

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2025

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SRCHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HER HONOR : CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : BOAKAI N. KANNEHASSOCIATE JUSTICE

Intestate Estate of Kaifa Kamara, represented by its)
administrators, Dauson Varney Kamara, A. Vaiffee)
Tulay, Siafa Benjamin and Austin H. Kamara) APPEAL
.....1st Appellant)

And)

Hassan Fawaz, a Lebanese National, Lessee of Kaifa)
Kamara.....2nd Appellant)

Versus)

Intestate Estate of Rebecca Thomas, represented by)
its administrators, Messrs Harmon C. and Timothy E.)
E. Thomas of the City of MonroviaAppellee)

GROWING OUT OF THE CASE:)

Intestate Estate of Rebecca Thomas, represented by its)
administrators, Messrs Harmon C. and Timothy E.)
Thomas of the City of Monrovia..... Petitioner)

Verus) PETITION FOR

Intestate Estate of the late Kaifa Kamara, represented) DECLARATORY
by its administrators, Dauson Varney Kamara, A. Vaiffee) JUDGEMENT
Tulay, Siafa Benjamin and Austin H. Kamara)
.....1st Respondent)

And)

Hassan Fawaz, a Lebanese National, Lessee of Kaifa)
Kamara.....2nd Respondent)

Heard: November 20, 2026

Delivered: February 12, 2026

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal is taken from the ruling of a declaratory judgment filed on January 12, 2016, in the Civil Law Court for Montserrado, Republic of Liberia. The Petition for Declaratory

Judgment was originally filed against Mr. Kaifa Kamara but during the pendency of the case, he died. As a result, the court, upon request of Mr. Kamara's counsel, substituted the deceased on June 21, 2016, with Dauson Varney Kamara, A. Vaiffee Tulay, Siafa Benjamin and Austin H. Kamara, all of whom subsequently became the administrators of the intestate estate of the deceased.

The appellant, the intestate estate of Kaifa Kamara, along with Hassan Fawaz, a lessee of the appellant, were respondents in a 13-count petition for declaratory judgment, filed in the court below. The appellee, the Intestate Estate of Rebecca Thomas, petitioner therein, prayed the court below for a declaration of the legality of the parties' respective claims regarding the ownership of one (1) lot of land on 3rd Street, Sinkor, Monrovia. The property in dispute is part of a 50-acre parcel of land originally owned by Elijah Johnson, and passed on to his son Hilary R. W. Johnson. The appellee contends in its petition that its decedent, Rebecca Thomas, acquired the property, subject of this declaratory petition, in 1976, via a conveyance to her from her deceased husband, H. Carey Thomas, who acquired said property in 1936 from Christiana C. Burke, one of the heirs of Hilary R.W. Johnson, and Elijah Johnson, and that H. Carey Thomas owned the property continuously until 1976 when he transferred title to his wife Rebecca Thomas, decedent of the appellee.

The appellee further alleged that Kaifa Kamara took possession of the property from Rebecca Thomas as a tenant-at-will, paying a monthly rent of Ninety Dollars (\$90.00), but subsequently refused to continue his rental payment obligations. In May 1979, Rebecca Thomas instituted an action of Summary Proceedings to Recover Possession of Real Property before J.C.N. Tecquah, Stipendiary Magistrate of the Monrovia City Court, to have the appellant evicted, and she prevailed. The appellant subsequently appealed to the Civil Law Court and from there various appeals and proceedings were filed before the Supreme Court which remained undetermined. The appellee averred that notwithstanding the fact that the matter was pending on appeal while Kaifa Kamara remained in possession of the property, he proceeded to purchase the subject property in 1988 from Victoria Johnson Maxwell and subsequently proceeded to lease the property to Hassan Fawaz, a Lebanese businessman who commenced construction on the property; that counsel for the appellee wrote to Mr. Fawaz on January 16, 2010, requesting him to halt all ongoing construction on the property and inviting him to meet with them. This, the appellee claim, was an attempt for the parties to reach an amicable solution; however, with no settlement apparently in reach on April 9, 2012, the parties voluntarily discontinued the proceedings pending before the Supreme Court on condition that they would file a petition for declaratory judgement before the Civil Law Court to determine their legitimate title to the subject property.

To the appellee's petition for declaratory judgment, the appellants filed their returns stating that the crust of the petitioner's petition had been adjudicated by the Supreme Court as reported in the Liberian Law Report, Volume 9 LLR, page 161 (1946); that in that case, Christiana C. Burke was included in the line of descent and inheritors among the appellants whose claim was dismissed in a bill of equity for accounting based on the statute of limitation; that this makes the appellee's petition therefore dismissible on grounds of *res judicata*, barring the entire line of descents of the appellee from asserting any claim of summary proceedings against the appellant; that the appellee's grantor's deed having derived from the 1936 deed of Christiana C. Burke to H. Carey Thomas and the Supreme Court having ruled barring the appellee's grantor from further claim to the property, in keeping with the legal maxim that one cannot pass title to another if he/she does not have title in himself/herself, the appellee's motion for Declaratory Judgment be dismissed in keeping with the Opinion of May 10, 1946.

The 1st appellant Kamara reiterated that the purported title deed of H. Carey Thomas believed to have possessed him of said property from 1936 to 1976, and which he transferred to the decedent of the appellee is a legal nullity as it was the same title deed that was set aside and declared fraudulent by the Civil Law Court and affirmed by Supreme Court. Therefore, any title owner of the aforesaid property traceable to Christiana C. Burke is equally defective and of no legal effect.

The 1st appellant Kamara further denied further in his returns to the petition that he was never a tenant of Rebecca Thomas; that the alleged action of Summary Proceeding to Recover Possession of Real Property that was instituted by Rebecca Thomas was just an allegation and a tactical means to cover up ownership for the fake 1936 deed relied on to claim property that did not belong to her. The 1st appellant challenged the appellee to show any final judgment or Supreme Court's Opinion naming Rebecca Thomas as the true owner of the subject property; that there is no records of a final judgement from the Supreme Court establishing that Rebecca Thomas is the owner of the subject proper, as a declaratory judgment can only lie where the ownership of a piece of property is established by the preponderance of evidence of ownership which the appellee lacks. The appellant therefore prayed the trial court to dismiss the appellee's petition for declaratory judgment.

The appellee in its reply to the appellants returns stated that the appellants' counsel, Henries Law Firm, was being unethical in its representation of the appellants as the case [9 LLR 161] referred to was instituted several years after Christiana Burke sold the disputed property to H. Carey Thomas; that several years after the sale, two proceedings were instituted by Christiana Burke and her co-petitioners on behalf of the Elijah Johnson Estate against the collateral heirs of Elijah Johnson. The first was to compel an accounting for rents [*Smith v.*

Faulker, 7 LLR 53 (1940)], and the second, *Smith et al Faulkner et al* [9 LLR 161 (1946)], was a Bill in Equity among heirs to compel the disclosure of properties which the petitioners alleged formed part of the original Elijah Johnson Estate. Both applications were rejected by the Supreme Court on grounds improper filing and Statute of Limitations respectively; that the denials were based not on substantive issues; that in both proceedings, Christiana Burke's status as a direct and legal heir of Elijah Johnson and as an authorized representative of the Elijah Johnson estate were not disputed and were recognized and accepted. If Christiana Burke's status as an authorized representative of the Elijah Johnson Estate was not disputed and was recognized and accepted in the 1940s when she was one of the co-petitioners who instituted both of the two proceedings on behalf of the Elijah Johnson Estate, it therefore follows logically that she must also have been recognized and accepted in 1936, both as direct legal heir of Elijah Johnson and also as an authorized representative of the Elijah Johnson Estate with authority to sell the one (1) lot of land, which formed a part of Elijah Johnson's original 50 acre tract of land to H. Carey Thomas in 1936; that the fact that Christiana Burke's sale of the property in 1936 to H. Carey Thomas has never been questioned or disputed by any of the Elijah Johnson's direct or collateral heirs is final and conclusive proof of the validity of the sale.

The appellee stated the primary issue for which the Petition for Declaratory Judgment was filed was for the court's adjudication as to the legality of the 1st appellant's action in obtaining a title deed to the property in 1988 from Victoria Johnson Maxwell, while he was occupying the property as the appellee's tenant at will and while the matter was *sub judice* before the Supreme Court of Liberia. Instead of addressing the issue which the petition presents, the appellants have elected to attack and question the validity of the appellee's title to the property; that the Supreme Court has held that a tenant is estopped from asserting title during the tenancy, and while possession is retained, he cannot recognize a title adverse and superior to that of his/her landlord, and that in order to assert title in himself/herself, the tenant has to surrender possession to the landlord or unless the landlord has been evicted by a person who was the owner of the paramount title.

On March 2, 2016, the Sixth Judicial Circuit Court, presided over by Assigned Circuit Judge Peter W. Gbeneweleh, ruled the matter to trial on a single issue of mixed law and fact; that is, whether the 1st appellant Kaifa Kamara's possession of the property was because of his arrangement with Rebecca Thomas as her tenant at will?

The matter having been ruled to trial with the primary goal of determining whether there ever existed a landlord-tenant relationship between Kaifa Kamara and Rebecca Thomas, the court after a hearing ruled for the appellee. Relevant portion of the court's ruling is as follows:

TRIAL COURT'S FINAL RULING

"...From the thorough examination of the records and the analysis of the oral testimonies, an impartial mind will irreversibly lead to the conclusion that the late Kaifa Kamara was a tenant-at-will of the late Rebecca Thomas. Why the conclusion?

During the trial, the counsel for the respondent produced two germane witnesses to establish that Kaifa was not a tenant of the late Rebecca Thomas. The first of the two witnesses was Mr. Siafa Benjamin who testified that Kaifa was his uncle; that he lived with Kaifa Kamara from 1975-1995, and his late uncle was a friend to Victoria Johnson-Maxwell; that he asked her for an ideal area to do his carpentry work and Mrs. Maxwell took him to 3rd Street and gave him the place where he built his shop and moved in 1979. He also testified that Kaifa Kamara was never sued by Rebecca Thomas; that Kaifa Kamara paid [Victoria Johnson Maxwell] an initial amount of USD 350.00 against USD 1,200.00 [charged for the lot].

Comparing and contrasting the above testimony with the respondent's second witness, Mr. Austin Kamara, who is a brother of the late Kaifa Kamara, it is easy to see the clear disparity or contradiction. The witness testified that Kaifa Kamara had his carpentry shop on Carey Street and he was looking for an ideal place preferably in Sinkor. He found a dump site on 3rd Street, opposite the present Ministry of Education, **and began to squat there hoping that when the owner came, he would negotiate with him.** In other words, according to Austin Kamara, Kaifa Kamara moved on the 3rd Street property on his own, waiting for the owner to appear so that he could negotiate [with said person] and he remained there until some people told him that the place was for Mrs. Victoria Johnson-Maxwell, as opposed to witness Benjamin testimony that Victoria Johnson Maxwell offered him the 3rd Street Property initially. So the nephew and brother of Kaifa who testified have two different versions of how Kaifa Kamara entered upon the property subject of this litigation.

Besides, Siafa Benjamin explained that when Victoria Johnson-Maxwell returned after the coup of 1980, she asked Kaifa to pay US\$1,200.00 for the land and he paid an initial amount of US\$350.00 while Austin explained that Victoria Johnson-Maxwell charged Kaifa Kamara US\$1,210 and that Kaifa Kamara made an initial payment of US\$300.00. (Material variance or corroboration)

In addition to the contradiction above, both respondent witnesses testified that Rebecca Thomas never sued Kaifa Kamara in 1979, even though Benjamin was staying with Kaifa in 1979 and Austin was also closed to Kaifa during his life time. Under Section 25.2 of the Civil Procedure Law, the Court is under duty to take advantage of historical facts.

The Court says that to establish and prove that Rebecca Thomas filed summary ejectment against Kaifa Kamara in 1979, the petitioner (Rebecca Thomas) exhibited a writ of summon issued on the 8th day of May 1979, and a letter from Cllr. Joseph Chesson to Magistrate GCN Tequah, dated May 10, 1979, in which letter Cllr. Chesson indicated that his client, Kaifa Kamara, occupancy was based on an "arrangement" between he the late Kaifa Kamara and Rebecca Thomas, even

though both witnesses had denied that Kaifa was ever sued by Rebecca Thomas and that Cllr. Joseph Chesson or his Law Firm did not represent Kaifa Kamara.

During argument, the petitioner counsels pray the court to take judicial notice of the Supreme Court 's record of the Summary Ejectment which was discontinued under the signature of His Honor Mr. Justice Kabineh M. Janeh in 2000. The records of the Supreme Court which this court cannot ignore confirmed that Rebecca Thomas sued Kaifa Kamara in 1979 and that the Chesson Law Firm was the late Kaifa Kamara Counsel.

a) That a writ of summons in favor of Rebecca Thomas and against the late Kaifa Kamara for a piece of property on 3rd Street, Sinkor, Monrovia, Liberia was issued by the Monrovia City Court on May 8, 1979;

b) A letter from Cllr. Joseph Chesson written to Magistrate GCN Tequah on May 10, 1979;

c) A motion for modification and correction of judgment was filed on May 16, 1979 by Cllr. Joseph Chesson in the City Court;

d) The above motion was resisted by Togba and Padmore Law Firm on behalf of Rebecca Thomas on May 25, 1979;

e) Magistrate GCN Tequah final Judgment was entered on September 14, 1979 and appeal announced on behalf of Kaifa Kamara;

f) Kaifa Kamara Counsel filed appeal bond on September 24, 1979

g) Motion to dismiss appeal was filed before Judge Benjamin Wordworth on December 7, 1979;

h) The resistance to the motion to dismiss appeal was filed on January 28, 1980;

i) Assignment for the hearing of the motion was issued January 26, 1980 served by Bailiff Henry Mitchell of the Civil Law Court;

j) His Honor Frank Smith heard and ruled on the motion on January 28, 1980, and an appeal was announced by Kaifa's lawyer, but judgment was ordered enforced with reference to dispossession.

k) Petition for prohibition was filed by Kaifa Kamara's lawyer through Chesson Law Firm and signed by Cllr. Arthur Williams of the Chesson Law Firm;

l) Justice Angie Brooks Randolph ordered all parties to appear in her Chambers on February 8, 1980;

Nothing happened apparently because of the coup of April 12, 1980, until 2000, when Cllr. Farmere Stubblefield filed returns before Justice M. Wilkins Wright. With the above information in the custody of the Honorable Supreme Court, it is difficult to accept the respondent witnesses' testimonies that Rebecca Thomas did not sue Kaifa Kamara and that Cllr. Joseph Chesson or his Law Firm did not represent Kaifa Kamara.

The above testimonies leave no doubt in my mind that the late Kaifa Kamara was a Tenant-At-Will of the late Rebecca Thomas, in that his own witnesses have

conflicting account as to how he entered the property and conflicting account as to what was the amount charged by Victoria Johnson-Maxwell, and conflicting amount as to what was the initial payment. More doubt is even created as to why Mr. Jessie Payne to whom the stipulation payments were made was never paraded as a regular or rebuttal Witness when he was visible in and around the court during the trial of the case.

This court, being under duty to take judicial notice of all court records including the Supreme Court of Liberia, have taken such notice of the record as outlined above, and finds it difficult to accept that Rebecca Thomas did not sue the late Kaifa Kamara in 1979, and Cllr. Joseph Chesson or his Law Office did not represent the late Kaifa Kamara up to February 1980. In the face of this evidence, the God I serve shall be justified to smash my head if I should rule otherwise.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petitioner's petition is granted, and this court hereby declares the petitioner's right to the property subject of this litigation."

The appellants excepted to the lower court's ruling and counts 4 which this Court finds relevant to the appeal is quoted herein below:

4. That an action of declaratory judgment cannot determine issues of title between two persons who have titles. In the petitioner's petition, she pleaded her own title deed and grantor's deed. In the respondent's returns, Kaifa Kamara pleaded his own deed and grantor's deed. The Honorable Supreme Court has held "If the law governing declaratory judgment must have such a binding effect, it means that in order to arrive at its decision in the matter, the court must of necessity consider and pass upon the legal issue involved; for it is only then that a trial judge would be in the position to give a ruling that would have full effect and conform with the provision of the statute mentioned above." **Isaac Cooper versus K & H Construction Company 27LLR187 text 195**. In the case **Mohammed Kafel versus Manita Moniba 4LLR 241**, the Honorable Supreme Court held that petition for declaratory judgment is not possessory action but in your final judgment you squarely determine issues of titles held that "WHEREFORE AND IN VIEW OF THE FOREGOING, the Petitioner's Petition is granted and this court hereby declared the Petitioner's rights to the property subject matter of this litigation. And which final judgment, respondent excepts."

The appellants in count 4 of their bill of exceptions have insisted that the 1st appellant was never a tenant of the appellee's decedent, and that declaratory judgment cannot determine issues of title between two persons who are alleging titles to a disputed property.

This Court says that there is no dispute that the crust of the matter before us has been the insistence of the appellee that lot No.3 lying in Sinkor is the legitimate property of the appellee; that the decedent of the 1st respondent, Kaifa Kamara, was allegedly placed on the property

by the appellee's decedent, Rebecca Thomas, as tenant at will, but when he failed and refused to further pay his monthly rent to the appellee's decedent, she proceeded to have him summarily ejected from the property. The records show that the matter of the summary proceeding to recover possession of property traveled as far as the Supreme Court. To confirm that the action existed and was pending before the Supreme Court, the legal counsel of the appellants, Counsellor Amara Sheriff, wrote and filed before the Supreme Court an inquiry as to whether the referenced summary proceedings to recover possession of real property had been on regular appeal before the Court. As a proof of the Court's response, Counsellor Sheriff requested a Clerk's certificate. On May 9, 2018, the Clerk of the Supreme Court, Counsellor Sam Mamulu, responded to Counsellor Sheriff in the letter with content produced verbatim, to wit:

"We refer to your May 1, 2018 letter requesting a confirmation of the status of the above referenced proceedings.

We confirm after a review of the records of the Supreme Court of Liberia that the matter was before the Supreme Court of Liberia based on a petition for a Writ of Prohibition which was filed on behalf of the Petitioner, Kaifa Kamara, on January 31, 1980, by the Chesson Law Firm through Counsellor Arthur K. Williams. The Writ of Prohibition was ordered issued by Chambers Justice Randolph on February 2, 1980.

The matter remained pending before the Supreme Court of Liberia until April 2012, when it was voluntarily discontinued by the parties with the approval of Mr. Justice Kabineh M. Ja'neh. In confirmation of same, attached is a copy of the Notice of Voluntary Discontinuance approved by Mr. Justice Kabineh M. Ja'neh.

Kind regards.

Very truly yours,

/s/

Atty. Sam Mamulu"

In addition to the response above, the Clerk of the Supreme Court also presented a clerk's certificate to Counselor Sheriff which noted that the case file containing the subject summary proceedings to recover real property was forwarded from the office of the Clerk to the Documentation Section in June 2006, and was recorded on page 18.

The records from the Supreme Court confirmed that indeed the decedent of the appellee estate, Rebecca Thomas, did file an action of summary proceeding to recover possession of real property against Kaifa Kamara, decedent of the 1st appellant estate, in 1979 in the Monrovia City Magisterial Court and prevailed; that the 1st appellant took an appeal to the Civil Law Court and the case was dismissed by the Civil Law Court based on the appellee's challenge to the 1st appellant's bond. Our Civil Procedure Law, Rev. Code 1: 62.24 provides no stay in a judgment from an action of Summary Proceeding to Recover Possession of Real Property from a case filed in the circuit court: In Re: James Doe Gibson, 16 LLR 202, 204

(1965); Kollie v. Judge Kaba, Supreme Court Opinion, October Term A.D. 2010; In this case where the records show that the appellee prevailed in the magisterial court and that the 1st appellant appeal to the circuit court was dismissed, the 1st appellant should have been ejected from the said property and the appellee put in possession thereof as ruled by Judge Frank W. Smith in his ruling dismissing the 1st appellant's appeal based on a defective bond filed. However, as stated in the appellee's reply, there were various appeals and processes filed in this matter before the Supreme Court, which remained undetermined, and because of which the 1st appellant remained on the property. One of said proceedings seen in the court's file is a petition for a writ of prohibition filed by Kaifa Kamara, on January 31, 1980. We further see in the records that returns were filed by the appellee and this surmises that the writ was issued, contrary to the law extant in this jurisdiction that an appeal from a ruling made in the circuit court in an action of Summary Proceeding to Recover Possession of Real Property shall not serve as a stay in the enforcement of the court's judgment. We also see that the decedent of the appellee's estate filed a bill of information growing out of the petition for a writ of prohibition and subsequently a motion to intervene filed by Victoria Johnson-Maxwell, the alleged grantor of Kaifa, during the March Term of the Supreme Court A.D. 2012, though we are remised as to the legal basis for the motion to intervene being filed at the Supreme Court. Be as it may, the records show that the parties on April 9, 2012 reached an understanding to voluntarily discontinue the dispute at the Supreme Court with the understanding that they would return to the Civil Law Court and institute an action for Declaratory Judgement to determine which party has legitimate title to the property, it is against the final ruling of the declaratory proceedings that the appellant has excepted and appealed the matter to the Supreme Court. This Voluntary Discontinuance filed by the parties before the Supreme Court, on *April 9, 2012, reads as follows:*

“VOLUNTARY DISCONTINUANCE.

In keeping with chapter 11, section 11.6 of the Civil Procedure Law, Counsels for the parties in the above captioned proceedings, in consultation with their respective clients, have agreed and hereby voluntarily discontinue the aforementioned proceedings by leave of court, on the condition that parties will thereafter proceed to file an Action of Declaratory Judgment in the Civil Law Court, Sixth Judicial Circuit, to determine **which party has legitimate title to the property**, the subject matter of the aforesaid proceedings.

Respectfully Submitted:

FOR: KAIFA KAMARA AND

VICTORIA

JOHNSON

The Henries Law Firm
Counsellor & Attorneys-at-Law

And

FOR: REBECCA THOMAS ET AL

Pierre and Tweh

Law Firm

COUNSELLOR & ATTORNEYES-AT-LAW

Approved: Justice Kabineh Janeh / April 9, 2012."

Referencing the Withdrawal written above, could the matter have been relegated on the context of landlord-tenant relationship? We think not.

This appellee voluntary withdrawal from the Supreme Court as stated in the body of discontinuance abated the summary proceeding case, that is, the contention of the parties' relationship to each other (landlord-tenant relationship) therefore became moot. For the court below to have proceeded to decide the case with regards to the issue of landlord-tenant relationship was an error as the case was withdrawn on the issue of the parties going down below to decide which of the parties had legitimate title and which we believe relates to their purchases and the more superior title.

The Black Law Dictionary defines title as a "legal evidence of a person's ownership rights in property and an instrument, such as a deed, constitutes such evidence." Blacks Law Dictionary 1622 (9th ed. 2009). On the other hand, our Civil Procedure Law, Rev. Code 1: 62.21 defines Summary Proceeding to Recover Possession of Real Property as a a special proceeding to recover possession of real property where title is not in issue.

Where the parties withdrew the matter from the Supreme Court, agreeing to go to the court below and file an action of declaratory judgment to determine the legitimacy of their respective titles, the lower court could not proceed to establish the rights of the parties based on the records of the case of summary proceedings that was withdrawn from the Supreme Court; to decide the case based on the matter of summary proceeding was relitigating the matter in contravention of the agreement between the parties that they would proceed to file a declaratory Judgment to determine title. The summary proceeding action once withdrawn from the Supreme Court had been abated and a further proceeding to hear the summary proceeding is disallowed on the legal principle of *res judicata*. The subsequent adjudication could only be based on the understanding of the parties relating to the strength of their titles and as stipulated in their agreement of Voluntary Discontinuance which was approved by a Justice of the Supreme Court.

Our Civil Procedure Law Rev.1: 43. - Declaratory Judgments reads:

43.1 Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment.

43.3. Adjudication of rights.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of a rights or legal relations in respect thereto; or

- (a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or
- (b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

43.4. Enumeration not exclusive.

The enumeration in sections 43.2 and 43.3 does not limit or restrict the exercise of the general powers conferred in section 43.1 in any proceeding where declaratory relief is sought, in which a judgment will terminate the controversy or remove the uncertainty.

43.5. Declaratory judgment to terminate controversy.

The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Our Civil Procedure Law Rev. Code 1: 62.1 provides that the rightful action for determining title to a disputed property is an ejectment action. It states: “ Any person who is rightfully entitled to the possession of real property may bring an action of ejection against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed. A widow may recover her dower in ejectment.

In determining the rightful owner to a property based on the parties’ title to the property, this Court has consistently held that the lower court must examine the parties’ titles leading up to the state. In this case, there must be a determination as to which of the grantors had superior right to the property, especially where both grantors of the parties, Christiana C. Burke and Victoria Johnson Maxwell, were heirs of the Intestate Estate of Elijah Johnson.

Also, in cases where title is in issue, this Court has held that a court of record cannot proceed with the hearing of a controversy concerning title to real property without a jury, that a trial by jury is mandatory to determine the weight and genuineness of titles and or claims of all the parties to the litigation where issues are joined by and between them in a case of title rights to property; that it is a jury that has the legal duty to determine the weight and the credibility or evidence or the validity of any title deed as it involves mixed issues of law and facts; *St. Stephen v. Gbeze*, Supreme Court Opinion, March Term, A. D. 2013; *Momolu v Cummings* 38 LLR 307, 312 (1996).

In this case, where the parties choose to go by *Declaratory Judgments* to determine their titles or superiority of their titles, the Judge in this case should have taken cognizance of the appropriate law and should have made the appropriate action regarding the said case, considering the Civil Procedure Law, Rev. Code 1:1.2 (2) which states: "If a court has obtained jurisdiction over the parties, an application for relief shall not be dismissed because not brought as an action or special proceeding or motion, which ever may be proper, but the court shall make whatever order is required for its proper prosecution."

The procedure by the lower court to declare the parties right in an action of *Declaratory Judgments* was wrong when it had the records sent from the Supreme Court to the court below and proceeded to relitigate the Summary Proceeding action as when the matter was withdrawn from the Supreme Court, the matter of summary proceeding became *res judicata* and the lower court could not further go into the matter of deciding the relationship between the parties unless by a Mandate of the Supreme Court.

Secondly, as stated, contest to title can only be determined by jury and in this case where the case was being heard in an action of Declaratory Judgment, this should have been proceeded with in accordance with our Civil Procedure Law, Rev. Code 1: 43.9 *Jury Trial*, which states: "When a proceeding under this chapter involves the determination of an issue of fact, the right to trial by jury may be demanded under the circumstances and in the manner provided in chapter 22 of this title."

The appellee says that the property was originally a part of a fifty (50) acre block of land which was originally owned by the late Elijah Johnson Estate and then subsequently owned by **his son, the late Hilary R.W. Johnson**; that the late H. Cary Thomas acquired the property in 1936 from Chirstian C. Burke, one of the heirs of Elijah Johnson and H.R.W. Johnson; that Christiana C. Burke's title to the property was derived from her status as one of the legal heirs of Elijah Johson as she was the sole surviving granddaughter of the late Rebecca R. Russell, who was a daughter of Elijah Johnson and sister of H.R.W. Johnson; that Christiana C. Burke

sold the property to the late H. Carey Thomas who was in possession of said property from 1936 to 1976, when he had the property transferred to his wife, the late Rebecca Thomas; that it was unethical for the appellants and their counsel to declare that the title of Christiana C. Burke was set aside and declared fraudulent by the Supreme Court as reported in the Liberian Law Report (9 LLR,161 (1946). The co-appellant Kamara on the other hand claims his title from Victoria Johnson Maxwell in 1988.

This Court takes note of its Opinion reported in the Liberian Law Report (9 LLR,161 (1946), and as the appellee countered, the case was a Bill in Equity to compel the disclosure of properties which the appellee's grantor, Christiana C. Burke, and other relatives insisted on other relatives accounting for. The application was rejected by the Supreme Court on the ground of statute of limitation. The Court wrote:

“Now Elijah Johnson has been dead about ninety-nine odd years, yet petitioners are praying the court to compel his great-great-grandchildren to come into court and say how much property he left at his death and what has become of the property since his death; to say how much of Elijah Johnson's property his children used and disposed of, how much these children left to F.W.R. Johnson and Gabriel Dennis, and much these two gentlemen left to these great-great-grandchildren, these happenings covering a period of about ninety odd years. If there are any cases in which the statute of limitation ought to apply, this in mine opinion is surely one. And in pleading same, we do not get the idea that it was from a stand- point of dishonesty; but because of the impossibility of the respondents to give the desired information.”

The Court says that the lone issue being for the court to ascertain the superiority of title of both parties, considering the rights of the grantors to the property, the proceeding of the lower court in handling the matter was erroneous.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial court is reversed and the case remanded to be heard on the issue of title with a jury sitting to determine the issue of facts. The Clerk of the Court is ordered to send a Mandate to the court below informing the Judge therein of the Court's Ruling. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR AMARA M. SHERIFF APPEARED FOR THE APPELLANT. COUNSELLORS EMMANUEL B. JAMES OF THE INTERNATIONAL GROUP OF LEGAL ADVOCATES AND CONSULTS, INC., AND ZIAYE B. DEHKEE OF THE PIERRE, TWEH AND ASSOCIATES LAW OFFICES, APPEARED FOR THE APPELLEE.

