

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Jesse Harris and Melvin Harris et al. of the City of
Monrovia, Liberia.....Appellants)

Versus) APPEAL

Mary Turning of the City of Monrovia, Liberia)
.....Appellee)

GROWING OUT OF THE CASE:)

Mary Turning of the City of Monrovia, Liberia)
.....Plaintiff)

Versus) ACTION OF EJECTMENT

Jessie Harris and Melvin Harris et al. of the City)
of Monrovia, Liberia.....Defendants)

HEARD: OCTOBER 31, 2023

DECIDED: JUNE 14, 2024

MR. JUSTICE GBEISAY 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 appellants Jessie Harris and Melvin Harris et al. The appellants have challenged the lower court’s ruling, averring that the verdict of the jury was contrary to the weight of the evidence adduced at trial and that the judge erred in his instructions to the jury. The appellants have now petitioned this Court to reverse the said 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 October 15, 1996, the appellee, Mary Turning filed an action of ejectment before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellants, Jessie Harris and Melvin Harris, contending that the appellants/defendants were unlawfully occupying her property containing 0.25 lot of land lying and situated on Benson Street, Montserrado County, Republic of Liberia without any color of right or title, which property she had acquired as a result of a lawful conveyance from her Late Mother, Beatrice Dean in fee Simple. The appellee contends that despite several attempts and notices from her to have the appellants leave her property proved futile and that this action of the appellants grossly violates her property rights. The appellee further contends that all efforts to have the appellants come to a meeting to find an amicable solution failed.

The appellee prayed to the court to oust, eject and evict the appellants from her property and award her damages which the court will determine she has sustained as a result of the appellant's illegal occupation of her property. The appellee attached to her complaint a warranty deed and copies of a letter written to the appellants to substantiate her claim.

The appellants filed their answer to the appellee's complaint, challenging the appellee's right to the property in dispute. The appellants averred that the appellee's warranty deed attached to her complaint was a product of fraud designed to deny them of the right to inherit from their grandmother, that the signature of Rev. Mrs. Beatrice J.W. Dean appearing on the appellee's warranty deed was forged as it is not the signature of the late Beatrice J.W. Dean and requested the court to take judicial notice of the purported signature appearing on the warranty deed attached by the appellee; that the land subject of the dispute belongs to the Intestate Estate of Beatrice J.W. Dean and that they are heirs and beneficiaries of the intestate estate of Beatrice J.W. Dean; that the house on the subject property was constructed by their late father who was the son of the late Beatrice J.W. Dean and that they were born and raised on the subject property; that co-defendant/appellant Melvin is a co-administrator of the Intestate Estate of Beatrice J.W. Dean.

The appellants attached to their answer a copy of the letters of administration of the Intestate Estate of Beatrice J.W. Dean and give notice that during the trial they would produce evidence to substantiate their claim that the signature of the late Beatrice J.W. Dean was forged. The appellants then prayed the court to deny and dismiss the appellee's complaint and ruled costs against the appellee.

The appellee filed her reply reiterating her complaint and further contending that the appellants have no deed to establish their claim of ownership and that assuming her deed is faulty, it still doesn't give them the right to the said property as they must establish their title by way of their father who they mentioned in their answer as letters of administration is not a proof of title; that the appellants entire answer should be denied as same does not establish their title to the said property.

When pleadings rested, the matter was assigned for the disposition of law issues and after arguments the matter was ruled to trial on its merits.

The plaintiff/appellee produced three witnesses while the defendants/appellants produced four witnesses respectively.

After a trial was conducted, the jury returned a unanimous verdict of not liable in favor of the appellants.

Thereafter, the appellee filed a motion for new trial on January 29, 1997, arguing that the jury verdict was contrary to the weight of the evidence adduced at trial and that the jury's verdict was contrary to the instructions of the trial judge when he instructed the jury that "*under our laws, property does not come to someone by blood ties but rather by deed or other legal instruments.*"

The appellants filed a resistance to the motion for new trial, basically arguing that the verdict reached by the jury is supported by the evidence produced at trial; that verdict is in no way contrary to the instructions given by the judge; that in an action of ejectment, a party can only recover on the strength of his title and not on the weakness of the adversary title.

Arguments were heard pro et con and the judge ruled granting the motion for new trial, holding that the appellants in their argument and through their counsel contends that the property

subject of this dispute was for their father and on the other hand argued that the property was for their grandmother which left the court confused because the two statements cannot be true at the same time for the same property; that the appellants argued that the signature on the deed that the appellee proffered into evidence was forged but did not produce any other document bearing what they considered to be their grandmother's true signature to compare with the signature on the deed and that it is the law in this jurisdiction that fraud, when it is alleged must be specifically proven by clear evidence and not mere allegations; that verdict was contrary to the weight of the evidence adduced at the trial.

The judge then ruled granting the motion for new trial filed by the appellee before a new jury and ordered the clerk to re-docket the case for the March Term of court, 1997. The appellants excepted to this ruling of the trial judge and announced an appeal before the full bench of the Supreme Court sitting in its March Term, A.D. 1997.

The records however are devoid of any appeal before this Court on the ruling made by the judge on the motion for new trial; however, on January 8, 2017, that is twenty (20) years after the motion for new trial was granted, the appellee by and thru her counsels filed a motion for substitution of party before His Honor the late Johannas Zlahn, contending that she went for medical engagements in the United States of America and has been there since the year 2001 because she was declared medically unfit to leave the United States of America and attached a medical certificate to substantiate her claim.

The judge denied the appellee's motion for substitution of party ruling that the fact that the appellee is still alive and that she has executed a power of attorney to someone to serve as her attorney in fact is sufficient in the eyes of the law; the judge therefore denied the motion for substitution of party.

The appellee later filed a motion for sequestration of rent on September 25, 2017, the said motion was entertained, and the judge ruled granting the motion for sequestration of rent ordering all tenants in the property subject of this dispute to pay their rent to the sheriff of the Civil Law Court.

The second trial of this case commenced on January 4, 2018, before His Honor Judge Scheaplor R. Dunbar. During this trial, the appellee and the appellants produced two witnesses each.

The appellee first witness in person of Daba Howard took the stand and testified that she is related to the appellee and that she was authorized by the appellee through a power of attorney to defend her legal interests; that the appellee owns a property located on Benson Street which was given to the appellee by her (appellee) foster grandmother, Beatrice J.W. Dean through a warranty deed. On the cross, the witness testified that she was not present when the deed relied on by the appellee was executed.

The appellee second witness in person of Massa Vaplah Dean took the stand and testified that the appellee is her sister-in-law, and that co-appellant Jessie Harris is her husband's nephew and that the other co-appellant, Melvin Harris is a stepchild that was brought in by the Dean's Family and that Melvin is not a member of the Dean family. She furthered testified that the deed attached to the appellee's complaint was given her by the late Beatrice J.W. Dean. On the cross, the witness testified that the appellee is a foster child to Mrs. Beatrice J.W. Dean; that one of the appellants, Melvin Harris was brought to the home of the Deans by his mother when he was nine years old. The witness furthered testified that she was not there when the deed was executed but the late Beatrice J.W. Dean told her that she executed the deed in the appellee's favor; she later identified the location of the property to be on

Benson Street. Thereafter, the appellee rested with production of oral and documentary evidence.

The appellants were then given the opportunity to defend themselves. In pursuit of this task, the appellants called their first witness in person of Melvin Harris to the witness stand. Melvin Harris testified that the appellee's grantor (her foster grandmother), Mrs. Beatrice J.W. Dean was his grandmother; that Mrs. Beatrice J.W. Dean brought the appellee from Kakata to stay with her and that she told him that the appellee was not her daughter and that she did not adopt her either; that his father was the son of Mrs. Beatrice J.W. Dean first son; that when Mrs. Beatrice J.W. Dean passed, the appellee went into the room and took all her deeds; that he is familiar with the signature of Mrs. Beatrice J.W. Dean and that the signature on the deed proffered by the appellee is not her signature; the witness further testified to letters of administration allegedly issued by the probate court. On the cross, the witness testified the appellee is the foster daughter of the late Mrs. Beatrice J.W. Dean and that the appellee was given the authority through a power of attorney issued by the late Mrs. Beatrice J.W. Dean to manage all her properties when she was alive, and that the appellee lived in the same house with the late Mrs. Beatrice J.W. Dean.

The appellants second witness in person of Richlue Bowen took the witness stand and testified that the late Mrs. Beatrice J.W. Dean was her grand aunt; that she doesn't know if Mrs. Beatrice J.W. Dean ever gave any property to the appellee; that the late Jessie Harris, Sr. was the son of Mrs. Dean and that appellant Melvin Harris is the son of the late Jessie Harris, Sr.; that she is not familiar with the handwriting of the late Mrs. Dean. On the cross, the witness testified that she had no dealings with the late Mrs. Dean's properties.

When the appellants rested with oral and documentary evidence, the judge charged the jury and the jury retired; the jury, after their deliberations returned with a unanimous verdict of liable against the appellants.

Thereafter, the appellants filed a motion for new trial contending amongst other things that the jury's verdict was contrary to the weight of the evidence adduced at trial; that the judge's instructions to the jury were leading and biased; that the issue of fraud which was a cardinal issue was not sufficiently dealt with in the charge to the jury; that the judge's charge to the jury fell short to inform the jury that when issues of fraud are raised in an ejectment action, it clouds the title of the person against whom the fraud is raised and that said title cannot be used as a basis for determining the case. The appellants then prayed the court to set aside the verdict of the jury and order a new trial and rule costs against the appellee.

The appellee filed her resistance to the said motion arguing that the said motion should be denied and dismissed because the verdict of the jury commensurate with the weight of the evidence adduced at trial; that the title deed which the appellee presented was duly probated and registered in accordance with law and that the judge's charge was based on the evidence adduced at trial; that the movants/appellants failed to prove the charge of fraud that they are alleging and that a mandatory requirement in alleging fraud is that the party making such allegation must present proof so as to sustain the charge and that their failure to produce evidence in support of their claim is sufficient justification for a liable verdict against them. The appellee then prayed the court to deny and dismiss the movants/appellants' motion.

The court entertained hearing on the motion and render a ruling denying the motion for new trial on grounds that the evidence adduced at trial was sufficient to support the verdict of the jury and therefore same should not be disturbed. The judge then entered final judgement, affirming the unanimous verdict of liable returned by the trial jury against the appellants.

The appellants excepted to this ruling of the judge and announced an appeal to the Supreme Court sitting in its March Term, A.D. 2018.

In their bill of exceptions, the appellants contends that the trial judge committed reversible errors when he instructed the jury leadingly and directly ; that the trial judge erred when he failed to sufficiently deal with the issue of fraud in his charge to the jury which was a cardinal issue in the case; that the trial judge erred when in his charge to the jury, he failed to inform the jury that when title is in issue and said title is challenged on the basis of fraud, it becomes invalid until proven and that fraud was proven by the them.

From a review of the pleadings filed by the parties, the bill of exceptions and the briefs filed before this Court, we shall determine whether or not the appellants prove the allegation of fraud sufficiently to entitle them to the disputed property?

This Court answers in the negative. We note from the evidence in the records certified to this Court that the property subject of this dispute was conveyed to the appellee by the late Mrs. Beatrice J.W. Dean through a warranty deed executed on May 18, 1994 which was duly probated and registered and that the appellee was in possession of the said property until the outbreak of the April 6, 1996 war when the appellants moved in and took control of the said property.

The fact that the appellee relied on a warranty deed issued her by Mrs. Beatrice J.W. Dean presupposes that the disputed property is not a part of the late Mrs. Beatrice J.W. Dean estate and therefore, could not be administered by an administrator; therefore, letters of administration cannot lie to establish a claim to the subject property.

Affirming the holding above, we now hold that the appellants' letters of administration pleaded and relied upon is not applicable to the property in dispute, which is owned in fee simple by the appellee.

The appellants also alleged fraud, arguing that the appellee's deed that she relied upon to prove ownership to the said property is a product of fraud as the signature of the late Mrs. Beatrice J.W. Dean shown on the deed was not her genuine signature. To prove their point, co-appellant Melvin Harris testified to letters allegedly written by the late Mrs. Beatrice J.W. Dean; however, no evidence was produced to properly prove that the handwriting and signature on the appellee's deed was different from the handwriting and signature of the appellee's grantor, Mrs. Beatrice J.W. Dean. The appellants made no efforts whatsoever during the trial to compare the signature and handwriting on the appellee's deed with the handwriting and known signature of the late Mrs. Beatrice J.W. Dean

Our laws are clear on issues of fraud that *it is not sufficient to merely allege fraud as a basis of relief, but that it must be specifically proven and established by proof. **Dean, Jr. et al v Heirs of Dean, Supreme Court Opinion, March Term, A.D. 2012.** In this case, the Petitioner filed a petition alleging the perpetration of fraud in the closure of the Intestate Estate of Samuel G. Dean, Sr. and Morris Dean and that the court should therefore reopen the estate. The lower court agreed and re-opened the estate, the respondents excepted and filed an appeal to this Court that the Petitioner did not prove fraud and that mere allegation is not proof. The Supreme Court agreed with the appellant and opined that it is not sufficient to merely allege fraud as a basis of relief, but that it must be specifically proven and established by proof. Francis v. Mesurado Fishing Company Ltd., 542, 552 (1971).*

The appellants not having specifically proven the fraud which they are alleging, this Court has no other option but to dismiss their claim of fraud.

We note from the appellants' motion for new trial, bill of exceptions and appellate brief that their main contention is the judge's charge to the jury. The appellants have strenuously argued that the judge's charge to the jury was improper and biased and as such this Court should overturn the unanimous verdict rendered by the jury.

We have reviewed the judge's charge to the jury from the records certified to this Court and see absolutely nothing wrong with the said charge; however, assuming the appellants contention is true, that the judge's charge was biased or that it prejudiced his interest, they should have excepted to the said charge before the jury retired to deliberate, only then the court would have had the opportunity to reject or accept the said charge in whole or in part; however, this haven't not been done by the appellants, this Court cannot legally review and overturn the said charge as it is the law that: "*no party may assign as error the giving or the failure to give an instruction to the jury unless he objects thereto before the jury retires to consider its verdict, stating succinctly the matter to which he objects and the grounds of his objection.*" Our Civil Procedure Law, Rev. Code. 1:22.9; *Sheriff v et al v Estate of Alhaji S. Carew*;3,9 (1986).

We have diligently searched the certified records before this Court but failed to see where the appellants complied with the above quoted law. We now hold that the appellants, having not complied with the law on assigning error to the judge's instruction as provided above by objecting to the jury's charge before the jury's deliberations, they cannot now seek the benefits of the said law.

The burden of proof is on the one who alleges the existence of facts to establish his case by the preponderance of the evidence. *Royal Stationery Store v The Intestate Estate of Mckeever*, Supreme Court Opinion, October Term, 2014; *Kollie v Kaba et al*, Supreme Court Opinion, October Term, 2010.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial court is hereby confirmed. The Clerk of this Court is hereby ordered to send a mandate to the lower court commanding the judge therein to resume jurisdiction over this case and give effect to the judgment emanating from this Opinion. Costs are ruled against the appellants. IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR GABRIEL W. NAH APPEARED FOR THE APPELLANTS. COUNSELLOR SAMUEL S. PEARSON APPEARED FOR THE APPELLEE.