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. 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
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR. …….ASSOCIATE JUSTICE

J. J. Wariebi, Sr.by and thru his Attorney-in-Fact, J. Wariebi, Stephen J. Wariebi and Nelson Diegbegbe of the City of Monrovia, Liberia…..
…….Appellant

Versus) APPEAL

The heirs of the late Gabriel L. Dennis, represented by Wilmot L. Dennis et al, and Clifford Young et al of UMARCO Compound, Bushrod Island, Monrovia, Liberia…….…..Appellee

GROWING OUT THE CASE:

J. J. Wariebi, Sr.by and thru his Attorney-in-Fact, J. Wariebi, Stephen J. Wariebi and Nelson Diegbegbe of the City of Monrovia, Liberia…..
…….Plaintiff

Versus) ACTION OF EJECTMENT

The heirs of the late Gabriel L. Dennis, represented by Wilmot L. Dennis et al, and Clifford Young et al of UMARCO Compound, Bushrod Island, Monrovia, Liberia…….…Defendant

Heard: April 12, 2022 Decided: July 5, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On January 5, 1996, the appellant, J. J. Wariebi, Sr. commenced an action of ejectment against the appellee, the heirs of the late Gabriel L. Dennis, before the Sixth Judicial Circuit, Civil Law Court for Montserrado County. The appellant's complaint alleged that on January 13, 1989, he acquired a parcel of land from the Intestate Estate of G. Kofa Nagbe by and thru its Administrator, John T. G. Nagbe, as evidence by exhibit "A" attached to the complaint, which is a copy of an administrator's deed containing twenty acres of land backed by a public land sale

deed dated March 11, 1911 in favor G. Kofa Nagbe; that realizing that the appellees are occupying the said property without his consent, he gave them notice to vacate; that upon receipt of the notice to vacate, the appellees, through their counsel, requested a meeting which yielded no result; and that the appellees' wrongful withholding of his property has caused him mental anguish, hardship and damages. The appellant therefore prayed the trial court to oust, evict and eject the appellees from his property and grant unto the appellant any other relief the court deems just, legal and equitable.

On January 22, 1996, the appellees filed their answer and substantially averred that the property, subject of the proceedings, is a part of a twenty acres of land deeded to the late Gabriel L. Dennis in 1951 by the heirs of the late Gabriel Moore as is evidence by a quit claim deed exhibited as "D/1"; that the appellees acquired the subject property by descent from his late father, Gabriel L. Dennis in 1959; that the twenty acres of land was a part of an eighty acres of land acquired by David, Gabriel and Ralph Moore (son of David Moore) from the American Colonization Society (ACS) on October 26, 1837 signed by A. D. Williams, Lt. Governor of the Commonwealth of Liberia; that the appellant's purported title to the land is based on a public land sale deed from the Republic of Liberia dated March 11, 1911, some 74 years after the issuance of co-appellees', Heirs of the late Gabriel L. Dennis', Wilmot L. Dennis and John L. Dennis' grantors' deed in 1837; that the appellees denied that President Arthur Barclay ever issued the purported March 11, 1911 deed; that in an ejectment action, "superior legal title is the only issue presented for disposition of the action by the court, and that the best title is the one that is given by the Republic of Liberia with preference given to the older title according to the date of issuance, the law in this jurisdiction being that where parties contesting title to real property, the party showing the older deed is entitled to the property"; that "if the appellant's predecessors in interest indeed had a deed issued in their favor in 1911, they would have their rights to the subject property judicially declared, but instead allowed the appellees, the heirs of the late Gabriel L. Dennis, Wilmot L. Dennis and John L. Dennis, predecessor in interest openly, notoriously, and adversely possess and enjoy the subject property from 1837 onward; and that in 1983, the appellant's grantor realizing that he had no valid deed or other legal right to the subject property, and the deed allegedly issued by President Arthur Barclay was fraudulent, requested the People's Redemption

Council (PRC) to illegally decree a deed for the property in his favor. The appellees therefore prayed the court below to dismiss the appellant's complaint and declare the appellant's deed invalid; and to declare the heirs of the late Gabriel L. Dennis the valid owners of the disputed property and grant unto the appellee any further relief the court deems just, legal and right.

In traversing the appellees' answer, the appellant, in reply filed on February 1, 1996, *inter alia,* denied that the title deed in favor of G. Kofa Nagbe, the appellant's predecessor in interest, is defective absent a showing by the appellees; that in 1943, the late Gabriel L. Dennis and the late G. Kofa Nagbe submitted their respective titles to a Presidential Commission appointed by President Arthur Barclay and that the commission having investigated the titles, found that the late Gabriel Moore et al's title called for properties in Virginia, Brewerville across the St. Paul River; that based on the Commission's finding, the late Gabriel L. Dennis, successor in interest, requested a two-year grace period to vacate the subject property; that there was no showing that neither Gabriel L. Dennis nor his grantors objected to the finding of the Presidential Commission and the PRC Decree #80 was based on the Commission's finding in 1943; and that the issue at bar is not who presented the older deed, but that the late Gabriel L. Dennis presented no deed that called for a particular property on the Bushrod Island.

After pleading rested, the matter progressed to the disposition of law issues and the lower court having entertained arguments, ruled the case to a trial holding that the case admits of mixed issues of law and facts which is triable by a jury; and that the issues to be decided are (1) "who should prevail since both parties derived their titles from the same grantor, Republic of Liberia and (2) " [whether] could the Republic of Liberia convey property to someone which it did not possess at the time it transferred title to another person?"

The records show that after a full trial, the jury returned a unanimous verdict of liable against the appellant. Following the returned of the verdict, the appellant timely filed his motion for a new trial which was regularly heard and denied. The trial court affirmed the unanimous verdict against the appellant in its final ruling as follows:

"COURT'S FINAL JUDGMENT

The plaintiff filed this action of ejectment against the defendant alleging that he is the bonafide owner of a parcel of land situated on Bushrod Island as a result of a purchase on January 13, 1988 from John T. G. Kingston who allegedly purchased same from the Republic of Liberia on March 19, 1911 and that the defendants were wrongly occupying the withholding said parcel of land. Attached to the complaint as exhibit more and administrator's deed and a deed from the Republic of Liberia under the signature of the late Arthur Barclay, president of the Republic of Liberia 33RD Day's Jury Session in this Judicial Circuit Court December Term A. D. 1997, Sat. January 31, 1998.

Defendants countered with a ten (10) counts answer which alleged that the subject parcel of land is a part of twenty acre tract of land deeded to the late Gabriel L. Dennis in 1951 by the heir of the late Gabriel Moore. Defendants in their answer traced their title through an unbroken chain to the Republic of Liberia as follow:

1. In 1837 the American colonization society devised the subject premises to three individuals, Dennis Moore and his sons;

2. In 1951 the heirs of Gabriel Moore devised the subject premises to Gabriel Dennis, his heir and assigns;
3. In 1959 the heir of Gabriel Dennis came in possession of the subject premises.

The answer also alleged that the plaintiff's title was based on a public land sale deed from the Republic of Liberia, issued 74 years after the issuance of the defendant grantors' deed in 1837 [by] the American colonization society. Hence, as both parties were claiming their title from the same source, the Republic of Liberia. They, defendants, are entitled to the property as their deed was obtained prior to the plaintiff's grantor's deed.

The defendants further contended that the plaintiff grantor's deed of 1911 was void *ab initio*, as the Republic of Liberia could not convey what it did not have as it had already conveyed the subject premised in 1837 to the grantors of co-defendants, the heir of the late Gabriel L. Dennis, Wilmot L. Dennis and John T. Dennis.

The defendant further alleged that co-defendants, the heirs of the late Gabriel L. Dennis, have openly, notoriously, and adversely, possessed and enjoyed the subject premises from 1837 onward without any interferences or claim by any party including the plaintiff. Defendant alleged that if the plaintiff predecessors in interest indeed had a deed issued in their favor in 1911, they would have contested the defendant's open and notorious occupation of their subject premises.

To this answer the plaintiff filed a nine (9) count reply. The reply in essence denied the allegations contained in the answer and confirmed the complaint.

In conformity with the mandatory statutory requirement, the law issues were heard and disposed of by the court. The court holding that issues presented by the pleadings were mixed issues of law and facts, ruled the complaint, answer and reply to trial.

In keeping with a notice of assignment duly issued and served, this case was called for trial on January 14, 1998. The parties were represented by counsels. Witnesses for both sides, plaintiffs and defendants, testified, were directed, cross examined and questioned by the jury. Both side rested with producing of oral testimonies and documentary evidence that were testified to and confirmed by this court. The documentary evidence were admitted into evidence for submission to the jury, the jury was charged and went into their room of deliberation taking with them the documentary evidence. The jury, after deliberation brought forth a unanimous verdict finding the defendant not liable.

Before the statutory period could expire, the plaintiff filed a motion for new trial. The motion for new trial was heard and denied.

The Supreme Court has held that the jury is the judge of facts and, in the absence of a clear showing of insufficiency of evidence to support

a finding, or a violation of law as provided by statute, its verdict will not be disturbed. Haider vs. Hassas, 2 LLR 32.

The Supreme Court has also held that when the jury arrives at a verdict after having given consideration to evidence which is sufficient to support a verdict, the verdict should not be disturbed by a court. Liberia Oil Refinery Company vs. Mahmoud 21 LLR 201(1972).

In view of the foregoing, the verdict of not liable being in harmony with the testimonies of the witnesses, the documentary evidence produced and the law controlling, the court [is] constrained to and accordingly, hereby confirms and affirms the unanimous verdict of the empaneled jury that the defendant is not liable to the plaintiff.

The court confirming and affirming the unanimous verdict of the jury, hereby adjudges to the defendant not liable on the complaint.

Accordingly, the clerk of the court in hereby ordered to issue the bill of costs to be taxed by counsels and approved in keeping with law.

Costs in these proceedings are ruled against the plaintiff and it is so ordered."

From this final ruling of the trial court, the appellant noted exceptions and announced an appeal. Of the eleven-count exceptions assigned by the appellant, we deem the following counts worthy of our consideration:

1. That the trial court erred when it sustained the objection of the appellee to the appellant's question posed to his witness on the direct examination regarding a map which was a result of a survey conducted in 1986 on the order of the trial court in obedience to a Supreme Court's mandate on ground that the appellant did not plead the map;

2. That the trial court erred when it refused to take judicial notice of the Supreme Court's decision rendered on July 31, 1986 in respect of the PRC's Decree #80 validating the late G. Kofa Nagbe, appellant's grantor's ownership of the disputed property.

3. That the trial court also erred when it denied the application of the appellant for a *subpoena duces tecum* to be issued and served on the clerk of the court

to produce the mandate of the Supreme Court in respect of the 1986 decision, the survey report growing out of that decision/mandate and the writ of possession ordered subsequent to the aforesaid instruments.

We shall consolidate and consider counts 1, 2, 3 of the errors assigned by the appellant in view of their common theme which is that the trial court's failure to give credence to the decision of the Supreme Court delivered on July 31, 1986 regarding the appellant's ownership of the disputed property was an error. We take recourse to the Supreme Court's decision in the case: *Lewis et al v His Honor Tulay et al 34 LLR 188 (1986)*; it is important to note that the appellees' position that neither they nor their privies were ever made party to that case; therefore, the Judgment emanating therefrom cannot bind or affect them as a matter of law.

In the *Lewis* Case, the Ministry of Justice petitioned the Sixth Judicial Circuit for Montserrado County based on an "Executive Ordinance" or PRC Decree #80 for an enforcement of the ordinance against certain squatters of the Fallah Varney Community on Bushrod Island for 54 acres of land determined by the Executive Branch of Government to be owned by the appellant's grantor and predecessor in interest, the Estate of G. Kofa Nagbe. It should be noted that the said ordinance was a predicate of the report made by a three-man commission appointed by President Arthur Barclay in 1943 that investigated the land dispute between the Estate of Gabriel Moore/Gabriel L. Dennis and the Estate of G. Kofa Nagbe/John T. Nagbe. After a regular service of summons, the defendants in that case, failed and neglected to appear. Subsequently, the trial court, having conducted a trial by default, entered a final ruling and ordered the defendants ousted, evicted and ejected. But before, the enforcement of the trial court's judgment, the defendants filed a bill of information before the said court contending that the parcel of land on which they occupied was not a part and parcel of the land owned by the Estate of G. Kofa Nagbe and that they were occupying public land. The trial court heard and denied the information.

The records also show that the informants/defendants, being aggrieved from the denial of their bill of information, fled to the Chambers Justice on a petition for a writ of certiorari contending therein that they were titleholders and that they were not occupying the Nagbe's property. The Chambers Justice heard and denied the

petition, from which denial the informants announced an appeal. While that appeal was pending, the petitioners also filed a bill of information before the Supreme Court *en banc.* The Supreme Court consolidated the appeal from the chambers hearing and the petitioners' bill of information, heard and denied both. Then the Supreme Court ordered the lower court to place the Nagbes in possession of 96.5 acres of land based on the "Executive Ordinance".

As stated herein, the appellees have argued that they were not made a party to the aforementioned decision of the Supreme Court. We are inclined to agree with the appellees' contention for two reasons: (1) In the *Lewis* Case, the Ministry of Land and Mines addressed a letter to the squatters in part acknowledging a land dispute between the Nagbe and Dennis Families as follows:

> "AMA/10-G/167/203/182 February 25, 1982 Rev. Isaac Tugbeh
> Chairman Fallah G. Varney Bridge Community Bushrod Island
> Monrovia, Liberia .
>
> Mr. Chairman:
> This Ministry has received complaint against you by two families, namely: the Dennis family and Mr. John Nagbe who are jointly claiming ownership of the 85 acres of the land around Fallah Varney Bridge which your community has asked the Ministry of Local Government to grant you squatter's rights and/or to allow you to undertake development projects in the area.
>
> We wish to direct that in view of the dispute over the ownership of this land, and in view of the head of State's letter, Ref. No. PRC/II/167/203/82 dated January 11, 1982 to Maj. Fodee Kromah, Minister of Lands & Mines in connection with the immediate settlement of this dispute between these two families for the establishment of the right ownership of this land, we cannot grant you
>
> the right to squat on this land or allow you to undertake any development project thereon. In case the rightful owner of this land is determined by the Liberian Government, negotiation could be made by

the community with that owner for the possibility of buying piece or portion of this land by your community."

It is clear from the language of the above quoted letter that the Government of Liberia recognized the pervading land dispute between the Nagbe and Dennis Families; that effort was being exhausted to have the dispute settled and that the eviction carried out in 1986 targeted or affected squatters within the Fallah G. Varney Bridge Community. But the question which continues to puzzle our mind is whether or not the Estate of Gabriel L. Dennis, appellee herein, that claimed to have owned and occupied that community located on the disputed property for about 150 years was not aware of the survey conducted in 1986? (2) The records show that subsequently, in 1996, that is about ten years later, the appellant now, successor in interest to the Nagbe Estate instituted this cause of action against the Estate of Gabriel L. Dennis. We are left also to wonder why would the appellant commenced a new independent action against the appellees considering that this Court delivered a final decision in 1986, a survey conducted and the appellant's predecessor placed in possession of the disputed property? The obvious answer is that the appellant knew or had reason to know that the appellees were not made party to that case. It is further clear from the appellant's complaint that he made no mention of the Supreme Court's decision in 1986. Rather, it is the appellees that raised the issue of the "Executive Ordinance or PRC Decree #80" in their answer and challenged the legality of that ordinance.

The appellant has assigned as an error the trial court's denial of his application for a *subpoena deces tecum* on the records to produce the records of the survey conducted and the writ of possession subsequently ordered issued, although those records were not pleaded. We are in agreement with the trial court when it denied the appellant's application for a subpoena on the ground that the appellant failed to raise the issue of the survey and writ of possession in his pleading. It is trite law that "introducing or testifying to new facts not pleaded or ruled to trial is a violation or breach of the fundamental principles of notice, and a judge acts *ultra vires* where he permits a party to do so." *Kanneh v. Wariebi & Son, 30 LLR 238 (1982), LAMCO J. V. Operating Co. v. Azzam et al 31 LLR 649 (1983).*

Assuming, *arguendo,* that the records of the survey and writ of possession were pleaded by the appellant, it still could not have resulted in a different result because

we have determined herein that neither the appellees nor their privies were made party to the *Lewis* Case. Additionally, we must note that the PRC Decree #80 and its predecessor "the President Commission Report of 1943" which the Ministry of Justice sought to enforce were without the pale of the law. It is the law in vogue that only a court or tribunal of competent jurisdiction may entertain and determine a dispute over claim of title to real property. The authority to maintain an action of ejectment or provide the competent forum for the adjudication dispute of title to land is a judicial function which is vested in the judicial branch of government. Neither the Constitution nor statutory law confer such authority on the other two branches of government. This position was reinforced in similar dispute decided by this Court in *Tolbert et al v. Gibson-Sampon, 37 LLR 113 (1993)* as follows:

> "In the event of a dispute regarding the ownership or right to possession of any realty, only a court or tribunal of competent jurisdiction can properly adjudicate such dispute. Such adjudication to settle title or ownership to realty under the laws of this Republic must be carried out in a manner consistent with the provisions laid down in the Constitution in accordance with due process of law. The Bureau of Reacquisition created by the People's Redemption Council Government was never vested with such powers to decide title to real property."

This brings us to the question of older or superior title to the disputed land as advanced by the appellees and certified by the trial court. The records show that the trial court, in agreeing with the appellees' contention that their title is older and superior to the appellant's title and that they have openly and notoriously occupied the disputed property some 74 years prior to the acquisition of the disputed property by the appellant, charged the jury exactly on that principle. The trial court also charged the jury to consider whether the Republic of Liberia having parted with title to the appellees by virtue of a transfer made by its predecessor, the Commonwealth of Liberia in 1837, could the Republic transfer the same property in 1911 to G. Kofa Nagbe? This is a pure legal issue, the determination of which does not lie within the competence of the trial of facts. We think that the question that the trial court ought to have considered, even before the trial commenced or the disposition of law issues, would have been whether, in the face of the appellant's allegation or averment that the appellees' properties lie across the St. Paul River in Virginia, Brewerville and

not on Bushrod Island, an investigative survey became imperative in resolving the land dispute?

We take cue from the case *Jaseph Surmie et al v. Calvary Baptish Church, Supreme Court Opinion, March Term, A.D. 2007* in which the appellee, Calvary Baptist Church instituted an action of ejectment against the appellants, Joseph Surmie and others for a portion of 15.56 acres of land the appellee claimed it acquired from one Solomon T. Edwards traceable to the Republic of Liberia in 1966 during the administration of President William V. S. Tubman. On the other hand, the appellants claimed title to the same parcel of land from the Republic through President Daniel B. Warner in 1865. After a full jury trial, the jury returned a unanimous verdict for the appellee. This Court in setting aside the unanimous verdict and remanding the cause for an investigative survey held that "…it is not enough in an ejectment suit that a party has an older title deed; nor is it conclusive that the older titleholder *ipso facto* becomes the owner of the land. What ought to be enough and conclusive is that the land in dispute is the same parcel or portion of land. The method or process to arrive at such finding is to conduct a survey using the title deeds relied upon." This Court has also held that 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), Varney Arthur Yengbeh, Jr. v. Sando Kiazulu et al, Supreme Court Opinion, October Term, A.D. 2022.*

Today, we are inclined to apply this principle to the present case since indeed the both parties are claiming title to the disputed property from the Republic of Liberia, an investigative survey to identifying the metes and bounds of the parties' deeds and the exact location of the properties corresponding to the respective title deeds is compelling for a fair and equitable disposition of this matter. We so hold.

The trial court judge therefore erred when he failed to order an investigative survey to resolve the critical and important question of whether the parties' deeds correspond with the ground location raised in the pleadings before delving into other issues raised by the parties. And this error renders the decision of the court a fit subject for reversal.

WHEREFORE and in view of the foregoing, the final ruling of the trial court is reversed and the case is ordered remanded for the conduct of an investigative survey. 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 enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors G. Moses Paegar and J. Bima Lasanah appeared for the appellant. Counsellors Eric B. Morlue and Denise S. Sokan appeared for the appellees.