

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF 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
BEFORE HIS HONOR: YAMIE QUI QUI GBEISAY, SR.....ASSOCIATE JUSTICE

Varfin Kenneh by and through his)
Attorney in-Fact, Foday Kenneh and)
Mohammed Kenneh of the City of)
Monrovia.....Appellant)

Versus)

APPEAL)

Jallah Boi, Stephen, Small Jallah and)
others to be identified, all of the)
Township of Congo Town acting under)
their control and authority.....Appellees)

GROWING OUT OF THE CASE:)

Varfin Kenneh by and through his)
Attorney-in-Fact, Foday Kenneh and)
Mohammed Kenneh of the City of)
Monrovia.....Plaintiff)

Versus)

ACTION OF EJECTMENT)

Jallah Boi, Stephen, Small Jallah and)
others to be identified, all of the)
Township of Congo Town acting under)
their control and authority.....Defendants)

Heard: April 5, 2023

Decided: August 11, 2023

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case is before us on appeal from a ruling rendered by the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellant Varfin Kenneh. The appellant challenges the lower court’s ruling, averring that the court overlooked material facts in the case, and has petitioned this Court to overturn the ruling and enter the ruling that ought to have been rendered by the court below.

The salient facts that are crucial to the determination of this matter are that on March 6, 2019, the appellant Varfin Kenneh, by and through his Attorneys-in-Fact, Foday Kenneh and Mohammed Kenneh, filed an action of

ejectment before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellees, Jallah Boi, Stephen, Small Jallah and others to be identified, contending that the appellant is the lawful and legitimate owner of a parcel of one lot of land, lying and situated in the Township of Congo Town, Montserrado County, Republic of Liberia. Appellant alleged that the appellees had without any color of right or title, illegally entered upon the appellant's land and erected a structure thereon despite several attempts and notices from him to prevent the appellees from building on the said land; that the occupancy of the appellees on his land is without any legal justification, and such occupancy grossly violates his property rights. The appellant prayed the court to oust, eject and evict the appellees from his property and adjudge them liable in damages in the amount of One Hundred and Fifty Thousand United States Dollars (US\$150,000.00) for the wrongful withholding of his property. The appellant attached to his complaint as exhibits, a copy of the power-of-attorney issued to Foday Kenneh and Mohammed Kenneh and copies of the appellant's deed as well as his grantor's deed to substantiate his claim.

The appellees filed their answer to the appellant's complaint, challenging the appellant's right to the property in dispute. The appellees averred that assuming the appellant has title to the property, by operation of law, his title is void because both the appellant and the appellees acquired the property from the same grantor, but the appellees were the first to acquire the said property as they bought the property on January 5, 2005; whereas, the appellant bought his property on February 27, 2007; hence, as per law, the appellees deed is older and therefore their title superior; that the older title will take precedence over the latter one. The appellees prayed the court to dismiss the appellant's complaint because the appellees are the bona-fide and legitimate owners of the property; they further prayed the court to also grant them One Hundred and Fifty Thousand United States Dollars (US\$150,000.00) as damages for the unmeritorious action filed against them by the appellant.

The appellant filed his reply countering the appellees' argument that their title to the subject property is superior to his. The appellant stated that even though the appellees allege that they purchased the property from the same grantor, the appellees deed shows that they bought the property on January 5, 2005, probated and registered their title on August 23, 2016, more than eleven (11) years after acquiring the property in violation of the Property Law. On the contrary, he, the appellant, bought the property on November

11, 2006, probated and registered his title on February 27, 2007, three months after acquiring the property in consonance with the Property Law (Title 29, Chapter 1.6). This, the appellant says, means that he legally perfected his title to the property nine years before the appellees and therefore his title is superior to that of the appellees. Besides, the appellant alleges that the appellees' deed is fraudulent as the date on which the deed was probated and registered predates the date on the letters of administration proffered by the appellees; that the date on the letters of administration proffered by the appellees is September 15, 2016, while the appellees' title deed is dated August 23, 2016, and not 2005 as they alleged their land was purchased and which clearly shows fraud. As such, the appellant alleged that the entire transaction by the appellees was a product of fraud and ejectment will lie against them to oust and evict them from the property in dispute.

When pleadings rested, the matter was assigned for the disposition of law issues and the appellant's counsel requested the court to rule the matter to trial on its merits. The appellees' counsel interposed no objection to the application made by the appellant's counsel but requested that since both parties acquired the property from the same grantor, the court should order for an investigative survey.

The Judge ruled that both parties having conceded that they bought the property from the same grantor and the appellant's counsel having requested for the case to be ruled to trial on its merits, same was granted. He also held that that an investigative survey be conducted as requested by the appellees' counsel.

The investigation was carried out by the Liberia Land authority with representatives of the parties present.

A report of the investigation conducted was filed with the court on August 14, 2019. The report concluded that based on the technical analysis and facts identified on the ground, the appellant's claim to the property in dispute has no support.

The appellant objected to the report, and on September 2, 2019, filed his objections detailing his disagreement with the report. We see in the records that after the appellant filed his objection to the survey report, the Assistant Clerk of the trial court, issued an assignment on September 10, 2019, to the parties to appear for hearing of the appellant's objection on September 17, 2019. The hearing was not held due to the Judge's dissatisfaction with the

appearance of the appellant's counsel and the matter was adjourned pending the issuance of a regular assignment. The records reveal that subsequently on October 14 and 30, 2019, the court invited the technical representative of the appellant, Mr. Arab R. Kamara, and the surveyor from the Liberia Land Authority who headed the investigative survey team, Mr. McArthur Z. Beyan, to appear for a conference in the Judge's Chambers in order for Mr. Beyan to clarify his report filed with the court and to confront Mr. Kamara regarding his objection made to the report. We do not see any record evidencing that the conferences scheduled for October 14 and 30, 2019 were ever held. However, we see a letter dated December 18, 2019, written again to Mr. McArthur Z. Beyan by the Assistant Clerk, inviting him to appear on January 2, 2020, to give clarification on his report submitted to the court, and on January 9, 2020, a Writ of Contempt directed to Mr. McArthur Z. Beyan, to show cause why he should not be held in contempt of court for disobeying and disrespecting the court's order.

The records transcribed to this Court contain no formal record made of the appearance of Mr. McArthur Z. Beyan, but a handwritten note made by the Judge on the citation sheet of the Writ of Contempt dated January 9, 2020, reads: "*Mr. Beyan appeared and confirmed his report which concludes that plaintiff (appellant) has no claim to the property because plaintiff's deed is not in conformity with the ground information. Therefore, the report will be submitted to the jury*". The Judge thereafter sent the investigative report along with other documentary evidence to the jury to consider in their determination of the parties' right to the disputed property.

The jury returned a unanimous verdict of non-labile in favor of the appellees. The appellant thereafter filed a motion for new trial and same was resisted by the appellees, heard and denied by the court. The court entered a Final Ruling affirming the jury's unanimous verdict, holding that the trial jurors are the sole judges of the credibility of each witness and they are the sole judges of the value or weight to be given to the testimony of each witness; that in the mind of the court, the evidence that was made available to the trier of facts was sufficient to enable them reach a verdict; that only the Honorable Supreme Court is competent to re-evaluate, re-weigh or re-determine evidence presented by the parties during the trial, and overturn the conclusion reached by the jurors.

The appellant excepted to the final judgment, announced an appeal therefrom and filed his bill of exceptions alleging that: (1) the trial judge erred when he failed to set aside the jury verdict and enter a ruling in favor

of the appellant on the issue of law bordering on the doctrine of superior title; and (2) the Judge erred when he referenced the conduct of the investigative survey and findings in his ruling but failed to indicate the objection filed by the appellant against the said investigative survey report.

The appellant urges this court to overturn the ruling by the lower court due to these alleged missteps by the trial court and rule in his favor as he is entitled to the land, subject of this case.

On the issue of the appellant's claim of having superior title to that of the appellees, the appellant forcefully asserts that the principle of superior title is controlling in this case because the two parties derive their respective title from the same grantor, Charles Coker, Jr., and the appellant probated and registered his title deed on February 27, 2007, nine years prior to the appellees' probation and registration of their title deed on August 23, 2016. The appellant therefore argues that his title is older and superior to the appellees' title and is thereby entitled to the property.

In addressing the appellant's contention, we take judicial cognizance of the settled law in this jurisdiction that when two parties assert claim of title or ownership to an identical parcel of land conveyed by the same grantor, the party holding the older title deed has a superior right to ownership of and possession to the property. *Subah-Belleh v Oniyama*, Supreme Court Opinion, October Term 2014; *Cooper v. Gissie*, 28 LLR 202 (1979); *Walker v. Morris*, 15 LLR 424 (1963); *Davies v. Republic*, 14 LLR 246 (1960). Our Real Property Law, Rev. Code 29:1.6 states: "If any person shall fail to have any instrument affecting or relating to real property probated and registered within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered." Therefore, it is settled law that when two parties assert claim of title or ownership to an identical parcel of land conveyed by the same grantor, the party whose deed is duly probated within four months after its execution, has superior right to ownership of and possession to the property.

In this case, we see no dispute in the pleadings that the parties were claiming the same parcel of land sold to them by the same grantor. The records reflect that the principal appellee, Jallah Boi, testified on the direct as follows:

Q. "Witness, refresh your memory and say if you know whether AB contacted anyone by the name of Varfee Kanneh and if so what happen?"

- A. "Yes. Varfee Kanneh. When I completed my house and was just about to move in, Varfee Kanneh came and said he wanted to build a gas station on a house spot within my lot, in front of my house, and I said, "no." That was when I went to our grantor, Charles, and I told Charles that somebody is claiming a house spot within the one lot that I owned and he said well, let's conduct a survey, and we conducted the survey. **The spot he was claiming was within my one lot and then Charles (grantor) told him that what we need to do is I will relocate you because this man bought since 2005** [emphasis ours] and they said no, they wanted refund of their money that how they left..."

Both parties in this proceeding lay claim to a particular disputed spot of land which the appellees allege was acquired by Jallah Boi and Bendu Jallah on January 5, 2005, and their deed was probated on August 23, 2016. On the other hand, the appellant claims that he acquired the property on November 11, 2006, and probated his deed on February 27, 2007. The principal appellee, Jallah Boi himself admits in his testimony that a survey was done and the appellant's spot was found in his one lot; that their grantor Charles Coker told the appellant that he would relocate him but the appellant refused and asked that his money paid for the land be refunded. Clearly then, the showing of superior title was vested in the appellant for the area identified as per his deed as he legally perfected his title more than nine years before the appellees and as per the property law cited above. Where the grantor in this case did not relocate the appellant or refund his money paid for the property as identified by the first survey report, the appellant was the superior owner of the spot identified as per his deed and is entitled to possession thereof.

We are taken aback that the counsel for the appellant who asserted the appellant's title in all the pleadings filed before the court and who should have as a matter of law prayed the trial court for summary judgment during the disposition of law issue, particularly in reference to the survey done and referred to by the principal appellee, requested that the judge submit the case for hearing on its merits; and that counsel for the principal appellee, Jallah Boi, who admitted that there was a previous survey done that placed the appellant's land in his property again requested for an investigative survey which the judge granted.

The appellant in its bill of exceptions also complains that the trial Judge erred when he referenced the conduct of the investigative survey and findings in his ruling but failed to indicate the objection filed by the appellant

against the said investigative survey report. The survey report presented and the appellant's objection are incorporated herein below:

1. The parcel of land/property in dispute exists at the location described.
2. The land/property in dispute is situated and lying in Oldest Congo Town, Montserrado County.
3. Both parties have the same grantor (Charles Cooker).
4. The plaintiff (appellant) is claiming portion of the ground location of the defendants.
5. The metes and bounds of the parcel of land/property in dispute as indicated on the deed of the plaintiff (appellant) is not in conformity with the metes and bounds obtained from the ground location of the land/property in dispute.
6. The plaintiff (appellant) metes and bounds according to the deed and ground location will further provoke land/property dispute.
7. Portion of the plaintiff's (appellant) property/land is within and across the Tubman Boulevard Road according to the deed.
8. The plaintiff's (appellant) metes and bounds according to the deed and ground are contrary to the area/block layout. That is, the width (82.5 feet/double) of the properties investigated are along the Tubman Boulevard Road and the length (132 feet/double) is running towards the beach (Atlantic Ocean).
9. The metes and bounds of the parcel of land/property in dispute as indicated on the deed of the defendants (appellees) is in conformity with the metes and bounds obtained from the ground location of the land/property in dispute.
10. The defendants' (appellees) metes and bounds according to the deed and ground reflect the area/block layout. That is, the width (82.5 feet/double) of the properties investigated are along the Tubman Boulevard Road and the length (132 feet/double) is running down the beach (Atlantic Ocean)."

The appellant wrote that he disagreed with the entire survey exercise, attaching the observation of his representative surveyor. Portion of the appellant surveyor's observation to the survey reads:

"Referring to the Chairman's report, I found that he failed woefully and fell short to depict the picture of the ground situation. The Tubman Boulevard runs from east to west and from west to east on the bearings; south 79 degrees east and north 79 degrees west. This data was picked up with the gamin (gps) global positioning system, which the Chairman [technical surveyor] claimed to have used to collect his data. This has to be proven by paying a second visit to the site in question by an independent qualified surveyor.

The vectors of both deeds are not in conformity with the direction of the Tubman Boulevard. For instance the plaintiff's deed carries 72 degrees and 18 degrees and the defendants' deed carries 45 degrees and 45 degrees. The Chairman [technical surveyor] failed to point out these differences, but went ahead to draw conclusion in favor of one party. This is a gross misconception on the part of the chairman [technical surveyor].

Therefore, Your Honor, I humbly appeal to this Honorable Court that I disagree with the Chairman's report and that we could pay a second visit to the site; this time around in the company of a different chairman [technical surveyor] to enable the new chairman to highlight the discrepancies in the Chairman's report.

In conclusion, I think the Chairman could not have included UTM Coordinates of the GPS for now in his report, and because of this, I don't think the jurors of this Honorable Court and the Court as a whole are in the position to interpret the data because what is required is a graphic representation of the ground situation.

The presentation of those UTM Coordinate is farfetched, it is a mere show off or bluff which does not satisfy the demand of this Court as expected from the chairman [technical surveyor] "

We find the investigative survey report submitted by the Technical Surveyor of the Liberia Land Authority as against his site plan baffling. Count 7 of his report states that portion of the plaintiff's (appellant) property/land is within and across the Tubman Boulevard Road according to his deed. If portion of the appellant's land is within and across the Tubman's boulevard, where is the other portion? Count 4 of the Report states that the plaintiff (appellant) is claiming portion of the ground location of the defendants (appellants). The appellant's first witness and Attorney-in-fact stated in his testimony that he and the appellant are brothers and it was thru him that the appellant bought the spot. He testified as follows:

"Concerning the story of this case, in Congo Town, Wantanga field, we were the first people to buy land there, and after buying my land, I was to buy the front view but I did not have money so my brother decided to buy it. We went to get the court's decree of sale and letter of administration and deed. When that happened, there was a house spot behind me and Steven, the owner of the house spot died; in the process, the wife of this gentleman (deceased) went to the Landlord and told the Landlord, Charles, that he should sell the house spot because she did not have money, so the Landlord told us to look for buyer for the place through his surveyor AB who is in Ghana. AB brought Jallah [appellee] and said Jallah was his friend and he wanted to buy the house spot and this happened in 2007. After Jallah bought the land, he asked Charles Coker, the landlord, who owns this front view? Charles replied that Varfin and Folley had the place. Jallah tried to convince AB to take the place from Varfin, and Jallah told Coker that he

is working in the government and nobody will do anything to him. So Coker accepted to sell the land to Jallah. When Coker came to us we told him that we are not selling the land; in the process, a Kissi man cited us for a conference. The counsel told us that this is land issue so when that happened Coker told me that he was going to give me back my money. I told him to pay me back my money before I give him his deed. Jallah remained on the land and later I learned that he was trying to lease the area and I came to the court to sue him.”

The map by the technical surveyor attached to the investigation report shows that portion of the parties land interlocks; that a rectangular portion of the appellant’s land described as E-D E-A falls within a portion of the land area said to be that of the appellee Jallah, and the other portion of the appellant’s land falls onto the Tubman Boulevard.

We find it implausible that a land allegedly purchased in 2006 and surveyed prior to the issuance of the appellant’s deed would exist in and across a permanent, remarkable and dominant feature as the Tubman Boulevard which was well laid out and on which traffic operated far before the appellant bought his property. We wonder as to how the survey was carried out!

Taking cognizance of the technical drawing attached to the investigative survey report, we are convinced that it reflects the fact set out by the principal appellee, Jallah Boi himself, who admitted that a survey was previously conducted when the appellant was stopped from constructing his gas station at the front of the property and the survey placed the appellant on a spot in the front of the land the appellee Boi was claiming.

From the testimonies of the parties, this Court gathers that what was sold to individuals by Charles Coker, the grantor/landlord, was house spots; that the appellant bought his house spot at the front of the land in 2006 and as the appellant’s witnesses testified, the principal appellee, Jallah Boi, came in 2007 and bought a piece of land from Charles Coker; that when the appellant later came to build a gas station on his spot, he was prevented from doing so by the appellee Jallah Boi, who had taken over the appellant’s spot and insisted that the land be surveyed; that when the survey that he Jallah requested for was conducted, it placed the appellant on the front spot, and the landlord, Charles Coker, then proceeded to compromise the matter by promising to relocate the appellant but the appellant refused, insisting that his money paid for the front spot be refunded instead. The appellant not having received his refund and noticing that Jallah Boi was leasing his spot to others, he instituted this ejectment action against Jallah Boi and others to be evicted from the property.

The drawing attached to the report of the Technical Surveyor Beyan clearly shows that the appellant deed placed him in the front of the property adjacent the boulevard and intersecting the appellee Jallah's land as per his deed.

The records in this case having established that the parties have the same grantor but the appellant probated and registered his title deed nine years before the appellees, the appellant has superior title to the disputed property. In essence, the appellant is entitled to the disputed front spot claimed by him and laid out in the Technical Survey drawing because the appellant perfected his title nine (9) years prior to the appellees perfecting their title.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the lower court is reversed. The Clerk of this Court is ordered to send a Mandate to the court below to resume jurisdiction and give effect to the Judgment emanating from this Opinion. Costs are ruled against the appellees. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR SAMUEL Y. PEARSON APPEARED FOR THE APPELLANT. COUNSELLORS SYLVERSTER D. RENNIE AND TOMMY N. DOUGBA APPEARED FOR THE APPELLEES.