

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. 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

The Assembly of God Church, Sinkor Branch, represented by its )  
Pastor, Overseer, and all those operating under said authority, )  
and all occupants on the subject property of Monrovia, Liberia )  
.....Appellants )

Versus )

APPEAL )

The Intestate Estate of Joseph V. Gaye, Sr., represented by its )  
administrators/trixes Stanton V. Gaye, Victoria D. Gaye, George )  
Giai and Sammie Peter Paul of Montserrado County, Liberia )  
.....Appellee )

GROWING OUT OF THE CASE : )

The Intestate Estate of Joseph V. Gaye, Sr., represented by its )  
administrators/trixes Stanton V. Gaye, Victoria D. Gaye, George )  
Giai and Sammie Peter Paul of Montserrado County, Liberia )  
.....Movant )

Versus )

MOTION FOR )  
SUMMARY )  
JUDGMENT )

The Assembly of God Church, Sinkor Branch, represented by its )  
Pastor, Overseer, and all those operating under said authority, )  
and all occupants on the subject property of Monrovia, Liberia )  
.....Respondents )

GROWING OUT OF THE CASE: )

The Intestate Estate of Joseph V. Gaye, Sr., represented by its )  
Administrators/trixes Stanton V. Gaye, Victoria D. Gaye, George )  
Giah and Sammie Peter Paul of Montserrado County, Liberia )  
.....Plaintiff )

Versus )

ACTION OF )  
EJECTMENT )

The Assembly of God Church, Sinkor Branch, represented by its )  
Pastor, Overseer, and all those operating under said authority, )  
and all occupants on the subject property of Monrovia, )  
Liberia.....Defendants )

Heard: June 25, 2024

Delivered: August 28, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The Intestate Estate of Joseph V. Gaye, Sr., appellee, plaintiff in the court below, by and  
through its administrators and administratrix, Stanton V. Gaye, Victoria D. Gaye, George Giaii

and Sammie Peter Paul, instituted an action of ejectment against the appellants, the Assembly of God Church, Sinkor Branch, Monrovia, and all occupants of the subject property, before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, on June 24, 2022. The appellee alleged that it owns 7.3 acres of land lying and situated in Oldest Congo Town, Montserrado County, Republic of Liberia, which it secured from the Republic of Liberia on September 7, 1962, signed by President William V. S. Tubman, probated on November 2, 1962, registered according to law in volume 85B, pages 401 – 402, and endorsed by E. Winfred Smallwood.

The appellee further alleged that the co-defendant Assembly of God Church encroached upon said property without its consent, developed and constructed structures thereon, and illegally leased portion of said property to businesses and private individuals; that the appellee informed the appellants about their illegal encroachment, requesting them to vacate the property, but they have remained intransigent and refused to do so. The appellee prayed the court below to oust the appellants from its property and to grant it Fifty Thousand United States (US\$50,000.00) as general damages for the illegal withholding and possession of its property.

On July 1, 2022, the appellants filed a twelve-count answer to the appellee's complaint contending as follows: that contrary to the assertion of the appellee, the co-appellant Assembly of God Church, Sinkor Branch, on January 27, 1988, acquired from Corinna Hilton Van Ee 11.0 acres of land lying and situated in Oldest Congo Town, Montserrado County, Republic of Liberia; that subsequent to the acquisition of the property, the co-appellant constructed thereon a church edifice, where it worships and conducts several other activities; that assuming without admitting it did not have a title deed, it has been occupying the subject property openly, notoriously and uninterruptedly for over thirty (30) years, and has ejected trespassers from the subject property; hence, by operation of law, it has acquired title to said property consistent with the doctrine of adverse possession. Further, the appellants allege that the purported true and certified copy of a public land sale deed from the Republic of Liberia to Joseph v. Gaye, Sr., is a product of fraud with several discrepancies; that it is the administrators of the deceased estate who have falsified a deed to claim the co-appellant Assembly of God's property; and that the appellee is not entitled to damages as a matter of law as it is the legitimate owner of the disputed property.

On July 11, 2022, the appellee filed a five-count reply basically denying the averments contained in the co-appellant's answer, and further alleging that the co-appellant Assembly of God Sinkor Church's deed and other title documents are all products of fraud as its

purported grantor does not own the subject property; that the plead of adverse possession cannot hold because the appellee has always engaged the co-appellant and all those operating on said premises.

Pleadings having rested and the law issues disposed of, the appellee, the intestate Estate of Joseph V. Gaye, Sr., on February 10, 2023, filed a five-count motion before the trial court requesting the court to allow for an investigative survey since the parties are contending a particular portion of land with two separate descriptions which would settle the dispute in question by an investigation of a technician, in this case, a surveyor. The court granted the motion and the co-appellant, Assembly of God Church, Sinkor Branch, interposed no objection.

On February 24, 2023, the trial court commissioned and instructed surveyor Albert D. Giah, a registered and licensed surveyor from the Liberia Land Authority, to conduct the investigative survey using only the deeds, maps and diagrams pleaded by the contesting parties. The lower court instructed surveyor Albert D. Giah to issue a survey notice to the technical representatives of the parties, and all adjoining parties to the disputed property, and to have a copy filed with the court as a demonstration of compliance; that all legal technicalities relating to any defects in the deeds and maps be left with the court for determination. The court further instructed that the report of the survey be submitted to the court within four (4) weeks and a party not satisfied with the conduct of the survey should file an objection prior to the survey report being submitted to the court. The court warned that a technical representative who absents himself on the date and day of the survey without a genuine excuse and due notification, the survey exercise should be proceeded with in accordance with the notice; and that a party failing to nominate a technical representative on the day of the survey, report emanating therefrom will be binding on him and enforceable on all the parties.

On March 22, 2023, the survey was conducted and Surveyor Albert D. Giah submitted his report to the trial court on April 18, 2023. The records show that when the case was called for the reading of the survey report on April 19, 2023, the appellee filed a motion requesting for a bench trial on ground that the appellants had failed to request for a jury trial consistent with the law after four years of pendency. However, there is no showing in the records as to whether the motion for a bench trial was heard and determined, as requested.

On May 1, 2023, the Co-appellant Assembly of God, Sinkor Branch, filed objection to the survey report, and when the case was called on June 28, 2023 to hear the appellants objector's objection, the appellants observed and made a submission on the records of the

court, bringing to the attention of the trial court that the survey report read on April 19, 2023 was captioned: “re-visitation to survey site” which presupposes a new survey report and the appellants would need time to file the appropriate objection to this new survey report. The request was granted, and on July 3, 2023, the co-appellant Assembly of God Church, Sinkor Branch, filed objection to the site re-visitation report.

The co-appellant’s objection to the investigative survey report averred that the investigative survey report of April 19, 2023, having been read in open court, the surveyor discharged and an objection filed, the court was under duty to hear and pass on the objection before ordering a subsequent survey if need be; that this not being the case, the site re-visitation report of June 8, 2023, should be set aside as at no time did the co-appellant’s technical representative, E. Murana Sheriff, participate or form part of a survey team to revisit the site on June 2, 2023, as alleged. The appellants further asserted that the investigative survey conducted was not an arbitration wherein the parties enter an agreement to bind themselves to an award; hence, the surveyor, Albert D. Giah, Jr., was in error when, he, in his report made an award that the appellee’s right to the disputed property be upheld in the absence of the co-appellant grantor’s deed; that the survey report was inconsistent and contradictory in that Surveyor Giah observed that the appellee and co-appellant are claiming the same property and the co-appellant had constructed a church on the property, yet in the conclusion of the report, he states that the co-appellant has no title to challenge the appellee’s title deed as the appellee’s public land sale deed is older than the co-appellant’s warranty deed.

The co-appellant, objector, reiterated in its objection that the purpose of the investigative survey as applied for by the appellee was not to determine which of the parties title deed was traceable to the Republic of Liberia, rather, the request for the survey was to determine whether the metes and bounds of the respective parties titles conform to the ground location; hence, Surveyor Albert D. Giah, Jr. erred when he concluded in the report that in the absence of the co-appellant’s grantor’s deed, it was impossible to determine whether co-appellant acquired its property before the appellee; that the Surveyor further contradicted himself in that he confirmed that the co-appellant acquired the property in 1988, constructed a church thereon and leased portion of said property to Abi Jaoudi, as against the appellee who has not developed the property, but concluded in the report that the co-appellant has no right or claim to the subject property, failing to take into consideration that the statute provides that a person being in possession of a property, even without a title deed for a period of over 30 years, as in the instant case.

A determination as to who has a better title and right to a disputed property, subject of an action of ejectment, the co-appellant says rests within the province of a trial jury and not a surveyor of an investigative survey whose duty was only to determine whether the parties to the ejectment action were claiming the same land and whether the metes and bounds of each party conforms to the land on the ground; that for the surveyor to make an award which was upheld by the Judge in a summary judgment was a usurpation of the function of the jury, the trials of facts, and said report being prejudicial to the rights and interest of the co-appellant, and a violation of the law, the trial judge should not have upheld same and granted a summary judgment.

The appellee filed a resistance to the objections made by the co-appellant denying all the averments contained in the co-appellant's objections. The appellee contended that surveyor Albert D. Giah, Jr. acted in line with the instructions given by the trial court, using the title instruments pleaded by the parties.

The objection and the resistance thereto were heard and argued before the trial judge who ruled and denied the co-appellant's objection. The co-appellant/objector noted exception and gave notice that it would take advantage of the law controlling.

On July 24, 2023, the appellee filed a motion for Summary Judgment on ground that since the investigative survey report concluded that the appellee's deed is superior to that of the co-appellant and established that the appellee's deed corresponds with the ground location while the co-appellant's does not, and that the co-appellant's deed is not traceable to the Republic of Liberia, there exists no genuine issue of material fact in dispute. The appellee therefore prayed the court to invoke Chapter 11, Section 11.3 of the Civil Procedure Law controlling Summary Judgment.

On August 8, 2023, the co-appellant resisted the motion for summary judgment, countering that a plaintiff and defendant in an action of ejectment are required to establish their claim to a disputed property on the strength of their titles and not by a summary judgment, since the proceeding involves mixed issues of law and facts and should be tried by a jury under the supervision of the court. The co-appellant further argued that the report from the investigative survey had no binding effect, since unlike an arbitration agreement where the arbitral board makes an award, an investigative survey cannot give an award since its sole basis and intent is to provide technical assistance to aid the trial court in its hearings and to assist the court make a legally fair and equitable determination in a matter; that an investigative survey is an evidentiary tool to help the court in considering its decision.

On August 14, 2023, the trial judge heard the motion for summary judgment and granted same, holding that following due consideration and reflection, and also having most diligently examined the records of the proceedings, he had arrived at the inescapable conclusion that the co-appellant/respondent is adjudged liable.

The co-appellant excepted to the judge's final ruling, announced an appeal to the Supreme Court, and subsequently filed a bill of exceptions stating *inter alia* that the judge committed reversible errors when he: (a) granted the motion for summary judgment on the strength of an investigative survey report whose function is only to provide technical assistance, and not to rule on the strength of the titles of the parties; (b) when he failed to conduct a trial with the aid of a jury whose duty it is to decide the issues joined by parties in an ejectment action; and (c) when he ruled that the investigative survey report is binding on the parties as if it were an arbitration agreement which grants an award that is binding on the parties.

The gravamen of this appeal as per our review of the records before us, and arguments heard is whether the trial judge erred when he granted the appellee's motion for summary judgment based on the investigative report?

The records transcribed to this Court reveal that the appellee, the Intestate Estate of Joseph V. Gaye, Sr., lodged its complaint with the Sixth Judicial Circuit, Civil Law Court for Montserrat County, on June 24, 2022, against the appellants, including the co-appellant, the Assembly of God Church, Sinkor Branch, for encroachment on the appellee's alleged 7.3 acres of land said to be lying and situated in Oldest Congo Town, Montserrat County. The co-appellant, the Assembly of God Church, Sinkor Branch, answered and denied the legal sufficiency of the complaint, and countered that on January 27, 1988, it acquired eleven acres of land from Corinna Hilton Van-Ee, on which the subject properties lie. According to the co-appellant, the certified copy of a public land sale deed that the appellee attached to its complaint is a product of fraud, and identified several discrepancies on the purported deed to sustain its allegation of fraud. Besides, the co-appellant stated that it has occupied the disputed property for over 30 years openly and notoriously without interruption from the appellee.

Subsequent thereto, the appellee filed a reply confirming its averments as recited in its complaints and also alleged fraud in the document relied upon by the co-appellant contending that the co-appellant's grantor does not own the subject property, and has never owned property in that location; and that co-appellant cannot plead adverse possession because appellee had engaged it on several occasions to vacate the property.

Our perusal of the case file reveals that the court ruling on the law issue stated that the case was a mixed issue of law and facts and therefore had the case forwarded for trial on its merits. In this case, as held by this Court, it was imperative that the case then be heard by jury, especially as this Court has consistently held that the jury in such cases is the proper party to determine the weight and credibility of evidence or validity of title deed presented by parties under the direction of the court: *Momolu v. Cummings*, 38 LLR 307, 314 (1996); *Karnga v Williams et al*, 10 LLR 10, 11-12 (1948). In this case both of the parties are claiming the same property as confirmed by the investigative surveyor who stated in the conclusion of his report that the co-appellant land surrounds the entire disputed property. Several allegations were made in the parties pleading and in this case the matter ought to have been heard by the court sitting with a jury and the parties given an opportunity to prove their right to the property. The trial judge, by summarily ruling on an ejectment matter without a hearing and with the aid of a jury, acted contrary to this Court's settled Opinion that all ejectment hearing held by a trial court must be done with the aid of a jury: *Ketter v. Jones*, 41 LLR 81, 85 (2002); *The United Methodist Church and Consolidated African Trading, Corp, v. Cooper et al.*, 40 LLR 449, 461 ( 2001 ); *Larsannah v. Passawe*, 14 LLR 599, 600 (1961).

Besides, the co-appellant Church in its bill of exceptions assigned as error the lower court summary ruling granting the appellee's motion for summary judgment based on the investigative report which granted an award of the disputed property to the appellee.

This Court upholds this contention of the co-appellant and reiterates that unlike arbitration where the contending parties in an ejectment action takes their matter from the court to be handled by an arbitration board, and the award made by the arbitration board has the same force and effect of a court's judgement except as provided in our Civil Procedure Law, Rev. Code 1: 64.11 & 64.12, an investigative survey report serves only as technical evidence in the hearing of a case by jury. In the case of an investigative survey, the surveyor appointed by the court is put on the stand to testify to his report and he is examined by the parties and court for clarification if needed, and in which case a party may object to any aspect of his report. The investigative report is then put into evidence and made part of the evidence for consideration by the jury in the case.

The motion by the appellee for the investigative survey stated that the parties were contesting a particular portion of land with their deeds reflecting two separate descriptions, and which the appellee said could be settled by the investigation of a technician, in this case, a surveyor. Where the surveyor found that the parties claim was for the same property, it should not have gone any further in its report, and all issues raised by the parties for this disputed property

should have then be left with the court to be decided after the hearing and taking of evidence in a hearing by jury. It was erroneous for the trial judge to have granted the summary judgment, ruling on an award made by the investigative surveyor when the survey report in its conclusion confirmed that the defendant's land surrounded the entire disputed property and in which case the disputed property having been identified as the same property claimed by both parties, the issues raised in their pleading should have been heard and decided by the trial court with the aid of a jury. This Court has held that the finding of an investigative survey is not and cannot be said to be ip so facto conclusive of the dispute and or controversy which is before the court. Such a finding however, serve as a tool that may be used by the court in its determination of the matter. *Cornomia vs. Henry B. Duncan's Estate*, Supreme Court Opinion, March Term, 2018; *Jallaba v. Street*, 12 LLR 356, 358 (1956); *Gardner v. James*, Supreme Court Opinion, March Term, A.D. 2015.

This Court has consistently addressed this issue of summary judgment in an ejectment proceeding, and has warned trial courts to desist from same so as not to disturb the tranquility of communities and render property, real or personal, insecure. In the case *United Methodist Church and Consolidated African Trading Corp. v. Cooper*, 40 LLR 449, 459, 462 (2001), the Court held that "ejectment proceedings involve mixed issues of law and fact; hence, a judge alone, without the aid of the jury, cannot determine same; that issues joined by parties in an ejectment suit must be decided by a jury, and that anything done to the contrary constitutes gross error on the part of the judge": *Saturday Gbassage v. Walter Holt*, 24 LLR 293, 296 (1975); *Larsannah v. Passewe*, 14 LLR 599, 600 (1961). This is a trite principle of law and it is our holding that the trial judge deciding the case on the motion for summary judgment was in error.

Further, this Court says that both parties alleged in their pleadings that the deed proffered by each was fraudulent. This should have caught the attention of the trial judge who should have been familiar with the Supreme Court's Opinions, which holds that all allegations of fraud are to be tried by jury: *West Africa Resources Corp v. Mathias and Kamal Annous & Company*, 40 LLR 21, 26 (2002); *Knuckles V. The Liberian Trading and Development Bank, Ltd.*, 40 LLR, 511, 525 (2001).

It was also error when the judge ruled terminating the case in the appellee's favor when the crucial legal and factual issue of adverse possession was raised by the co-appellant Church in its pleading, and countered by the appellee. This was a factual issue for the jury. The opportunity to hear and address this vital issue was lost because of the judge's summary ruling which disallowed the co-appellant Church from substantiating its claim that it had notoriously occupied the property for thirty years with no claim made by anyone for said

property. Our Civil Procedure Code 1: 2.12 (2) states that an action to real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years.

The judge having failed to conform to the settled principles of law and practice in this jurisdiction, requiring an ejectment action which comprises of mixed law and facts to be tried by jury with the guidance of the court, and proceeded to grant a summary judgment based on an investigative report, said ruling was erroneous and is hereby reversed and the matter remanded for hearing by a jury to determine all the issues raised in the parties' pleadings.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the final ruling of the trial judge is reversed and the case remanded for trial by jury to consider all issues raised by the parties in their pleadings and identified in this Opinion. The Clerk of this Court is to send a Mandate to the court below, commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment growing out of this Opinion. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

**WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR J. JOHNNY MOMOH OF THE J. JOHNNY MOMOH AND ASSOCIATES LEGAL CHAMBERS, INC., APPEARED FOR THE CO-APPELLANT ASSEMBLY OF GOD CHURCH, SINKOR BRANCH. COUNSELLORS ARTHUR T. JOHNSON, MORRIS M. DAVIS JR. AND AMBROSE TARPLEH OF THE KEMP AND ASSOCIATES APPEARED FOR THE APPELLEE, THE INTESTATE ESTATE OF JOSEPH V. GAYE, SR.**