

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  
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Sophronia Richard-Townsend, by and thru her Attorney-In-Fact )  
 Rita Townsend, of the City of Monrovia, Liberia.....Appellant )

Versus )

APPEAL

The Intestate Estate of Momo Mbolon, by and thru its Admini- )  
 strators, Momo Z. Saryon, Boakia Z. Saryon, Gogo Z. Saryon, and )  
 Abraham Kromah, of the City of Monrovia, Liberia..... Appellee )

GROWING OUT OF THE CASE: )

Sophronia Richard-Townsend, by and thru her Attorney-In-Fact )  
 Rita Townsend, of the City of Monrovia, Liberia.....Objector )

Versus )

OBJECTION TO  
ARBITRATION  
AWARD

The Intestate Estate of Momo Mbolon, by and thru its Admini- )  
 strators, Momo Z. Saryon, Boakia Z. Saryon, Gogo Z. Saryon, and )  
 Abraham Kromah, of the City of Monrovia, Liberia.....Respondent )

GROWING OUT OF THE CASE: )

The Intestate Estate of Momo Mbolon, by and thru its Admini- )  
 strators, Momo Z. Saryon, Boakia Z. Saryon, Gogo Z. Saryon, and )  
 Abraham Kromah, of the City of Monrovia, Liberia.....Plaintiff )

Versus )

ACTION OF  
EJECTMENT

Sophronia Richard-Townsend, by and thru her Attorney-In-Fact )  
 Rita Townsend, of the City of Monrovia, Liberia.....Defendant )

Heard: December 1, 2021

Decided: January 26, 2023

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

On March 8, 2011, the appellee/plaintiff, the Intestate estate of Momo Mbolon, thru its administrators, Momo Saryon, Boakai Z. Saryon, Gogo Z. Saryon, and Abraham Kromah, filed before the Sixth Judicial Circuit, Civil Law Court for Montserrado County, an action of ejectment against the appellant/defendant, Sophronia Richard-Townsend, thru her

Attorney-in-Fact, Rita Townsend. The appellee alleged *inter alia* that the appellant encroached on portion of its 500 acres of land lying and situated in the Settlement of Upper Caldwell, Montserrado County, Republic of Liberia; that despite efforts by the office of the Township Commissioner and engagement of a registered surveyor to survey appellee's land, the appellant has over the years obstructed the process; hence, has filed this suit and prays the trial court to have the appellant ejected, evicted and ousted from the appellee's premises, and award it damages in the aggregate amount of Three Hundred Thousand United States (US\$300,000.00) Dollars; One Hundred Thousand (US\$100,000.00) Dollars as general damages, Fifty Thousand United States (US\$50,000.00) as special damages, and One Hundred Fifty Thousand United States (US\$150,000.00) as punitive damages, for illegal and unlawful withholding of appellee's land. The plaintiff attached to its complaint a March 1901 Public Land Sale Deed to support its claim.

On March 23, 2011, the appellant filed her answer and denied the legal sufficiency of the appellee's complaint; that she and her sister, Lulu Richards are the legitimate owners of three parcels of land containing Sixty (60), Forty (40), and Ten (10) acres of land, respectively, located in the Settlement of King Governor Farms, Montserrado County, Liberia, given to them by their mother, Beatrice Yates-Richards; that the portion of land "about six miles above Caldwell" was formerly the site known as King Governor's Town; that the appellee's complaint should be dismissed on ground that it lacks clarity and has not shown the metes and bounds of its alleged 500 acres of land; that the appellee has not shown any loss it sustained from the appellant's family who has been in possession of the land since May 9, 1849, to warrant the award of special and general damages. The appellant annexed to her answer,

three pieces of warranty deeds for the Ten, Forty and Sixty acres, respectively, to form a cogent part of the answer.

On March 28, 2011, the appellee filed its reply and averred that the three pieces of title deeds containing 110 acres of land attached to the appellant's answer are nowhere related to the area where the appellee's property are located because the appellant's deeds are calling for a complete different and separate settlement where the property is located, and therefore requests the trial court for arbitration consistent with practice and procedure to resolve the dispute; since trial jurors are not surveyors.

On April 5, 2011, the parties through their legal counsels, signed and filed arbitration agreement with the trial court, in keeping with Chapter 64 of the Civil Procedure Law. Subsequently, on April 18, 2021, the trial court issued a circular letter and ordered all parties to submit names of their respective surveyors to the court on or before April 27, 2021. On April 26, 2021, the appellee submitted and filed with the trial court the name of its surveyor, Reuben Johnson; on May 5, 2011, the Ministry of Lands, Mines and Energy, submitted and filed the name of Charles F. Caine as its surveyor, and on June 3, 2011, the appellant submitted and filed the name of her surveyor, Josiah Odoi.

On July 13, 2011, the trial court constituted the board of arbitration and instructed it as follows:

“This court hereby appoints Surveyor Charles F. Caine as Chairman of the Board of Arbitration in this case at bar, while Surveyors Josiah Odoi and Reuben Johnson are members of said board. They are instructed to present to this court within the period of one (1) week a cost analysis indicating the costs in undertaking the arbitration exercise. Each party in these proceedings will be responsible to compensate their nominated surveyor, while both parties will jointly compensate the Chairman on a 50/50 basis.

The Chairman and members are hereby instructed to only conduct their arbitration exercise with the deeds(s), maps(s) or diagram(s) that were pleaded/presented by the parties in these proceedings. The Chairman and members of the board of arbitration are further instructed to prepare a survey notice and have same served on the parties prior to the commencement of their work. They are to file copies of this survey notice with the clerk's office for future reference and same shall be placed in the case file. The survey notice will indicate the date and time of the commencement of the arbitration exercise. Any party or surveyor who fails to attend the exercise on the day and time stipulated in the survey notice and without any excuse to the Chairman indicating his absence at the survey, the outcome of the survey report will be binding on the absent surveyor. All legal aspects concerning the defects of the deed(s), map(s) or diagram(s), etc. should remain with the court for determination. The board is hereby to submit its written report within four (4) weeks/one (1) month upon the payment of the costs analysis by the parties either in half or whole. Any member of the board who is not satisfied with the conduct of the survey should submit his objection before the submission of the arbitration report by the Chairman. AND IT IS HEREBY SO ORDERED

Given under my hand and seal of court, this 13<sup>th</sup> day of July, A. D. 2011.

Peter W. Gbeneweleh  
Assigned Circuit Judge, Sixth Judicial Circuit,  
Civil Law Court, Montserrado County, R. L."

As instructed by the trial court, the Chairman of the board of arbitration, Charles F. Caine, filed with the trial court a costs analysis report, and a survey notice on June 20, 2011, and July 9, 2015, respectively. The costs analysis showed an aggregate amount of Eighteen Thousand, Two Hundred Fifty United States (US\$18,250.00) Dollars, while the survey notice showed Friday, July 24, 2015, at the hour of 11: 0'clock a.m. as the day, date and time for the scheduled survey. On October 15, 2015, the Chairman, Charles F. Caine, filed with

the trial court the report of the board of arbitration. Relevant excerpts of the report are quoted below:

“Reconnaissance and survey notice on both radio and newspaper were carried out to inform the public and review all documents submitted. The parties were also asked by the Chairman to show their respective boundary points according to deed description...the survey exercise began with measuring the distances and angles. After the field exercise, the board came to know that what on the ground is different from the deeds...During the commencement of the survey, all parties were present with their surveyors, police officer, Commissioner’s Representative and sheriff from the Civil Law Court.

**FINDINGS:**

The board members agreed that Rita Townsend’s Deeds do not agree with the points that are on the ground. This means that the points on the ground are different from the Deeds’ description. As for Momo Mbolon’s point that we saw on the ground went almost according to the Deed because some of the corners were removed. And so, more than half of the property claimed by Rita Townsend is in Momo Mbolon’s land. Please see on the map.

**CONCLUSION:**

In conclusion, the board of arbitration is asking the Honorable Court to allow the Momo Mbolon’s family to have their property and moreover, Momo Mbolon has the oldest Deed than those of Rita Townsend.”

On October 26, 2015, the arbitration report was read in open court following the issuance of a regular notice of assignment dated October 22, 2015. The arbitration report as highlighted in the conclusion which is contained in the preceding paragraph of this Opinion, counsel for the appellant noted exception and gave notice that he will take advantage of the statute controlling. On November 17, 2015, the appellant filed objection to the arbitration report and alleged *inter alia* that the award was procured by fraud, corruption and misrepresentation or undue means; that the arbitrators negligently or deliberately refused to take

into consideration the map of 1967 prepared by the Bong Mining Company which reflects the owners of property at the time, to include the objector's; that the arbitrators negligently or deliberately refused to take into consideration the map of 1987 which is a resurvey and relay out of the 1970 survey conducted by surveyor C.K. Dagadu; that the arbitrators proceeded unprofessionally and with fraudulent intent as revealed by a review of their report by fellow professional colleagues; that the arbitrators acted upon misrepresentation and did not verify the deed presented by the appellee because the deed could not legally exist for reasons shown in a research report from the National Archives; that the Chairman of the arbitration board, Charles F. Caine, and the representative for the appellee, surveyor Reuben Johnson, made no effort to obtain the signature of surveyor Josiah Odoi, representative for the appellant; and that the report demonstrated total misconduct on the part of the arbitrators, especially, when they unprofessionally stated that the appellee's deed was older than those of the appellant/objector.

On December 1, 2015, the appellee, filed its resistance and contended substantially that the arbitration award should be upheld because the objector has provided no legal ground for the award to be vacated; that the objector's land is lying and situated in the settlement of King Governor's Farms, distinct and separate from that of the respondent which is located in the Settlement of Caldwell, as evidenced by the respondent's deed; that the only document objector annexed to her answer was the Deed which showed that the objector's land was located at King Governor's Farms; hence, those other documents the objector is making reference to were never pleaded and are not before the trial court; that the objector's representative had knowledge of the locations of the disputed properties (Caldwell and King Governor's

Farm) therefore, the question of her representative's signature not been on the arbitration report has no legal bearing because the law provides that a majority signature validates the arbitration award.

On March 18, 2016, the trial court entered on the records its final ruling on the objection to the arbitration award after it had entertained arguments thereon on January 18, 2016. In his ruling, the trial judge found for the appellee/respondent and denied objector's motion to vacate the arbitration award for reason that the motion did not state any of the four (4) grounds provided by the statute to form the basis to vacate arbitration award. We quote excerpts of the trial court's final ruling for the good of this Opinion:

"The objector's objection to vacate the arbitration award did not allege any of the four grounds provided for by our statute herein above quoted to form a basis for this court to grant the objector's motion to vacate the award. Instead, the objector raised strange issues relating to instruments that were not pleaded and forwarded to the board of arbitration. In fact, this court says if the defendant has reason to believe the nonexistence of the deed of the plaintiff as per the alleged non-discovery from the Ministry of Foreign Affairs, that issue should have been raised in the answer and would have formed the basis for this court not to constitute a board of arbitration since the controversy of fraud cannot be determined by the board of arbitration, but by a trial jury.

The report having been submitted before this court and read in open court, this court says the objector cannot raise issue of fraud which was not raised in the answer to enable this court to rule this case to trial by jury to determine the issue of fraud. The other instruments were not pleaded by the defendant and were not given to the board of arbitration as a basis or necessary tool or instruments for the conduct of the survey. This court says that the board of arbitration did not proceed contrary to the instructions of this honorable court.

Wherefore, and in view of the foregoing, the motion to vacate the award is hereby denied and the resistance thereto hereby

sustained. It is the final judgment of this honorable court that the award is hereby confirmed and affirmed.”

The objector noted exception and announced an appeal to the Honorable Supreme Court sitting in its October Term A.D. 2016. On March 25, 2016, the objector filed her approved bill of exceptions and assigned the following as errors allegedly committed by the trial judge; viz: The appellant/objector alleged that the trial judge erred when he disregarded a Bong Mining Company Deed used for survey in 1967, and a 1987 resurvey map which also is a relay-out of a 1970 survey on ground that they were not pleaded, though the objector further alleged that those instruments were produced on request by the trial judge’s predecessor’s instructions; that the trial judge ignored count four (4) of her objection which points to the unprofessional acts of the arbitration board as revealed by a review report by their fellow professional colleagues; that the trial judge erred when he ruled that the objection does not contain any of the grounds provided by statute to vacate arbitration award when in fact counts 2, 3, 4, and 5 of her objection contain all of the grounds; and that the judge also erred when he construed count six (6) of her objection as an admission of service on the technical representative of the objector when in fact said count points to the procuring of the report by fraud, corruption and other undue means by excluding the objector’s technical representative.

Having reviewed the facts in this case, and carefully analyzed the contentions raised by the parties before Court, there are two issues this Court must answer to settle the matter, and they are:

1. Whether or not the appellant/objector proved fraud as alleged in her objection to vacate the arbitration award?
2. Whether or not the trial judge erred when he denied the objector’s objection and affirmed the arbitration award?



This Court is not bound to pass on all the issues raised in the bill of exceptions or briefs of the parties, but those the Court finds germane and meritorious to the determination of the case. *LIBCO v. Collins*, 36 LLR 828 (1990); *LAMCO J.V. Operating Company v. Verdier*, 26 LLR 445 (1978).

The appellant, in her motion to vacate arbitration award, and her bill of exceptions before this trial court, alleged that the arbitration award was procured by corruption, fraud and misrepresentation as the arbitrators excluded her technical representative from the survey process; that the trial judge committed reversible error in that those Deeds of 1967, 1987 and 1970, respectively, that were annexed to her objection and denied by the trial judge because they were not pleaded, were produced on instructions of his predecessor. She further alleged that the arbitrators proceeded unprofessionally and with fraudulent intent as revealed by the review of their report by fellow professional colleagues.

This Courts has held in a long line of Opinions that the issue of fraud is not by presumption, but when fraud is alleged, the facts and circumstances constituting it must be stated with particularity and proved by the production of evidence, which is required to establish the fraud; and the burden of proof rests entirely on the party who alleges the fraud. *Wilson et al v. Wilson et al*, 37 LLR 420 (1994); *Multinational Gas and Petrochemical Company v. Crystal Steamship Corp.*, 27 LLR 198 (1978); *Monrovia Construction Corporation v. Wazami*, 23 LLR 58 (1974). In order to verify the allegation of fraud as required by law, we take recourse to the certified records in this case. The records established that the appellant attached to her objection species of documents which include a research report she claimed was issued by the Ministry of Foreign Affairs, under the signature of C.

Morris, Acting Director of Archives, dated May 13, 2015. Mr. C. Morris indicated that Rev. Rita Townsend, the Attorney-in-Fact for the appellant/objector, requested the Bureau of Archives of the Ministry of Foreign Affairs to research and authenticate the Public Land Sale Deed containing 500 acres of land, issued to Momo Mbolon by the Republic of Liberia on March 16, 1901. Mr. C. Morris further indicated in his research report that volume 29 of the records at the Archives of the Ministry of Foreign Affairs did not cover the year 1901 but 1902; and that March 16, 1901, the date written on the deed was a Saturday and the President could not have signed and or approved Deeds on non-working days.

This Court observes that the intent of the research report was to discredit the Title Deed of the appellee, but we also take cognizance of the fact that the appellant (objector) obtained said report five (5) months prior to the reading of the arbitral report in open court on October 26, 2015. Besides, the appellant (objector) failed to file her objection prior to the reading of the arbitral report in open court as mandated by the trial court; whereas, the counsel for the appellant (objector) was notified at every stage of the arbitration process, as evidenced by the several notices of assignment acknowledged by the counsel of the appellant (objector).

This Court also observes that the appellant/objector attached a report addressed to the trial court, titled: Disagreement over the partial self-interest report sent to your court by the Arbitration Board, dated October 27, 2015, under the signature of Edwin Boikai, with the title of a Registered Surveyor of Liberia, Land, Mines and Energy, presenting himself as the technical representative of Rev. Rita Townsend. The report alleged that the Arbitration Board did not know the meaning of Caldwell; that the board did not conduct the survey and that some of

the documents were false drawings. Another document attached by the appellant/objector was a report titled: Authentication of arbitration survey report and Momo Mbolon's Deed, dated November 6, 2015, under the signature of Paul Alex Tolbert, who presented himself as Senior Land Investigator from the Land Commission. This report, like the previous, was also intended to impeach the genuineness and lawfulness of appellee/respondent's Title.

This Court also notes that the reports attached to the objector's objection to the arbitration award may seem plausibly correct, but, this Court has held in a litany of Opinions that a party to a disputed property must recover on the strength of his own title, not on the weakness of the title of his adversary (emphasis supplied). *Tay v. Teh et al*, 18 LLR 310 (1968); *Dasusea et al v. Coleman*, 36 LLR 102 (1989). Moreover, the documents so attached were never pleaded, testified to, examined under direct and cross-examined to have established their individual weight consistent with the law of evidence. We must emphasize that where an action is instituted before a court, an agreement to submit the claims raised in the pleadings to arbitration can only be based on the instruments pleaded by the parties, except where otherwise provided in the arbitral agreement; that in the instant case, instruments attached to the appellant's objection which were never pleaded nor provided for by the arbitral agreement so as to give notice to the opposing party was properly excluded by the trial court. This not being the case, the attached documents to the motion of objection by the appellant are self-serving and not cognizable before this Court.

We must further expatiate herein that this Court finds it extremely difficult to concede the point that fraud had been committed by the board of arbitration as the survey was conducted pursuant to Deeds

attached to the pleadings of the parties. Additionally, the Civil Procedure Law, Chapter 64, Section 64.11 provides grounds for vacating award of the board of arbitration; and that the appellant having alleged fraud as the only ground in her objection to vacate the award, but failed to prove same as mandated by law, the trial judge was not in error when he denied the objection, upheld and confirmed the arbitral report.

This brings us to the second and final issue: whether or not the trial judge erred when he denied the objector's objection and confirmed the arbitration report? On April 5, 2011, upon the filing of a signed arbitration agreement by the parties through the respective counsels, the trial court issued several instructions necessary for the impartial implementation of the arbitration agreement. These instructions included the supply of technical representatives/surveyors from the contesting parties, and the Ministry of Land, Mines and Energy; supply of a costs estimate for the conduct of the arbitration exercise; issuance of a survey notice; strictly use of instruments pleaded; filing of objection before the report is submitted by the chairman, and failure by any party or member of the arbitration board to attend the exercise on the date and time specified unexcused, the outcome of the exercise will be binding on the absent party. Our review shows that the parties adhered to the instructions. However, this Court observes that the technical representative (surveyor) for the appellant (objector), Josiah Odoi, did not sign the survey notice, neither did he sign the arbitration report. We further observe that notices of assignment and other documents from the court relative to the arbitration exercise were signed for and received by either the counsel for the appellant, Counsellor Pearl Brown-Bull, or the appellant's Attorney-in-Fact, Rita Townsend, with no reservation or indication to the contrary.

The survey report contained that all parties were present at the conduct of the investigative survey; and that the trial court did not receive any objection from the conduct of the exercise. Further, there is no information of noncompliance from the technical representative for the objector, Josiah Odoi, but strangely, the objector hired the services of other “technical representatives” to the exclusion of the trial court and the appellee, who submitted documents not sanctioned by the trial court. We must emphasize as was done in one of our earlier paragraphs that the appellant/objector’s counsel had knowledge of the arbitration process to the extent that not only did she sign the arbitration agreement and other court papers, but importantly, supplied the name of the appellant/objector’s surveyor/technical representative in person of Josiah Odoi, a resident of Caldwell. In the mind of this Court, the selection of a surveyor, resident in the area of the disputed property was in the right direction, and whose presence should have aided the arbitration survey. We therefore hold that the trial court was justified when it ruled and held that “the objector raised strange issues relating to instruments that were not pleaded and forwarded to the board of arbitration”. This Court is also in agreement with the trial judge that if the defendant had reason to believe that the plaintiff’s deed was nonexistent as per the allegation of non-discovery from the Ministry of Foreign Affairs, same should have been raised in her answer which would have formed the foundation for a trial by jury.

The appellant (objector) having not considered any of the aforementioned options, this Court is not inclined to set aside the trial court’s final ruling. The Supreme Court of Liberia has held that “courts of justice cannot do for litigants that which they ought to do for themselves, otherwise they will cease to exist as the blind goddess of

justice and the pillar of neutrality". *LAMCO J.V. Operating Co. v. Azzam et al*, 31 LLR 649 (1983).

Wherefore, and in view of the foregoing, the final ruling of the trial court confirming the arbitration award in favor of the appellee is affirmed, and the appeal denied. The Clerk of this Court is ordered to send a Mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case, and give effect to this Opinion. Costs are ruled against the appellant/objector. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Morris M. Davis, Jr. of the Kemp & Associates appeared for the appellant/objector. Counsellor Mamee S. W. Gongbah, Jr. of the Liberty Law Firm appeared for the appellee/respondent.