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

Varney Arthur Yengbeh, Jr., of the City of Monrovia, Montserrado County, Liberia…….Appellant	)
Versus	) APPEAL
Sando Kiazolu, Darlington Burphy and Musa Tarlawally of the City of Monrovia, Montserrado County, Republic of Liberia……..….Appellees	)
GROWING OUT OF THE CASE:	)
Sando Kiazolu, Darlington Burphy and Musa Tarlawally of the City of Monrovia, Montserrado County, Republic of Liberia……..….Petitioners	)
Versus	) PETITION FOR A WRIT OF CERTIORARI
His Honor Emery S. Paye, Assigned Circuit Judge Sixth Judicial Circuit for Montserrado County, Republic of Liberia……..1st Respondent	)
And	)
Varney Arthur Yengbeh, Jr., of the City of Monrovia, Montserrado County, Liberia……2nd Respondent	)
GROWING OUT OF THE CASE:	)
Varney Arthur Yengbeh, Jr., of the City of Monrovia, Montserrado County, Liberia……..Plaintiff	)
Versus	) ACTION OF SUMMARY PROCEEDING TO RECOVER
Sando Kiazolu, Darlington Burphy and Musa Tarlawally of the City of Monrovia, Montserrado County, Republic of Liberia……..…..Defendants	) POSSESSION OF REAL PROPERTY

Heard: March 29, 2022 Decided: January 26, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

Our Distinguished Colleague, former Associate Justice Philip A. Z. Banks, III, whose chambers ruling is now on appeal, re-accentuated the diligence and tact our courts must demonstrate in cases that result into the possibility of loss of human life and real property as follows:

> "Questions of property, especially real property, and human life are to be handled with every available care by our courts. If you deprive a man of his life, you deprive him of further existence on earth; if you deprive him of his real property unjustifiably, you deprive him of a basic means of existence that is seriously difficult for one to obtain in our time, and which stands to be more difficult to obtain in the years ahead." *Kennedy et al v. Goodridge and Hilton, 33 LLR 398(1985)*

This care, diligence or tact which the trial court should and ought to have applied in the present case was hardly demonstrable, if not ignored. More confounding is that the trial court would elect to state a fact which is not only unsupported by the records, but that the court based its ruling upon such unfounded facts while at the same time delving into the factual issues which ought to have been tried by a jury. *St. Stephen v. Gbedze, Supreme Court Opinion, March Term, A.D. 2013, Andrews et al v. Cornomia, 39 LLR 761 (1999)*

In a myriad of opinions including *Juah v. Konneh et al, 42 LLR 187 (2004)*, this Court, giving meaning to the *Civil Procedure Law Revised Code:1:62.21* clearly espoused that "an action of summary proceeding to recover possession of real property is not applicable to cases where both parties are claiming title." Furthermore, this Court has consistently upheld the statutory provision of *Civil Procedure Law Revised Code:1:62.1* that "any person who is rightly entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right of possession thereof is disputed."

Accordingly, where an action of summary proceeding to recover possession of real property is commenced before a court, the primary query which should be made is whether title is in issue? Where it is established by the records that the parties exhibit papers or fee simple title to their respective pleadings, then summary proceeding will not lie; *Konneh v. Badio et al37 LLR 576 (1994)*

On October 6, 2014, the appellees herein, Sando Kiazolu, Darlington Burphy and Musa Tarlawallay filed a twenty-four count petition for a writ of certiorari before the Chambers Justice in which they alleged that they are defendants in an action of summary proceeding to recover possession of real property filed by the appellant, Varney Arthur Yengbeh, Jr. before the Sixth Judicial Circuit for Montserrado County; that they were placed in possession of the disputed property by the attorney-in-fact of Madam Jennie B. Morris who was once married to the appellant's grantor, Mr. David M. Morris; that on May 15, 1990, Mr. Frank Jallah sold 4.7 lots of land to the appellant's grantor and that eight years later after the union of appellant's grantor and Mrs. Jennie B. Morris on May 2, 1998, the couple requested Mr. Frank Jallah to re-write and to re-issue a deed in the couple's names; that on February 6, 2000, Mr. Frank Jallah did issue a new deed to Mr. David M. Morris and Jennie B. Morris which instrument was probated and registered on February 5, 2002; that when the couple began construction on the property, the Kai Ballah Family queried the title held by the couple on grounds that Mr. Frank Jallah owned no property in the area; that the couple negotiated with the Kai Ballah Family and repurchased 3.0 lots of the 4.7 lots previously acquired from Mr. Frank Jallah; that in spite of the joint ownership of the property, Mr. David M. Morris elected to single handedly convey 2.0 lots to the appellant without the knowledge and consent of Mrs. Jennie B. Morris who is now a resident of the United States of America; that in spite of proffer of title deeds, the trial judge proceeded to dismiss their answer and ruled the case to trial on an action of summary proceeding to recover possession of real property; that the case cannot be disposed of without resolving the joint title held by Mr. David M. Morris and Mrs. Jennie B. Morris; that quite strangely, the trial judge, *sua sponte,* questioned the validity of the administrator's deed issued by Kai Ballah Family on grounds that the said deed was not accompanied by letters of administration and court's decree of sale; that the fact that the trial judge would, *sua sponte,* based his ruling on the absence of letters of administration suggests that title was in issue and that the case should have been taken from the category of an action of summary proceeding to recover possession of real property to the category of an action of ejectment; and that the ruling of the trial court striking the exhibits proffered by the appellees without the taking of evidence needs to be corrected. The appellees therefore prayed the Chambers Justice to grant their petition, stay further proceedings, review, set aside and reverse the ruling of the trial court.

On October 23, 2014, the appellant filed a thirteen-count returns and averred that Madam Jennie B. Morris who was not named in the writ of summons filed the appellees' answer which is tantamount to her appearance; that Madam Jennie B. Morris had sufficient notice to have withdrawn her answer and filed a motion to intervene after the appellant raised that issue in his reply; that the trial court did not err when the judge ruled that title was not in issue because Mr. Frank Jallah earlier parted with title to David M. Morris and could not have re-conveyed said parcel of land since title was no longer vested in him; that the trial court did not err when the judge ordered stricken the administrator's deed on grounds that the letters of administration and court's decree of sale did not accompanied the said deed as would legally obtained; that assuming without admitting that the property was jointly acquired by the couple, Madam Jennie B. Morris could not unilaterally issue power of attorney to Mr. Nyanbor Cornelius Pillepor without the knowledge and consent of Mr. David M. Morris by virtue of the rule of equity which states that "he who comes to equity must come with clean hands"; that it is not true that the trial court, *sua sponte,* raised the issue of the letters of administration and court's decree of sale, but that the appellant made specific reference to the issue in count seven of his reply; that it is also not true that the issue of intervention was not raised by the appellant in that count one of appellant's reply raised the issue; and that the trial court acted within the pale of the law when the judge ruled the case to trial without the exhibits on grounds that the exhibits were shown to be products of void transactions and without legal effects.

In considering the issues raised by the parties, we must first address the question, which is whether or not the defendant's answer filed in the main suit was filed by Madam Jennie B. Morris or the appellees herein? The trial judge, in his ruling on this law issue, held that the appellees did not file an answer to the complaint but that Madam Jennie B. Morris, who was not named in the action, filed the answer to the appellant's complaint. The trial judge then concluded that Madam Jennie B. Morris, having admitted in her "answer" that the property was previously transferred to Mr. David M. Morris from Mr. Frank Jallah in 1990, Mr. Jallah was without title to have re-conveyed the self-same property to the couple after their marriage. The trial court further held that the administrator's deed annexed to Madam Jennie B. Morris' "answer" not having been accompanied by letters of

administration and court's decree of sale, the transfer from the Intestate Estate of Zoe Ballah to the couple is void in keeping with Rule 8 of the Probate Court Rules.

In addressing this issue, the Chambers Justice took recourse to the pleadings of the parties more especially counts 6, 12 and 13 of the answer and count 1 of the reply quoted verbatim as follows:

> "6. As to count two (2) of plaintiff's complaint, defendants say and submit that they were placed on the property which is the subject of this litigation by an agent of Madam Jennie Morris in person of Mr. Nyanbor Cornelius Pillepor. Hereto attached is a copy of the power of attorney issued out to her agent mark as exhibit "D/3" to form a cogent part of the defendants' answer.
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> 12. Defendants say that Madam Jennie Morris wrote plaintiff as a family friend on August 8, 2012 advising him not to purchase the property in the Hotel Africa Community from Mr. David M. Morris because the property he intended to buy was a joint property own by she and Mr. Morris. Hereto attached to the defendants' answer is a copy of the letter mark as exhibit "D/4".
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> 13. As to count three (3) above, defendants say and submit that plaintiff was fully aware that his 'grantor' and Madam Jennie Babie Morris were once married and during the time of their marriage they jointly owned several properties including the property which is the subject of this litigation and since their divorce they have not distributed the properties."

The appellant replied the allegations in the appellees' answer as follows:

> "1. That plaintiff says that as to the entire Defendant's Answer, same is characterized with falsehood and misrepresentation of facts and subject to complete dismissal by this honorable court *because Jennie Morris should have intervened to protect the*

> *defendants if the defendants' occupation of the premises met her consent and knowledge. Plaintiff further says that her failure to intervene affirmed and confirmed the illegal occupation of plaintiff's property by the defendants.* Plaintiff therefore prays this honorable court to summarily eject the herein named defendants from plaintiff's premises." Emphasis is ours.

It can clearly be discerned that the Chambers Justice rightly concluded that the answer interposed in this matter was indeed filed by the appellees rather than Madam Jennie B. Morris. The averments in the pleading clearly show that it was by the appellees rather than Madam Morris.

Having held that the trial judge was in error when he ruled that the answer was filed by Madam Morris as concluded by our esteemed colleague, we now consider the issue as to whether the action of the trial judge during the disposition of law issue to order stricken the exhibits attached to appellees' answer on the ground that the same were product of either a void transaction or that they lack the proper supporting documents was consistent with law.

In his determination on the law issues, the judge, in dissecting the pleadings, held as a ground for his order to have stricken the deed issued by Mr. Frank G. Jallah to Mr. David M. Morris and his wife, Jennie B. Morris, that Mr. Jallah after having issued a deed in favor of Mr. David M. Morris had parted with title and therefore did not have any property to convey to Mr. David M. Morris and his wife. In other words, after having issued a deed for the same property to Mr. David M. Morris, Mr. Jallah was without authority to have issued another deed to Mr. David M. Morris and his wife for the same property. By this reasoning, the judge considered the second deed; that is, the deed issued to David M. Morris and Jennie B. Morris as being void. Hence, his determination that that instrument is a fit subject to be stricken from the records of the proceedings. The trial judge also in consideration of the deed issued by the Intestate Estate of Zoe Ballah found that because the letters of administration and decree of sales authorizing the said Intestate Estate to convey the disputed property was not pleaded by the petitioners herein, the title deed issued to the Morrises by the estate was not properly before the court and also therefore same was a fit subject to be stricken from the records of the proceedings.

Our learned colleague held that it was error on the part of the trial judge to have delved into the issues raised in the pleadings on grounds that the said trial judge after having erroneously held that the answer was filed by Madam Jennie B. Morris who was not a party to the action and the averments in the answer having demonstrated that the title pleaded by the petitioners herein was that of a third party and also the petitioners not having shown any authority given them to represent the interest of that third party, the trial judge could not have legally delved into making a determination as to the validity of those instruments. More besides, our colleague also further held that the issues that the trial judge attempted to resolve during the disposition of law issue were mixed issues of law and facts that needed evidence to be resolved. He therefore concluded that the trial judge attempt to order these instruments stricken was ultra vires and inconsistent with the trial process in our jurisdiction.

Giving due consideration to the parties' pleadings before the lower court, we are of the opinion that certain concerns need to be addressed. To begin with, we have concluded that the answer that was interposed in the main suit was filed by the petitioners herein rather than by Madam Jennie B. Morris. Therefore, she did not interpose her title so as for those titles to be a subject of litigation before a trial court. Additionally, there is no showing that Madam Jennie B. Morris issued any authority to the appellees herein to represent her interest as her agents in the action filed before the lower court. Therefore, while we are in agreement with the conclusion of the trial judge for reason not necessarily that upon which he based the said conclusion that those title instruments were not properly before the court, we are also in agreement with the Chambers Justice that it was error on the part of the trial judge to have delved into the factual issues raised in the pleadings as the bases for striking out those title instruments, especially considering that the proper party to have interposed those instruments was not a party to the action.

Having agreed that the titles interposed by the petitioners herein were not properly before the court and the trial judge was right to have them stricken for reason other than that relied upon by the trial judge, can it be said that summary proceedings rather than an action of ejectment will lie in the action before the trial judge?

We have already noted that in the answer to the complaint, the appellees herein averred that their possession and occupancy of the demised premises was based upon a right conferred upon them by an agent appointed by Madam Jennie B. Morris. The appellees herein pleaded what they purport to be the power of attorney issued by Madam Jennie B. Morris empowering the agent to manage and/or oversee the property on her behalf since she was in the United States of America. Ordinarily, the proper action that Madam Jennie B. Morris and/or her agent ought to have done was to intervene in the matter on behalf of their tenants or in the alternative, the respondent herein having been notified of the interest of Madam Jennie B. Morris and by operation her agent, ought to have filed a motion for joinder if complete relief is to be accorded in this action. The parties to the main suit not having taken advantage of these laws, that is, *Civil Procedure Law Revised Code: 1:5.51 and 1:5.61,* respectively, the trial judge, taking judicial notice of the pleadings in this matter on his own ought to have also *sua sponte* ordered a joinder of Madam Jennie B. Morris and/or her agent so as to ensure that complete relief is accorded in this action.

The *Civil Procedure Law Revised Code: 1:5.51* provides as follows:

> *"1. Parties who should be joined.* Persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendants therein.
> *2. Compulsory joinder.* When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. When a person who should be joined according to the provisions of paragraph 1 has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned to appear in the action."

We note that similar question on the issue of joinder of a party was at one time urged upon this Court in the case *Badio et al v. Cole-Larson et al 33 LLR 125 (1985).* In that case, the appellants, Julia Ammons-Webster et al, instituted an action of ejectment against one Alida in the Sixth Judicial Circuit for Montserrado

County. The defendant filed a two-count answer in which he averred, among other things, that he was a caretaker and that the property, subject of the ejectment action, belong to Leonora Cole-Lartson and Cecil Walker, lineal heirs of Iris E. B. Cole. The appellants did not interpose a reply to the defendant's answer. The trial judge ruled the case to trial without passing on several law issues raised in the defendant's answer. After a regular trial, the petit jury returned a verdict of liable against the defendant. While a final ruling was pending, the alleged owners of the property, Leonora Cole-Lartson and Cecil Walker, appellees, filed a petition for a writ of prohibition before the Chambers Justice to prohibit and restrain the trial judge from rendering and enforcing the final ruling in the ejectment action on grounds that they could not be bond and concluded by such final ruling growing out of the ejectment action in light of the averments as contained in the defendant's answer. The Chambers Justice heard the petition and ordered the peremptory writ issued. On appeal, the Supreme Court *en banc*, in affirming the ruling of the Chambers Justice held, among other things, that "the defendant, having stated in his answer that others and not he, were the owners of the disputed property, the plaintiffs should have made application to the court to have the real alleged owners of the property joined as party-defendants or withdraw the first complaint and file another in which the petitioners would then be named as defendants."

In the alternative, however, we must add that considering the fact that the appellees, in the present suit, attached to their answer the power of attorney purporting to be that of the attorney-in-fact of Madam Jennie B. Morris, a resident of the United States of America, the trial judge ought to have summoned the alleged attorney-in-fact to appear pursuant to *Civil Procedure Law Revised Code: 1:5.51(2)* which provides as follows:

> "When a person who should be joined according to the provisions of paragraph 1 has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned to appear in the action."

In view of all that have said hereinabove and in the interest of justice and to avoid multiplicity of litigations, we are of the opinion that the ruling of the trial judge on the disposition of law issue be set aside and that the trial judge, consistent with the Civil Procedural Code order that Madam Jennie B. Morris through her agent be

joined as a party defendant so as to place the court in an informed position to accord the complete relief in the action.

WHEREFORE and in view of the foregoing, the alternative writ is affirmed and the peremptory writ ordered issued. The trial court ruling on law issue is hereby set aside and the judge ordered to join Madam Jennie B. Morris as party defendant. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and enforce the Judgment of this Opinion. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Snonsio E. Nigba and Gabriel W. Nah of the Stubblefield, Nigba & Associates Law Firm appeared for the appellant. Counsellor Momolu G. Kandakai and Philip Y. Gongloe of the Gongloe & Associates Law Firm appeared for the appellees.