

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,  
SITTING IN ITS OCTOBER TERM, A. D. 2024.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF 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  
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON..... ASSOCIATE JUSTICE

The Intestate Estate of Kaifa Kamara by and thru )  
its Administrators, all of the City of Monrovia )  
Liberia..... Movant )  
Versus ) Motion for Newly  
Discover Evidence  
The Intestate Estate of Rebecca Thomas by and )  
thru her Administrators, also of the City of )  
Monrovia, Liberia ..... Respondent )  
GROWING OUT OF THE CASE: )  
The Intestate Estate of Kaifa Kamara by and thru )  
its Administrators, all of the City of Monrovia )  
Liberia..... Appellant ) Appellee  
Versus )  
The Intestate Estate of Rebecca Thomas by and )  
thru her Administrators, also of the City of )  
Monrovia, Liberia ..... Appellee )

Heard: October 23, 2024

Decided December 19, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This case was heard and decided by the Sixth Judicial Circuit Court, then presided over by our distinguished colleague, His Honor Yamie Quiqui Gbeisay, Sr., then serving as a Circuit Judge. The trial court heard the petition and granted the same. The movant, the late Kaifa Kamara, entered exceptions to the final ruling, announced an appeal therefrom, and perfected the same. While this appeal is pending, the movant filed a five-count motion for newly discovered evidence, claiming therein that the trial judge introduced out-of-court evidence in reaching his final ruling in the case and, therefore, the movant is praying the court for permission to introduce those out of court evidence to controvert them.

In resisting the movant's motion for newly discovered evidence, the respondent averred that consistent with section 9.11 of the Civil Procedure Law, a motion for newly discovered evidence is only cognizable before the trial court and not the Supreme Court; that the motion, not being correctly venue before the Supreme Court, the said motion should be denied and dismissed; the respondent further averred that the motion raises several factual allegations, including fraud issues that require evidence taking and the Supreme as an appellate court lacks the competence to do so. The respondent thereby prays that the motion be denied.

The determinative issue is whether a motion for newly discovered evidence may be filed before the Supreme Court.

It is the law in this jurisdiction that in criminal prosecution where a guilty verdict has been returned and an appeal pending before the appellate court, if the criminal defendant discovers evidence that he/she believes, if considered, will exonerate him of the crime charged or will lessen the sentence, the law grants permission to him to introduce the said evidence by way of a motion for newly discovered evidence even before the Appellate Court. The Criminal Procedure Law, Rev. Code 2:22.1(3) provides:

“...A motion for a new trial on the ground of newly discovered evidence may be made at any time after a verdict or finding of guilty. If an appeal is pending, the motion shall be made before the appellate court. A motion for a new trial on any other ground shall be made within four days after the verdict.”

Unlike in criminal cases, as provided for in the Criminal Procedure Law, the Civil Procedure Law prohibits filing a Motion for newly discovered evidence in civil cases before the appellate court. The Supreme Court had held that a motion of this nature is cognizable only before the trial court in a civil case. *James v. Bonner* 29 LLR 534, 537-538.

Civil Procedure Law, Rev. Code: 1:9.11 provides as follows:

“§ 9.11. Procedure in case of newly discovered evidence before trial. At any time before submission of the case to the court or jury, the court may, on motion with notice, grant to a party permission to introduce new evidence in addition to the allegations of his pleading. A motion under this section shall be granted only if the moving party shows to

the satisfaction of the court by affidavit that at the time of service of the pleading, he did not know and could not, with reasonable diligence, have known of the facts as to which such evidence is offered. If the motion is granted, the former pleading shall be withdrawn and a new one filed which shall conform to the evidence introduced”.

The statute is unambiguous. Its clear meaning is that a court, under the circumstances listed in the statute, may allow a party to introduce newly discovered evidence in the manner and form prescribed in the statute before a case heard by a jury is submitted to the jury or the court determines a case heard by the court. The question that begs for an answer here is whether the reference to court in the statute includes the Supreme Court.

To avoid burdening the record, we revert to an occasion when this Apex Court had the opportunity to address a similar issue that was presented to it. In that case, this Court opined that “a motion for newly discovered evidence is made in the trial court, not the appellate court, and its object is for the movant to either be relieved from a final judgment or for permission to introduce newly discovered evidence by including same in the pleadings to form a part of the proceedings, or to grant a new trial”. James v. Bonner 29 LLR 534, 537-538. The Court reaffirmed this holding in the case Konneh v Marshall 40 LLR 429, 438-439 (2001), in which the Supreme Court held that, as an appellate court, it could not for the first time hear and determine the veracity and genuineness of newly discovered evidence and fraud. Considering the above, this Court cannot give credence to the movant’s motion.

WHEREFORE and in view of the foregoing, the movant’s motion for newly discovered evidence is hereby denied and dismissed, and the appeal ordered proceeded with on its merit. Costs to abide the final determination.  
IT IS HEREBY SO ORDERED

*Motion denied.*

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR AMARA M. SHERIFF APPEARED FOR THE MOVANT. COUNSELOR ZAIYE B. DEHKEE, I APPEARED FOR THE RESPONDENT.