hence, they should have told the so-called Movant and therefore the claims that Movant's Attorney-In-Fact is a student and did not know of the lawsuit is untenable as a matter of law because the property grantor knew.

Respondent says further that assuming without admitting that the Movant did not know of the lawsuit which is not the case, which defense can the Movant put forward after it has been established that the property sold to the Movant by Morris Yarvogar and others actually belongs to respondent as determined by the court? The averment in count 2, 3 and 4 should be denied and dismissed.

That as to counts 5, 6, 7, 8 and 9 of the Motion, Respondents submit that the laws relied upon are not applicable in the instant case on grounds that once a court of law has duly determined that a property subject of a court process was stolen or illegally occupied or acquired

by a person, a sale of that property to a third party is void ab initio as a matter of law especially so where the seller has been taken to court and the proceedings are determined on their merits as in the instant case. Morris Yarvogar and his cohorts could not have made a sale of subject property to the movant in 2009 or 2012 because throughout the trial proceedings movant's purported grantors defended the property as theirs and provided no information of it being sold to a third party or made no reference to a third party; hence, the averments in counts 5, 6, 7, 8 and 9 are nothing but misinterpretation of the law and therefore should be denied and dismissed.

Respondent submits that its lawsuit was clear from caption of the cause that the cause of action was filed against the Chiefs, Elders and Youth Leaders, represented by Morris Yarvogar and all those acting and operating under their control, including those who bought properties from all of Kpia Kracon Town, Marshall, Margibi County, Republic of Liberia, respondent says what is strange however is that despite the nature of the action being against Morris Yarvogar and his cohorts, said Morris Yarvogar and Chiefs filed their answer and claimed that the property was theirs up to the time of the final determination of the case by His Honour Peter W. Gbenewelleh. If the property was sold to the Movant which is not the case, then why did Morris Yarvogar and company fail to say so?

Whether or not this Court lacks jurisdiction over this matter on grounds that there is no case and there are no parties before the court? To this issue, this court answers in the affirmative. A recourse to the case file shows that this case for which this Motion to Relief from Judgment is sought was determined and final judgment rendered on May 29, 2013 by His Honour Peter W. Gbenewelleh in favor of the plaintiff after the trial was held following the invocation of default judgment where an imperfect judgment was made perfect. Prior to the rendition of final judgment on May 29, 2013 a notice of assignment was issued and served on the Cllr. T. Dempster Brown but the defendant's counsel stayed away. From the same courts record it shows that the court then appointed Attorney Kpoto K. Gizzie to take

the final judgment which he accepted and final judgment was delivered and the said counsel excepted and announced an appeal to the Honourable Supreme Court of Liberia and same was granted by the court as a matter of right.

Following the announcement of the appeal to the Supreme Court, the Informant filed a Motion to dismiss the appeal on June 22, 2013, 22 days after the final judgment, and served this Motion on the Counsel for Defendants, Cllr. T. Dempster Brown which was signed by his office assistant Peter Brown. Following the filing of the motion to dismiss the appeal, a notice of assignment was issued for the hearing on June 27, 2013. The Sheriff's returns shows that Cllr. T. Dempster Brown was served and returned served. Yet, he woefully stayed away from court, thereby affording the respondent counsel the opportunity to invoke Chapter 10, Section 10.7 "Default on Motion.

The motion to dismiss the appeal having been granted on default, there by terminating the matter completely, the court issued Writ of Possession on July 2, 2013. The repossession of the plaintiff/informant following the dismissal of the appeal by our predecessor His Honour Peter W. Gbenewelleh based on a Motion properly and duly filed, heard and determined, automatically terminated the matter before this court.

The commencement of an action is guided and provided for under Chapter 3.31 of the Civil Procedure Law once the finality of a matter is determined on its merits and a party announces an appeal consistent with Chapter 51.4 of the Civil Procedure Law but fail to prepare and file his Bill of Exceptions within ten (10) days as required by statute, the other party may move the court for a motion to dismiss an appeal. To challenge such judgment is not by a motion to relief from judgment which is an auxiliary action or a post-trial proceeding that normally grows out of the main law suit from which a final judgment is rendered. A motion is not a proper form of action to bring a party under the jurisdiction of a court and is not a trial procedure to restart a cause of action already decided on its merits.

This court has consistently held that it will not do for a party what the party ought to do for itself. This court solely relies upon the ruling delivered by the Honorable Supreme Court of Liberia in the case: Samuel Chebo vs. Dougba Karmo Carranda 33LLR, page 452 (1985) Syl. 5, text at page 457 where it held that: "When the issue of a court's jurisdiction is raised, it is proper for the court to first determine its own status from a jurisdictional standpoint and to refuse to hear the case if it determines that the case does not lie within its jurisdiction." What is true is that this matter was determined on its merits, judgment had, writ of possession enforced, possession completed; hence, in the mind of this court and which is the law, there is nothing left to be done. The case has been concluded and judgment has been enforced and the plaintiff party repossessed.

An alleged irregular enforcement of a judgment against a party who was not part of a lawsuit is not a ground for a motion to relief from judgment under Chapter 41.7 of the Civil Procedure Law.

It is therefore the holding of this court that the final judgment rendered by our predecessor be and the same is undisturbed under the principle of concurrent jurisdiction which bars this court from reviewing or setting aside the actions of its predecessors and the Motion to Relief from judgment is hereby denied. AND IT IS HEREBY SO ORDERED. Matter suspended.

Given under my hand this 26th day of
October, A.D. 2015.
Mardea T. Chenoweth
Resident Circuit Judge"

Having entered exceptions to the trial court's final ruling and announced an appeal therefrom, the appellant filed his twelve-count bill of exceptions which can be summarized as follows:

1. That the trial judge erred when she considered Mr. Morris Yarvogar, one of appellant's grantors, to have represented the appellant in the action of ejectment without authorization from him;

2. That the trial judge erred when she ruled that the court lacks both personal and subject matter jurisdiction to entertain the motion for relief from judgment on ground that there is no pending cause of action before the lower court out of which this motion grew, without taking into account that the law in this country, is that, whenever a court ruled in a case and that judgment is enforced, the court waved jurisdiction; but when a motion for relief from judgment is filed, the court resumes jurisdiction in that case.

3. That the trial judge erred when she ruled that the proper remedy in this case is not by a motion to relief from judgment, rather the appellant ought to have filed a petition for a writ of error.

4. That the trial judge erred when she ruled that because of the principle of concurrent jurisdiction which bars the lower court from reviewing or setting aside the action of its predecessor, but failed to take into account that motion for relief from judgment can be held by any other judge presiding over the same court and it does not run on terms.

We certify a singular issue for the determination of this case which is whether a motion for relief from judgment is tenable under the facts and circumstances of this case? And if so whether the appellant is entitled thereto?

The appellant based his claim to the right to relief from the final ruling of the trial judge on the premise that his right to be heard was denied because neither he nor his attorney-in-fact was served the writ of summons and that his representation by Morris Yarvogah was without his authority and therefore he cannot be bound by any ruling out of that case. On the other hand, the appellee argued that the underlying action of ejectment having been concluded and judgment enforced, the matter was terminated thereby causing the lower court to loss jurisdiction over his person and the subject matter of the case.

The trial judge not only agreed and sustained the appellee's position, but also added that because a judge of concurrent jurisdiction decided the case, she was without the pale of the law to review, set aside or reverse her predecessor; that the defense of the appellant's grantors having failed, he was bound by the judgment; and that it took almost two years for the appellant to file his motion which was not reasonable within the contemplation of *Civil Procedure Law Revised Code: 1:41.7*.

This Court says that considering the contentions of the parties herein and the trial court's ruling thereupon, we realized that there exists a conflict in the determination of what constitutes a motion for relief from judgment and a motion to rescind. A motion to rescind is concerned with an interlocutory determination by a judge. Its purpose is to call the attention of the judge to inadvertence in or misapplication, misinterpretation and misconstruction of the facts and/or the law in any particular case. The purpose of a motion to rescind is to accord the judge the opportunity to correct his own errors in his interlocutory determination of a point of law and/or facts. It goes to the substance of the matter which is being determined by him. Because, a motion to rescind goes to the substance of the judge's determination and considering that if such motion is heard by another judge, the same will constitute varying or reviewing the opinion of his colleague of concurrent jurisdiction, the law makes it a point that only the judge who entered the interlocutory ruling is clothed with the authority to review such a ruling and that such judge can review that ruling only during term time. *Montgomery v. Hall et all 38 LLR 378, Inter-Com Security Systems v. Walters et al, Supreme Court Opinion , March Term, A.D. 2009*

Unlike a motion to rescind, a motion for relief from judgment goes to the final ruling of the trial judge. It does not call for a review of the substance of the ruling nor is it applicable to an interlocutory ruling. It does not call for the setting aside of such a ruling. A motion of this kind goes to the review of the form and the manner of procuring the ruling. In this sense, its purpose is not to determine the legality of the ruling; but rather it goes to determining the applicability of the ruling against the party who applied to be relieved therefrom. The time for the filing of such a motion is not limited to the term in which the final ruling was procured; but, rather it must be interposed within reasonable time or that amount of time which is fairly necessary to do whatever is required to be done as soon as circumstances permit. This means that depends on the facts and circumstances of each case. Most

specifically, a motion of this nature must be filed as soon as the movant is aware or have reason to be aware of the ruling from which he is seeking relief.

In substance, a motion for relief from judgment does not call for a review of the merit or substance of a ruling. It goes to challenging the form and manner in which the judgment is procured. When a party is not brought under the jurisdiction of the court or where by its inadvertence, mistake, surprise or excusable neglect, a judgment is entered against a party, or where fraud, misrepresentation or other misconduct of an adverse party result into the entry of a ruling against a party or where a ruling is void or where there has been satisfaction, a release or discharge of the claim or the reversal or vacating of a prior ruling or order on which it is based, or in the case of a newly discovered evidence which, if introduced at a trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provision of sections 26.4 of the *Civil Procedure Code*; in all such cases, an application for relief from judgment is available. *Civil Procedure Law Revised Code:1:41.7,*

In the instant case, there is no denying that the appellant was not served a writ of summons either personally or by publication thereby bringing him under the jurisdiction of the court. A ruling emanating from such a matter cannot and ought not to operate against him and those who are similarly situated.

In the case *Ma-Sainet D. Kaba et al v. His Honor Joseph N. Nagbe et al, Supreme Court Opinion, October Term, A. D. 2021,* this Court extensively dealt with the issue of when a motion for relief from judgment may be applicable. In that case, Bolton Tarley Nyuma filed a petition for a writ of prohibition before Chambers Justice contending that the trial judge in the Sixth Judicial Circuit Court for Montserrado had reviewed and reversed his colleague of concurrent jurisdiction in violation of settled principle when he ordered a writ of possession in favor of the appellants who filed before him a bill of information. The bill of information essentially complained that the appellants were not party to an action of ejectment in which the appellee Bolton Tarley Nyume obtained a judgment by default which resulted in their property taken from them without the opportunity to be heard. The appellants prayed the lower court for a relief from judgment and to allow them the opportunity to defend their property. The trial judge ruled in favor of the appellants and ordered that they should file their answer *nunc pro tunc* and be placed back in

possession of the property pending the outcome of the trial. After the exchange of the appellants' answer and the appellee's reply with the motion to strike the answer, the appellee Bolton Tarley Nyuma fled to the Justice in Chambers challenging the legal soundness of the trial judge's ruling.

This Court speaking through our esteemed colleague, Madam Justice Jamesetta Howard Wolokolie espoused as follows:

> "*Section 41.7 of the Civil Procedure Law-Relief from Judgment-states: '...2. Grounds. On motion and upon such terms as are just, the court may relieve a party or legal representative from a final judgment for the following reasons:... (d) Voidness of the judgment…*
> *3. Time for motion: A motion under this section shall be made within reasonable time after judgment is entered.*
> *4. Effect of motion. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from a judgment or grant relief to a defendant under section 3.44.*
> …, the judgment rendered by Judge Kaba is void with respect to the appellants and therefore unenforceable against them, as they were not party to the case from which the judgment emanated. This Court has held that a court cannot enforce a judgment against persons who were not made a party to the case in which said judgment was rendered…
>
> We acknowledge and uphold the legal principle that no judge has a scintilla of judicial authority to conduct himself/herself in a manner that amounts to reviewing, setting aside, or modifying, let alone rescinding or reversing a ruling duly entered by a colleague of concurrent judicial authority…We however hold that this principle is inapplicable to the facts and circumstance of this case, in that the appellants' bill of information filed in the court below did not seek a review or reversal of the judgment entered by Judge Kaba, as the bill of information did not point to any error of law or inadvertence by Judge Kaba to consider any key point of fact in his judgment. The core issue raised in the appellants' bill of information and upon which Judge Kontoe based his ruling, was that they were not party

> defendants in the 2016 action of ejectment before the Civil Law Court, and hence their property rights could not be adversely affected by a judgment emanating from an action to which they were not party defendants.
>
> We therefore hold that under the facts and circumstances of this case, Judge Kontoe's entertainment of the appellants' defenses against the judgment of ejectment for the appellee, was proper and did not amount to a review of Judg Kaba's ruling."

Similarly, as in the instant case, a review of the appellant's motion for relief from judgment, did not alleged or point to any error of law in the trial judge's final ruling in favor of the appellee, rather, the appellant has consistently argued that he was never served a writ of summons and never made a party to the action filed by the appellee; therefore did not have his day in court. Also in 1982, this Court held that "a motion for relief from judgment should be granted where there is evidence that the movant was not served with the writ of summons. *Sasay v. Sasay 29 LLR 505 (1982)*.

The appellee argued in his resistance to the motion for relief from judgment that the writ of summons having been served on the grantors of the appellant, the same should also constitute service on the appellant. The argument of the appellee is that after having prevailed over the grantors of the appellant, the appellant does not have a defense to the action and therefore there is no need to grant the motion for relief from judgment. On the other hand, the singular argument of the appellant is that he was never brought under the jurisdiction of the court and therefore cannot be concluded by judgment therefrom.

This Court has held in numerous cases that where in a proper case, the judgment is secured against a grantor in an ejectment action, that judgment should operate against the grantee of that grantor. *Duncan et al v. Cornomia 42 LLR 309 (2004), Kpoto v. Williams, Supreme Court Opinion, March Term, A.D 2008*. In the instant case, the judgment that was entered was by default. In other words, the grantor of the appellant did not appear for the hearing due to the negligence of their lawyers and in spite of opportunity to appeal did not also appeal therefrom. While the appellee herein had all of the opportunity to present his side of the case, however,

due to the negligence of the counsel of the appellant's grantors, the said grantor's side of the case was not heard by the trial court. Although, the law provides that a grantee in an ejectment action is bound by a judgment against his grantor, however where such judgment is obtained by default and where the grantee was not accorded the opportunity to appear and defend his interest, certainly it would be iniquitous to have such a judgment to operate against such grantee as in the instant case. Had the matter being heard on its merit and all of the evidence paraded before the court, then and in that case, the law requires that such judgment be operational against the grantee. We therefore hold that the appellant not having been served and the judgment against his grantors being one by default and not appealed, the appellant ought to be granted the opportunity to defend his claim. *Sasay v. Sasay, supra*. This, however, should in no way affect the enforcement of the judgment that has been entered.

WHEREFORE and in view of the foregoing, the final ruling of the trial court is reversed and this case ordered remanded to the court to allow the appellant defend his property right. Costs shall abide the final determination of this case. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Edward Fanbulleh of the Henries Law Firm appeared for the appellant. Counsellor Jallah A. Barbu of the Public Interest Law Office appeared for the appellee.