

CHARGE DELIVERED FOR THE OPENING OF THE SEPTEMBER TERM OF THE SIXTH JUDICIAL CIRCUIT, CIVIL LAW COURT AD 2023

BY CLLR. J. KENNEDY PEABODY, RESIDENT CIRCUIT JUDGE, MONTSERRADO CO.

Her Honor Sie-A-Nyene G. Yuoh, Chief Justice of the Supreme Court of Liberia, Justices of the Honorable Supreme Court of Liberia, my friend and brother His Honor Ousman F. Feika, the President and members of the Trial Judges Association, the President and members of the Liberian National Bar Association, the President and members of the Montserrado County Bar, the Minister of Justice and Attorney General of Liberia, and all prosecutors of the Ministry of Justice, my esteemed Colleague Magistrates, the Clergy, the Fourth Estate, Clerical Staff and Ministerial Officers, Party Litigants, distinguished ladies and gentlemen.

Today, we express our gratitude to the Almighty God, the Creator of all Creation for His many Blessings. If it was not for God we would not be sitting here today. May I at this time, thank the Honorable Chief Justice, Her Honor Sie-A-Nyene G. Yuoh for her confidence in assigning us for the September Term of Court. We are indeed grateful Madam Chief Justice.

Let it be known that we are at a very important period of our national existence. Within the next 20 days, we will be electing our leaders who will steer the affairs of our country. We plead with all our citizens to keep the peace so that our democracy will be sustained. We need a peaceful election for growth and development and support from the International Community. This is everyone's problem, and together we can make it. It is only through collective efforts that we can overcome our problems and ensure that peace prevails.

Madam Chief Justice, Mr. President, distinguished members of the Bar, ladies, and gentlemen, we have done a four-year analysis of cases filed before the Sixth Judicial Circuit, Civil Law Court, from March 2020 up to and including August 31, AD 2023, and found that a total of 2,212 cases were filed before this Court, 877 of that number was ejectment cases accounting for 39.6%. It is further observed that 103 of these ejectment cases were disposed of, thereby, accounting for 11.7%. It is clear and worth noting that the number of ejectment cases disposed of is far less than the number of cases that are pending undetermined.

Significant developments have been achieved since the independence and the sovereignty of the Republic of Liberia, the adoption of the Constitution, and the establishment of the Judiciary. At the same time, the process of transition of Liberia towards an economically developed, modern, democratic state governed by the rule of law encountered certain weaknesses. Hence a need to intensify the reforms in all of the segments of the Judiciary. To that end, the Supreme Court headed by Her Honor Sie-A-Nyene G. Yuoh, has identified the need to reform the judicial system as a strategic priority.

The goals and the short-term and medium-term instruments for accomplishing them are been determined within the framework of the

reform. In addition, the reform of the Judicial and legal procedures of our court systems need not be overemphasized. The reform of the Judicial system needs to be seen as a part of a complementary reform project that encompasses the enactment of new statutes to conform to present-day reality and prevailing conditions and the repeal of old and irrelevant laws.

Consequently, the reform of the judicial system must be in line with the Legislative functions, as well as with the creation of laws that will shorten the time of litigation and quick access to justice. This is why today we like to speak on the topic, **Investigative survey a prima facie evidence for summary judgment in ejectment cases, speedy trial, and access to justice for land owners.** The analyses on the ejectment cases up to date identify a significant number of weaknesses in the system pertaining to slow procedures and inaccessibility of justice. Difficult and prolonged execution of final decisions; Overburdened courts with cases that should be disposed of and obsolete and insufficient laws.

The nature of such weaknesses of the Judicial system demands complex, complementary, and dynamic measures and actions, conceived within the framework of a comprehensive strategy for the reform of the judicial system by alternative means suitable to present-day reality and popular needs.

The Strategy is essentially a measure of actions directed towards eliminating unfavorable situations and initiating a new phase for access to justice. Ultimately, the disposition of ejectment cases Strategy implies political consensus and a will to make changes, which assumes a shift in the relationship of the key political players in addressing societal confrontations that are generating crisis in society and raising the issue of reform orientation and capacity for changes.

This is a prerequisite for the purpose of performing the legal protection of human rights and fundamental freedoms and supporting the rule of law and legal security to secure the development of a society based on the principles of democracy. The general goal of the Strategy is to build a functional and efficient justice system based on legal standards that will afford speedy trial and predictability.

The two key areas underpinning judicial reform are strengthening its weak and unnecessary procedures to increasing its efficiency in the performance of courts. Over the years we have experienced the troubling issue of land disputes, therefore, the fast disposition of land cases is a recipe for ensuring stable democracy, rule of law, protection of human rights, and the rights of access to justice for the people.

Accordingly, the significance of using the survey report as prima facie evidence in ejectment cases is a sine qua non to clearing of the docket of the courts, as well as for the speedy disposition of ejectment cases. The Survey exercise, incorporating the record is consistent with conventional metes defined as 'the territorial limits of the disputed property as measured by distances and angles from designated landmarks and in relation to

adjoining properties' See Metes and Bounds defined; **7th Edition Black's Law Dictionary (2010)**.

It is therefore, safe to say that a summary judgment may be granted based on an investigative survey, since the Court, the Jury, and the lawyers do not have the Technical know-how with the aim to establish an impartial and fair ownership of the disputed property, especially so where the Investigative survey report is prepared by the engineers who are the technicians trained to locate and interpret metes and bounds which report is concise, precise and to the point where it is clear and convincing that the subject property of contention is located on the ground and that one of the contending parties has the strongest title deed than that of the other party; then and in that case, said report shall be highly considered. The Supreme Court has again said that the law in this jurisdiction is that the Report of the Survey is in the nature of evidence. **Pratt v. Philips and Summerville 9 LLR 446, 451.** **Therefore,** what should be of concern to every lawyer, party litigant and the Court is the cold neutrality of an impartial and fair surveyor. This is why we need to engage the Liberia Land Authority to set up a committee of engineers to verify and certify all survey reports for accuracy and correctness.

The lawyers, the party litigants, the Jury, and the judges are not surveyors, they cannot technically establish the location of a property, nor can they interpret the meaning of 23 degrees east, 20 degrees north, 90 degrees west, and 25 degrees south. We as lawyers and judges cannot also interpret metes and bounds therefore, only the Surveyors who are the engineers trained to do so. The Supreme Court said that the object of an investigative survey is to assist the Court by providing the Court the technical assistance necessary to a legally fair and equitable disposition of a matter before the Court; this is done when the technicians, especially in a land case, under the direction of the Court, conducts a survey identifying the metes and bounds and exact location of a parcel of land that may be subject of controversy. **Jarba vs Fagans-Freeman October term 2012 delivered February 2013. Freeman et al v. Webster 14 LLR 493.**

Such a process has been endorsed in numerous decisions by the Supreme Court and further elaborated and articulated in **Josephus Surmie, Norwah Garkpor et al. v. Calvary Baptist Church**, delivered during the March Term, 2007. In the Josephus case, the Supreme Court said that the proper process in respect of a dispute of ownership where the land in dispute is the same parcel or portion of the same land is to conduct a survey using the title deeds relied upon by the parties where the land in dispute is the same parcel or portion of the same land. Ladies and gentlemen, the question to you is what extra evidence do we need here to determine the owner of the contested property?

We are aware of the constitutional provision of **Article 21 (h)** that an accused shall have the right to a speedy and impartial jury trial, in my mind this is purely for criminal cases however, this is another debate that the Bar needs to look at. However, the right to a jury trial is not absolute, according

to Chapter 22 Subsection 22.1 (2) a party in a civil suit must request a jury trial within ten days after pleadings should have rested. In my mind, to wait for five or more years just to submit an ejectment action to jurors who are not technically inclined, when the Survey Report is clear and convincing, is a denial of the party litigants' right to a speedy trial. It is inconceivable to advocate access to justice and at the same time allow a procedure that denies the parties access to justice for speedy trial and speedy result. It is an undisputed fact that we have submitted all our ejectment actions for a jury trial, not taking into consideration the Terms of Court which is only 42 days, as a result of which enough ejectment cases are not disposed of.

It has been established that there is in fact a danger to the continued pending of ejectment cases before the Court. There is always incontrovertible evidence that due to the prolonged pending cases to be submitted to a jury trial, other parties use the prolonged period for violence and intimidation of the weaker parties and have their lawyers employ legal technicality not to have a speedy trial. In so doing, it is the innocent, the poor, and the weaker party litigants who are the direct victims of our legal procedure in land disputes, as a result, the docket is grossly overcrowded. The violence that continues to be perpetrated in land cases must stop and this can only stop if we take the initiative to do so.

The Liberia Land Authority is the Technical Arm of the Court with the authority to determine the ownership of a property that is being contested by two or more parties through an impartial and fair survey. We as a court cannot shy away from this reality and continue to delay ejectment cases that are increasing the docket alarmingly in the name of submitting it for a jury trial and denying party litigants speedy trial thereby contributing to unscrupulous land sale and violence. It is about time that the Judiciary changed course.

Title or ownership is complete only when the land covered by a deed is positively identified and the polygon closed according to deed description (metes and bounds) and ground location; and the deeds presented to the Court or surveyor, therefore, in the authentication of the parties claims to the disputed parcel of land only the surveyors have the technical relevance to grant possession rightfully to any party exception wherein adverse possession is evoked.

This reform aims at prompt access to justice, prompt and easy exercise of the rights and interests of citizens and legal entities, efficient crime control, and procedural guarantees for protecting human rights through the mechanisms of the justice system. One of the direct effects of the reform is to increase the efficiency of the Courts and decrease the number of pending ejectment cases. The inadequacies and limitations of the legal system need a remedy, which can be done by the initiative of the Liberian National Bar Association and the Supreme Court. We recognize and acknowledge the challenges to achieving our goals, but there is no easy way to succeed. When

the rule of law and human rights are threatened, our democracy is threatened as well.

We charge the LNBA today to be the voice of positive change and take the lead in rebranding the Judiciary. The Bar has a special responsibility to set the pace for the speedy disposition of ejectment cases. This is not just the Judiciary problem, this is our problem because our clients are the direct victims of the delay in disposing of ejectment cases due to jury trials. We as Lawyers have a special responsibility to advocate to change laws and practices that are ineffective and not in conformity with present-day reality.

Therefore, we urge you today to continue to fight to advance the rule of law and the cause of justice, this is the values we believe in as lawyers. Change is needed in our legal system, reform is the platform and change we must. Everyone needs to be at the forefront to achieve what we believe is long overdue regarding our legal system and access to justice.

To have access to justice, we must be willing and must exert all efforts to have our constitution and statutes reflect present-day reality to expand legal services to more Liberians and residents. We must, therefore, work to narrow the procedural technicality in our statutes. In my view, this is clearly a substantial issue for the Bar and Bench to seriously consider. Certainly, some of you may have a different viewpoint regarding investigative survey reports being used as prima facie evidence to dispose of ejectment cases, let me say that we welcome those views that will help our people to have speedy access to their properties.

Therefore, Madam Chief Justice, Mr. President, and members of this August Bar, we believe, that the establishment of a procedure where ejectment cases are ruled based on the investigative survey report would enable a judge to dispose of more than ten to 15 ejectment cases per term. This will alleviate the burden of overcrowded dockets and long years of cases pending for more than 15 years or more undisposed.

Additionally, one other way to enhance speedy trial of ejectment cases is to do away with the jury system and maintain trials by judges sitting alone as both judge of the law and judge of the facts. The jury as we know it today is basically a legal institution in which a group of laymen participate in a trial to make a determination. Of course jury service is a national obligation of every citizen. But the issue is the caliber of people who are providing jury services in ejectment cases, the lawyers, and the judges are not trained engineers, they don't understand the technical nature of the case. The resources directed towards jurors could be used for important areas of the judiciary. We are living in the past, Liberia is behind, and countries around us have gone far ahead. We have been told that laws are made based on the prevailing realities and conditions at a particular time. We believe today's realities do not require a jury trial in ejectment matters.

These measures may sound radical but I respectfully submit that to achieve good things, we have to venture into the unknown with faith in the future. The first thing to do is place these suggestions on the agenda for the LNBA Assembly and Convention to be thoroughly discussed and adopted as a

Resolution for recommendation to the National Legislature for enactment into law, thereby amending existing laws in their respective Statutes.

Accordingly, we must respond to the needs of our people, this is one of the reasons why people are losing faith in the judiciary and our justice system. The actual problem is not the judiciary or the interpretation of the law, but rather the laws, procedures, and how the system is structured.

Madam Chief Justice, Mr. President, and my esteemed colleagues of the Bar, it is safe to say that the main barriers to disposing of ejectment cases are the length of the procedure, the lack of the political will to take the lead, and to a certain extent the costs. Additionally, it is clear that the procedure is slow, and the time to end litigation is unpredictable. The procedural aspects of access to justice are not always easy. For example, there are cases on this Court docket for more than 15 to 20 years waiting for a jury trial. Far worse, some of the party litigants die long before the case is disposed of. The setbacks, especially the pain, cost, delay, complexity of the legal system, and the suffering many have experienced directly or indirectly as a result of waiting for a jury trial are unbearable.

Today, we plead with you, somehow, some way, you are either to choose the change necessary to speedily dispose of ejectment cases or remain where you are and deny those who need your help. We know how it feels, we know what it entails to wait for years to be given the legal rights to one property. We know what it entails to die without enjoying one property, we know what it is to pay legal fees to a lawyer and your case cannot be heard. Yes, we know and it behooves us to act now and enhance the rule of law for party litigants to have their cases heard on time. In my mind, this is not opposing principles to the authority of the statutes nor the constitution, but rather complementary. Nevertheless, the success of the judicial reforms depends upon the level of cooperation and coordination from the Bar, because the Supreme Court has taken the lead by the pronouncement made by the Chief Justice, Her Honor Sie-A-Nyene G. Yuoh, on **Rebranding the Judiciary**. It is our readiness and the expectations, to implement that are required.

As we conclude, we as members of the highest and most respectable profession in this country, have a duty and responsibility to change the phenomenon, especially so when that change is beneficiary to our country and residents. We must, therefore, do everything humanly and legally possible to make the Judiciary a symbol of great pride. We must certainly, spare no efforts in this endeavor.

The accomplishment of the general and specific objectives of the Strategy is based on the following principles: the Rule of law; Guaranteeing speedy disposition of ejectment cases; Equitable and appropriate clearing of the docket and Ensuring equal access to justice; and Prompt and efficient procedures. Our efforts, however, should be directed particularly towards the revision of the entire judicial system so as to enhance the confidence in the administration of justice by our courts of law.

finally, with the authority in us vested by virtue of the Mandates of Her Honor Sie-A-Nyene G. Yuoh, Chief Justice of the Supreme Court of Liberia, to hold

and preside over the affairs of the Sixth Judicial Circuit, Civil Law Court for the September Term of Court A. D. 2023, we respectively through this Charge hereby declare the said Circuit open for the transaction of business. AND IT IS ORDERED.