

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS MARCH TERM, A.D. 2025

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

Snow Hill Community Play Ground, by and thru its Community Heads)
 and authorized Officers, Rev. Jonah Togba, Ben A. Roberts, and)
 Myers Tarpeh, of the City of Monrovia, Liberia.....Appellants)

Versus

) APPEAL
)

Snow Hill Baptist Church, of the Township of Gardnerville, County)
 of Montserrado, Liberia.....Appellee)

GROWING OUT OF THE CASE:

Snow Hill Community Play Ground, by and thru its Community)
 Heads and Authorized Officers, Rev. Jonah Togba, Ben A. Roberts,)
 and Myers Tarpeh, of the City of Monrovia, Liberia.....Petitioner)

Versus

) OBJECTION TO
) BOARD OF
) ARBITRATOR'S
) REPORT

Snow Hill Baptist Church, of the Township of Gardnerville, County)
 of Montserrado, Liberia.....Respondent)

GROWING OUT OF THE CASE:

Snow Hill Baptist Church, of the Township of Gardnerville, County)
 of Montserrado, Liberia.....Plaintiff)

Versus

) ACTION OF
) EJECTMENT
)

Bedel Gaigela, Ben A. Roberts, Florence Jlopleh, James Tarley and)
 Sam T. Kpahyu of the Township of Gardnerville.....Defendants)

Heard: July 16, 2024

Decided: May 28, 2025

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal emanates from an action of ejectment filed on November 13, 2013, before the Sixth Judicial

Circuit, Civil Law Court for Montserrado County, by the appellee, Snow Hill Baptist Church, through its Resident Pastor, Rev. Samuel S. Tye. The appellee, plaintiff below, alleged in its complaint that it purchased a parcel of land from Leduonleh Williams of the Township of New Georgia, on July 28, 1997, and registered same according to law in Vol. 46 - 98 Pages 137- 140, The appellee attached to the complaint a certified copy of its Warranty deed.

The appellants, Bedel Gaigela, Ben A. Roberts, Florence Jlopleh, James Tarley and Sam T. Kpahyu, filed their answer in which they prayed the court to deny and dismiss the appellee's complaint because the parcel of land being claimed by the appellee/plaintiff was purchased in 1981 to be used as Snow Hill Community Playground, and had been used for said purpose prior to its purchase without molestation until the appellee encroached upon a portion thereof; and which encroachment triggered a resurvey of the property. The appellants attached to their answer a copy of a Warranty Deed from David Morris to the Snow Hill Community Playground, certified copy of a deed issued to David Morris from the Republic of Liberia for two (2) acres of land, lying and situated in the Township of Gardnersville, dated December 3, 1954, and a copy of a survey notice dated May 25, 2013.

The appellee Snow Hill Baptist filed its reply to the appellant's Snow Hill Community Playground's answer along with a motion to dismiss the appellant's answer which was subsequently withdrawn and replaced with a motion to strike the appellant's answer.

The parties having joined issues, the matter was assigned for a disposition of the motion to strike; same was heard and denied; thus, leaving the main issues of the appellee's complaint which included mixed issues of law and facts. On February 24, 2014, a motion to intervene together with an intervener's answer was filed by the Snow Hill Community Playground, the present appellant, by and through its community heads and authorized officers, Rev. Jonah N. Togba, Ben A. Roberts, and Myers Tarpeh.

The appellant asserted in its motion to intervene that it is a community within the Township of Gardnersville, and a lawful owner of an eight-lot or a two-acre parcel of land lying and situated in the said Township; that it acquired the subject property from Mr. David Morris to be used and operated as a playground for the children and young people of the Snow Hill Community; hence, the name Snow Hill Community Play Ground; that further, consistent with Civil Procedure Law Revised, Rev.Code 5.61.1 and 5.62, it should be permitted to intervene as a party defendant so as to adequately assert its claim of ownership to the property, subject of these proceedings, because the named defendants are simply elders, sympathizers and or officials of the community; that it stands to be adversely affected by the decision of the court, if denied intervention, and would thereby lose its investments on the subject property and its dream of a playground for the children of the Snow Hill Community.

On March 6, 2014, the case was called for the disposition of law issues in the original ejectment suit, and upon notification to the trial court by counsel for the appellant that a motion to intervene was filed

and remained undetermined, the court ordered it heard, and the counsel for the appellee requested permission to spread its resistance on the records on grounds that it received the said motion late.

The appellee, in its resistance to the motion to intervene, strenuously contended that the motion to intervene be denied and dismissed for reason that the individuals, including Ben A. Roberts, who had earlier filed answer to the complaint, are the same requesting to intervene which is unprecedented and not tenable under the law; that the title deed also proffered earlier, is the identical one being annexed to the intervener's answer; and that the motion is intended to baffle the proceedings.

The motion and the resistance thereto were argued, the motion granted, and the movant made a party defendant. The counsel for the appellee noted exception but took no steps further. On April 22, 2014, the case was called for hearing for the disposition of law issues and both parties conceded that the matter be ruled to full trial as it contained mixed issues of law and facts.

On October 6, 2014, the case was called for hearing on a motion for investigative survey, but the records show that the parties, through their respective counsel, conceded that instead of an investigative survey, the proper process to resolve the subject matter of an ejectment was to send the matter for arbitration. Both parties therefore jointly requested a court's order for a board of arbitration to be set up and the court granted same. The clerk of court was ordered to communicate to the Ministry of Lands, Mines and Energy to nominate a qualified and licensed land surveyor to serve as Chairman of the arbitration board, and also to instruct each party to submit to the court the name of its surveyor to serve as technical representatives on the arbitration board.

The board of arbitration was duly constituted and qualified by the court. Edwin Boakai was nominated and endorsed as Chairman, King Walters was nominated as representative of the appellee/plaintiff to the board, and Eastman Quaqua was nominated by the appellant/defendant as its representative on the board. However, we find that no instruction, rather unusual in cases of arbitration, was given by the judge when he granted the parties request for arbitration.

On January 7, 2015, Edwin Boakai, the Chairman of the Board of Arbitration, issued out a survey notice to conduct a survey of the disputed property, and on March 19, 2015, the board submitted its report to the trial court. The court had this report set aside because it was found to have been done by the Chairman alone and wrought with extrinsic issues not within the ambit of the arbitration requested by the parties. A new survey was then ordered conducted consistent with Section 64.7 of the Civil Procedure Law.

The appellee, not satisfied with the subsequent survey process, filed objection to the second report and stated as its ground that the Chairman, Surveyor Edwin B. Boakai, Sr., acted unilaterally in that he did not cite members of the arbitration board to a meeting to plan and conduct the survey as a team. The

appellee also attached to its objection, a certificate of non-discovery allegedly issued by the Ministry of Foreign Affairs, indicating that the appellant's deed could not be traced in its records.

The parties later jointly filed a stipulation agreeing to a re-conduct of the arbitration which stipulates the following in counts four (4), five (5), six (6) and eight (8):

4. That the board of arbitrators consider comprehensively all title documents of the parties before the court and all related documents substantiating the parties respective claim and those counter/refuting adversary claims;
5. That the Chairman communicate all notices, information, and other matters relative to the conduct of the arbitration to the technical representatives of the parties on the Board;
6. That the Board be mandated/instructed by the court to authenticate all title documents of the parties at the relevant Government agencies;
8. That the Board be ordered to conduct the Arbitration within two-weeks and filed their report/award not later than three weeks from the date of the Judge's Order/Instruction to the arbitrators.

In the wake of the order to re-conduct the arbitration survey as stipulated by the parties, the Chairman Mr. Edwin Boakai died, and Surveyor Momo G. Yee was nominated by the Ministry Lands, Mines and Energy and qualified by the court to serve as the new Chairman of the board. However, subsequent to Mr. Yee's nomination by the Ministry of Lands, Mines and Energy and qualification by the Court, a survey announcement under the signature of Surveyor Momo G. Yee was issued out, bearing the names of all interested parties, except for the technical representative of the appellant, Eastman K. Quaqua.

It must be emphasized in this Opinion that unlike an investigative survey where the parties' surveyors are merely observers, with a board of arbitration, parties representatives to the board are integral members of the board and their presence and participation are vital to the outcome of the report. In such case, all the parties to the board must have personal knowledge of exercises conducted by the board and not receive information by public service announcements.

On May 28, 2016, the third arbitration survey report was submitted to the court. Upon the reading of said report on September 6, 2016, which supported a conclusion for the appellee, the trial judge ordered that this third report be sent back and be redone as it did not include a definite award consistent with our Civil Procedure Law, Section 64.7.

The appellant then filed an objection to the Chairmanship of surveyor Momo G. Yee, primarily alleging that Momo lacks the requisite knowledge on the procedure to conduct an arbitration survey; that his conduct raises suspicion of his independence and that he conducted the arbitral survey in a manner as a regular investigative survey. The appellee resisted the appellant's objection and filed a bill of information in which appellee averred that the appellant had deliberately refused to pay its share of the

survey fees. However, there is no showing in the records as to whether the objection or the bill of information was heard and determined.

On January 23, 2017, Chairman Momo G. Yee filed with the trial court another report (4th report) signed by him and surveyor King Walters, the technical representative for the appellee, in which they as majority members awarded the disputed property to the appellee, the Snow Hill Baptist Church. On February 1, 2017, and April 13, 2017, the appellant's technical representative, surveyor Eastman Quaqua and the appellant itself, respectively filed separate objections to this forth report.

The appellant alleged principally in its 's objections, that the award given was false, misleading, and does not reflect the reality of the arbitration survey carried out; that the Chairman failed to call a meeting of the board to discuss their findings from the field prior to the submission of the report; that the procedures for the conduct of the survey were not followed but a simply resurvey of the property was done. They further alleged that at no time did the team visit the Ministry of Foreign Affairs or the National Archives to obtain the purported certificate of non-discovery; and that the report is a replica of the previous one made on September 6, 2016, without an award.

The court, having entertained arguments into the objections and the resistance thereto, reserved ruling and ordered an investigation on September 12, 2017. On September 14, 2017, the court ruled and ordered that the majority report be set aside due to conflicting testimonies from the surveyors.

The presiding judge, His Honor Scheaplor R. Dunbar, is quoted as follows:

“ In view of the conflicting testimonies of the three surveyors, this Court is of the considered opinion that the appropriate thing to do under the circumstances is to set aside the final report [The Report of xxxxxx] submitted by the majority, and order the three surveyors to go back and do the post survey analysis, order the plotting of the post survey analysis and preparation of the final report. All three surveyors informed the Court that they are still in possession of the field data and that there is no need for a new survey but to use the data collected from the field in the preparation of the report. In the event that any of the party surveyor is not cooperating, the Chairman is ordered to report that surveyor. Similarly, if the Chairman is doing something not correct, the other surveyors should also report the Chairman to this Court.”

This ruling of the judge above called for a fifth report to include his instruction above. The records show that on October 12, 2017, the fifth report, signed by surveyors Momo G. Yee and King Walters, was filed with the trial court. The report concluded as follows:

“In our investigation findings and based on the below reasons, the Board Chairman and its member hereby award the parcel of land being investigated to Snow Hill Baptist Fellowship Living World Ministry.

- A. That the deed presented to the survey team by the defendant, [the] bearing and distance differ with that of the complainant's document and has spatial and geographical disparities;
- B. That after carefully scrutinizing the [appellant's] document technically, it is proven that its geographic position differs with that of the complainant's document;
- C. That said document [appellant's] is not discovered in the National Archives of Montserrado County records;
- D. Even though the defendant showed the same position on the ground, the bearings are not the same as the complainant; and.
- E. That the land owned by Snow Hill Baptist Church is portion of a six acres land owned by Ledondlah Williams and children, situated in Snow Hill Community, Gardnersville Township, Republic of Liberia”.

On October 30, 2017, surveyor Eastman Quaqua, the technical representative for the appellant, filed another objection to this fifth report. He alleged that the mandate given by the court ordering the arbitration team (the surveyors) to meet and put the final arbitration report together was not implemented because the Chairman, Momo G. Yee, made several excuses that effectively excluded his participation in the post-survey data analysis; that to his utmost surprise, he received a notice of assignment for the reading of the Arbitration Report, same being on Thursday, October 31, 2017, at 9:30 a.m., and that with all these technical and fundamental issues being wrongly done, the scheduled reading of the fifth report should be halted.

On November 21, 2017, upon notice of assignment duly served on all parties, the report was read in open court and thereafter, the counsel for the appellant noted exception and gave notice to take advantage of the statute controlling. Notwithstanding the notice of exception, upon a submission made by the counsel for the appellee, the trial court entered upon the records the arbitration report.

On December 20, 2017, the appellant filed formal objection to the final report re-asserting the claims made in its initial objections to the previous reports.

In resistance, the appellee contended that the objection failed to establish any of the grounds for vacating an award as provided in the Civil Procedure Law; that the appellant's technical representative deliberately refused to cooperate with the team of arbitrators but has continued to file objections for the purpose of delaying the proceedings; that as to the certificate of non-discovery, the arbitrators were required to ascertain all documents presented to them, and that if the appellant was possessed with a genuine deed to the contrary, it would have submitted same to the board of arbitrators.

The appellee further contended that unlike the previous reports, the current report gave a definite award, hence, it could not be a replica of the previous reports as alleged by the appellant; that despite the court's order for the board to meet and their technical representatives share their notes and analyze the data gathered and prepare a final report, the appellant's technical representative had always refused to attend the meetings with the intent to mislead the court and have the court believe that the chairman acted unilaterally; that the appellant who had claimed that its technical representative's data was not considered in the previous report, has now come to complain that a point is missing in his data/notes.

When the case was called for hearing into the objection and the resistance thereto, on August 30, 2018, the appellant/objector, without excuse, was absent for the hearing. Predicated upon the absence of the appellant, the counsel for the appellee prayed the trial court to deny the objection on ground of abandonment. The trial judge granted the prayer and confirmed the report of the board of arbitration, awarded the subject property to appellee/Snow Hill Baptist Church.

Subsequently, the appellant's counsel filed a motion to rescind judgment, pleading that his absence in court was not due to an abandonment as it was not deliberate but inadvertent due to lack of knowledge that the notice of assignment was served along with the appellee/respondent's resistance to the appellant's objection when it was served on August 17, 2018; that further, the Civil Procedure Law, section 10.7 (default on motion) as invoked by the appellee was not applicable in the circumstance because its objection to the arbitration award was not a motion, and if the appellee was of the belief that its absence was deliberate and amounted to abandonment, the appellee should have invoked the Civil Procedure Law Section 42 (default judgment) which is the appropriate law, and in which case, it would have made its imperfect judgment perfect, consistent with sub-sections 1 & 2 of the said provision; that the records having not shown that it was the case, the court granting of the appellee's motion under Section 10.7 was therefore an error for which its motion to rescind would lie.

The judge ruled and granted the motion to rescind, setting aside his final ruling of August 30, 2018, and on September 25, 2018, the trial court entertained arguments into the objection and the resistance, and thereafter, denied the appellant's objection. On November 26, 2018, the court handed down its final ruling, quoted herein below:

"The majority entered an award in favor of plaintiff and against the defendant. This court is satisfied that the majority report and/or award reflect the actual situation existing on the ground, and that the disputed property is owned by the plaintiff church. This case had dragged on for too long, one objection after the other. This court denies the objector's objection and confirms the majority award consistent with Section 64.10 of the Civil Procedure Law. This court, having denied the

objectors' objection to the arbitral report, it herewith confirms the award and shall proceed to enter final judgment consistent with section 64.13 of the Civil Procedure Law. This court adjudges defendants liable to plaintiff in this action of ejectment and are ordered ousted and evicted from the plaintiff's property. The clerk of this court is ordered to issue a writ of possession and place same in the hands of the Sheriff who, with the aid of the chairman of the board of arbitration, shall proceed to the subject property, evict and oust defendants, and put plaintiff in full possession thereof in keeping with the metes and bounds of its title deed".

Being dissatisfied with the court's final ruling, the appellant noted exception and announced an appeal to the Supreme Court. On December 6, 2018, the appellant filed a seven (7) count bill of exceptions, essentially re-asserting the averments contained in its previous objection which it alleges the trial judge overlooked when it denied its objection.

The appellant assigned the following key points as errors committed by the judge: i) affirming the award from the majority members of the arbitration board because it was a product of fraud and misrepresentation; ii) that the case prolonged due to technical and legal grounds not the fault of the appellant; iii) that the report did not contain a survey map, an important component of an arbitration survey report which shows the ground location of the disputed property according to the points gathered on the field; iv) that the method used in arbitration survey to produce the survey map which involves "running a traverse to locate all points that are identified or being identified by the parties on the ground, and then plot same on the paper, after plotting same on the paper, you then superimposed the respective parties' deed on the located points which were being identified by the parties on the ground and this then eventually becomes the survey map" was allegedly not done and thus, considered an error by the appellant; v) and that the certificate of non-discovery and its insinuation as contained in the survey report were considered by the judge when at no time did the team visit the National Archives to obtain said document.

From our review of the records, we must ask the questions whether the exercise conducted by the surveyors was an arbitration proceeding in the manner and form contemplated under Section 64 of our Civil Procedure Law (1973) and whether the award made by the purported board of arbitrators was conclusive to put the appellee in possession of the property as against the appellant?

The records before us show that the parties jointly signed a stipulation agreement to submit the dispute to a binding arbitration. In count 2 of the bill of exceptions, the appellant alleges fraud and misrepresentation committed by the members of the arbitration board; that the allegation of fraud committed in the conduct of the arbitration was credited to the fact that the survey report lacked a survey map or the map of the area so surveyed and further, the parties did not meet to plot the said map and therefore the report did not display a survey map, an important component of an arbitration

survey report, which shows the ground location of the disputed property according to the points gathered on the field.

This case brings us to the issue of the conduct of arbitration in matters of ejectment, whether the exercise conducted by the surveyors met the standard of an arbitration proceeding in the manner and form contemplated under Section 64 of our Civil Procedure Law (1973) and laid out by this Court in the case, *Gardiner v. James*, Supreme Court Opinion, March Term, A.D. 2015.

Chapter 64 "Arbitration" sets out clearly defined terms, at the election of parties to a dispute, to select arbitration as a means of settling their disputes. This agreement, as the one herein, effectively ousts the court and the jury from delving into the hearing of the matter, taking and weighing evidence and according credibility to witnesses' testimonies. The court is only limited to confirming the awards made by the arbitral board with exceptions as set forth by section 64.10 of our Civil Procedure Statute.

An arbitral proceeding therefore must not only consist of a survey as in an investigative survey. What the law contemplates in an arbitration proceeding is that proof of title must be comprehensively established as per due process. This means that the parties in an arbitration proceeding must be given the opportunity to present oral and written evidence which may include subpoenaing witnesses to substantiate claims. Was the evidence in this case sufficiently established to grant an award?

We note that the appellee has called into question the authenticity of the appellant's deed, claiming it to be fraudulent, through a purported certificate of non-discovery issued to the appellee stating that the appellant's deed could not be traced. This leads us to wonder how could discovering the registration or non-registration of title document at the National Archives establish fraudulent title? The purpose of probate and registration of title, as required by law, is to give legal notice to the public (or to the whole world) in general as to ownership; *Suah-Belleh v. Oniyama*, Supreme Court Opinion, October Term, A.D. 2015. Certainly, by this Opinion of this Supreme Court, probate and registration of title documents is a necessary and prudential step a land owner takes to protect his interest against anyone and not a process to establish authenticity of deeds. Besides, one may procure a deed fraudulent but still proceed to have it probated and registered. Hence, upon a challenge of fraudulent obtainment of such deed, a discovery or non-discovery of the records of registration is not the best evidence to prove fraud. The board of arbitration was required to subpoena the probate clerk and the registrar general of the National Archives to authenticate the signatures and filing dates on the appellant's deed.

It is self-serving for the appellee, on his own volition, to proceed to procure an instrument against his adversary in an ejectment action, claiming to show that his adversary's deed was not discovered in

the national archives; hence, fraudulently obtained. The appellee was not the competent authority to seek and procure the document of non-discovery of the appellant's deed, if true, as evidence of fraud against appellant. In the mind of this Court, it was the very board of arbitrators that were authorized to procure such evidence, examine it and subject it to review, and that their failure to exercise that duty as instructed by the Court was a violation of the court's mandate which was enough to suppress it as evidence of fraud against the appellant.

In the instant case, where both parties are claiming ownership to the same disputed property by presentation of distinct title instruments and with the appellee contending that the appellant fraudulently obtained its title deed, this Court says that a fraud investigation is the most tenable legal means to settle the matter, and ought to have been done by the said board of arbitration in keeping with due process.

The joint stipulation signed by both parties and approved by the trial court clearly assigned the responsibility of verifying the authenticity of each parties' documents and titles to the board of arbitration and not the Court. Mr. Justice Henries, speaking for the Court in the case *Stereo Hotel v. S & A Construction and Trading Company*, 21 LLR 415, 421 and 427 (1973) held that stipulations is an agreement, admission or concession made in a judicial proceeding by the parties thereto in respect of some matters therein for the purpose of ordinarily avoiding delay, trouble, and expenses. In addition, this Court, in the case *Koon v. Gbe*, 39 LLR 329, 341 (1999) also confirmed the principle of law that courts are bound to enforce stipulations which parties validly make, when they are not unreasonable or against good moral or sound public policy. The stipulation herein being in the form of an arbitration as stipulated in Civil Procedure Law Rev. 1:64 (1973), it is binding, legal, valid and enforceable. *Chicri Brothers v. Isuzu Motors The Overseas Distribution Corporation*, 40 LLR 128, 135 (2000), *Karen Maritime Limited v. Metzger et al* 42 LLR 216, 224 (2004).

The fraud investigation not being done as agreed by the parties, the Court's confirmation of the award in favor of the appellee was prejudicial and lacked transparency.

We see that this case began during the December Term 2013, in the Civil law Court, Sixth Judicial Circuit, Montserrado County, and like the judge stated in his ruling, the case had dragged on for too long and needed to be concluded. We empathize with the challenge the court faced below as it had to overturn the board of arbitration report four times; however, this Court has emphasized that property rights are fundamental rights and caution in handling said matter must be strictly in adherence to the rule of law and due process. The stipulation agreed to by the parties only set to ensure that the property in dispute was one and the same and the deeds presented by the parties were genuinely obtained as per law. It is clear to us that these requirements remain unresolved prior to the confirmation of the award by the trial Judge.

The trial court having been ousted of jurisdiction in hearing the evidence in the case, we are compelled to have the issues of fraud and due process raised by the appellant returned to the board of arbitrators to proceed in accordance with the Civil Procedure Law, Rev. Code 1:64.6 regarding its authority to seek and procure and authenticate documents and instruments used as evidence by parties before it, and to examine and review same consistent with due process in settlement of a dispute submitted to arbitration;

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the lower Court is reversed, and the case remanded with instructions to the board of arbitration to: (1) investigate the issue of fraud, and (2) have the board meet to drive a final report using the data already gathered. The Clerk of this Court is ordered to send a Mandate to the Court below to resume Jurisdiction over this matter and proceed in accordance with this Judgment. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR JEROME B. KOLLEH APPEARED FOR THE APPELLANT. COUNSELLOR ABRAHAM J. ELDINE APPEARED FOR THE APPELLEE.