

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2026

BEFORE H I S HONOR: YAMIE QUIQUI GBEISAY, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE H I S HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE
BEFORE HER HONOR: CEANEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: BOAKAI N. KANNEH ASSOCIATE JUSTICE

Magdalene Dagoseh and Mr. Sheriff to be identified, and all)
those under the scope of their authorities, of Somalia Drive,)
Paynesville, LiberiaAppellant)

VERSUS) APPEAL

Moses B. Karngbayee of Somalia Drive, Paynesville)
Montserrado County, Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Moses B. Karngbayee of Somalia Drive, Paynesville)
Montserrado County, Republic of Liberia..... Plaintiff)

VERSUS) ACTION OF EJECTMENT

Magdalene Dagoseh and Mr. Sheriff to be identified, and all)
those under the scope of their authorities, of Somalia Drive,)
Paynesville, Liberia..... Defendants)

Heard: January 12, 2026

Decided: August 28, 2026

MADAME JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This appeal is grown out of the final ruling of the Sixth Judicial Circuit, Civil Law Court for Montserrado County, wherein the appellants, Magdalene Dagoseh et al., were adjudged liable to the appellee, Moses B. Karngbayee, in an action of ejectment, in which the appellants were ordered ousted from the property in dispute and ordered to pay damages in the sum of Ten Thousand United States Dollars (US\$10,000.00) for wrongful withholding of the appellee's property.

The records certified before this Court show that on April 17, 2020, the appellee instituted an action of ejectment against the appellants, alleging therein that he, the appellee, is the lawful owner of two (2) lots of land situated along the Somalia Drive, opposite the Monrovia Vocational Training Center (M.V.T.C); that he acquired the said property by virtue of an honorable purchase made on November 22, 1993, from Varney Gbassay and Sando Gbassay, the administrators of the Intestate Estate of Boymah Zulu and George Carey; that the deed evidencing said conveyance was duly probated and registered according to law.

The appellee further alleged that the appellants, without any color of right or legal authority, unlawfully entered upon his property and wrongfully deprived him of possession thereof; that the appellants' entry and continued occupation of the subject property constitute wrongful withholding for which damages will lie. On these grounds, the appellee prayed the trial court to evict, eject, and oust the appellants from the subject premises and to place him in peaceful possession thereof, and grant him special damages in the amount of Thirty Thousand United States Dollars (US\$30,000.00), and general damages in the sum of One Hundred Thousand United States Dollars (US\$100,000.00).

In their answer, filed on May 8, 2020, and subsequently amended on August 11, 2020, the appellants denied the material allegations of the plaintiff's complaint, averring therein that co-appellant Magdalene Dagoseh is the administratrix of the Intestate Estate of Edward B. Dagoseh, and that the subject property forms an integral part of said estate.

The appellants further alleged that the Late Edward B. Dagoseh acquired the subject property in 1987 by honorable purchase from Samuel B. Varwon; that the deed evidencing this transaction was taken to the United States of America prior to any challenge, and that, thereafter, the estate exercised possession over the property through a caretaker, one Gbadah Yeakid, who allegedly resided on the premises from 1987 until Edward B. Dagoseh died.

The appellants also alleged that the Intestate Estate of Edward B. Dagoseh made improvements on the land, including the construction of a house and the fencing of the property, for the purpose of preventing encroachment; that they and their predecessor-in-interest openly, notoriously, continuously, and adversely possessed the property for more than thirty (30) years, beginning in 1987 and extending until 2020, thereby claimed title both by deed and by adverse possession and prayed the trial court to deny and dismiss the plaintiff's complaint.

On August 12, 2020, the appellee filed his amended reply wherein he denied the averments contained in the appellants' answer, contending that the appellants' alleged grantor, Samuel B. Varwon, along with his associates were investigated by the Ministry of Justice for unlawfully conveying portions of the Intestate Estate of Boymah Zulu and George Carey.

The appellee further alleged that, as a result of said investigation, the Ministry of Justice issued a caveat to the public to desist from engaging in land transactions with Samuel B. Varwon and his associates. According to the appellee, notwithstanding the existence of this caveat, Samuel B. Varwon purportedly conveyed the subject property to the late Edward B. Dagoseh on March 19, 1987, and caused the deed to be probated on March 28, 1987, before the Provisional Monthly and Probate Court in Careysburg rather than Monrovia, most likely in an effort to avoid objections to the probate of the deed.

The appellee further denied the appellants' assertion that they constructed a house or fence on the subject property. He alleged instead, that a former Representative, Ballah Zayzay, entered upon the premises and constructed a two (2) course foundation thereon. The appellee maintained that the appellants' claim of ownership and adverse possession are without legal foundation and should not defeat his duly acquired title to the property.

Following a pretrial conference and a hearing of the disposition of law issues, the case was ruled to a bench trial pursuant to a "stipulation agreement for non-jury trial" executed by the parties. The records show that the trial commenced on December 14, 2020, with the appellee presenting three (3) witnesses, viz.: Joseph Boone Narbo, Isaac D. Okai, and Moses D. Karngbayee to testify in his behalf.

On the other hand, the appellants presented two witnesses to testify in their behalf; the co-appellant Magdalene Dagoseh testified, followed by a second witness in person of Gbadah Yeakid.

Following the production of evidence *pro et con*, and thereafter closing arguments, final ruling was reserved. On February 9, 2021, the trial court entered its final ruling, adjudging the appellants liable to the appellee, and assessed general damages against the appellants in the sum of Ten Thousand United States Dollars (US\$10,000.00) for their wrongful holding of the appellee's property. In adjudging the appellants liable to the appellee, the trial court determined that the case was depository of two issues: viz: whether or not the defendant established adverse possession during trial and whether or not the plaintiff established ownership of the property upon the strength of his title deed.

In answering these two issues, trial court determined as follows, which we quote verbatim:

"We shall determine these issues as they are raised. The defendants alleged in count three of their answer that they acquired the property in 1987 and have been in possession thereof thru their caretaker Old man Gbadah Yeakid) who lived on the said property from 1987 up to present. Old man Gbadah Yeakid however testified before this court that he was placed on the subject property in 1993 as a caretaker for the defendants there is a doubt in the mind of the court when the defendants placed old man Yeakid on the property as a caretaker. The plaintiff on the other hand testified that he acquired the property from said estate in 1993 and the administrator surveyed his property in 1993 without any resistance from the defendants. This court says that a doctrine of adverse possession is a mixed issue of law and fact, and that the factual issue as to the occupation and possession of the property should be squarely established by the defendant during trial by the preponderance of evidence.

As to the second issue whether or not the plaintiff has established ownership to the property upon the strength of his title, this court says that the plaintiff's grantor acquired the subject property containing 200 acres of land from the Republic of Liberia as far back as in 1856. The records before this court show that Samuel B. Varwon, uncle of Varney Gbassay and Sando Gbassay, sold portion of the estate in 1975 and 1976 before his letter of administration became effective in 1979. The Government of Liberia thru the Ministry of Justice conducted an investigation and recommended to the then Head of State for the cancellation of deeds issued in 1975 and 1976, which recommendation was endorsed. The cancellation proceeding has been ruled to trial since 2007 according to the record before this court."

The appellants noted exceptions to this final ruling of the trial court, announced an appeal therefrom to the Supreme Court, and subsequently filed an eight (8) count bill of exceptions for review by this Honorable Court, thus culminating into the present appeal.

Before proceeding, we note from the records that although the complaint and all other pleadings designate the responding party as “*Magdalene Dagoseh and Mr. Sheriff to be identified*”, the entire records show that only co-appellant Magdalene Dagoseh filed an answer and presented evidence at trial in support of her claim. In fact, the sheriff’s returns on the writ of summons indicates that Mr. Sheriff refused to accept the complaint on grounds that he was not a party to the case, but was merely an occupant with his container on the subject property. Hence, this Court will proceed with the determination of this appeal with Madam Magdalene Dagoseh as the only appellant before this Court.

Further, notwithstanding the many issues raised by the parties and the alleged errors imputed to the trial judge by the appealing party and contained in the bill of exceptions, the Supreme Court, hoary with age, has held that credence will only be given to those issues that are dispositive of the controversy presented in a case. This rationale is grounded in a plethora of Opinions wherein this Court espoused that it needs not to pass on every issue raised in a bill of exceptions or the briefs filed by the parties, but only those that are germane to the determination of a case. *Joan Newton-Roland v. Augustus D. Kormah*, Supreme Court Opinion, October Term, (2022); *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53(2000); *Vargas v. Morns*, 39 LLR 18, 24(1998); *LAMCO J.V. v. TRADEVCO*, 26 LLR 554 (1978).

Therefore, this Court, having reviewed the bill of exceptions along with the records attendant thereto, finds that a conclusive determination of this appeal hinges on two (2) issues as follows:

1. Whether or not the appellee established the supremacy of its title to the subject property by a preponderance of the evidence.
2. Whether the appellant established ownership to the subject property by virtue of adverse possession.

However, before proceeding with our discussion of the issues presented herein, this Court deems it expedient to recount some fundamental principles of law applicable to all ejectment proceedings.

This Court says that it is a settled law in this jurisdiction that the plaintiff in an ejectment action must recover unaided by any defect or mistake in the defendant’s title; that a weakness in the defendant’s title will not of itself enable the plaintiff to recover the disputed property. As a matter of fact, proof of plaintiff’s title must be clear, convincing and beyond question; and that in situations where there are doubts and uncertainty surrounding the title deed of the party with the older deed, such party cannot enjoy the benefit of the principle that the holder of the older deed has a superior title. *Suah-Belleh v.*

Oniyama, Supreme Court Opinion, October Term, 2014; *Kollie v. Jarbo*, Supreme Court Opinion, October Term A.D. 2013; *Caine et al., v. Fahnbulleh*, 31LLR 235 (1983).

The duty to prove title, fundamentally rests on the plaintiff to show that the supremacy of his title is clear, convincing and beyond question. After a careful review of the records certified before this Court, we shall now proceed to determine whether or not the appellee established the supremacy of his title by a preponderance of the evidence, *vis-à-vis* the appellant's title.

This Court has reiterated in litany of cases that every action of ejectment is a clash of titles to real property, where the primary objective is to test the strength of the titles of the parties, and to award possession of the property in dispute to that party whose chain of title is so strong as to effectively negate his adversary's right of recovery. In all such cases, the plaintiff's right of possession must not depend upon the insufficiency or inadequacy of his adversary's claim; he must be entitled to possession of the property upon legal foundations so firm as to admit of no doubt of his ownership of the particular tract of land in dispute. *John W. Duncan v MacDonald M. Perry*, 13 LLR 510, 515 (1960); *Karuaii-et al. v. Sarfloh*, 26 LLR 3 (1977); *The United Methodist Church and Consolidated African Trading Corporation v. Cooper et al.*, 40 LLR 449 (2001); *The Tower of Faith Church v. The Intestate Estate of the Late Wheagar Blaybor*, Supreme Court Opinion, March Term (2010); *The Intestate Estate of the Late Karman Dassen v. Bawo, Captan et al.*, Supreme Court Opinion, March Term (2012); *Amos Klah v. The Intestate of Tahiru Keingo*, Supreme Court Opinion, October Term (2023). No matter the weakness of the party defendant's title, the party plaintiff must establish title and how it lawfully came to Him; if not, the defendant is not ejected and ousted from the subject property in controversy. *Simpson v. A.I.D. Enterprise et al.*, Supreme Court Opinion, March Term (2015).

In furtherance of these settled laws and opinions, the appellee's claim of title rests on an administrator's deed executed on November 22, 1993, by Varney Gbassay and Sando Gbassay duly appointed administrators of the Intestate Estates of Boimah Zulu and George Carey. The deed was probated and registered according to law; and as proof of the said administrators' capacity to convey the property to him, the appellee submitted into evidence the letters of administration of Varney Gbassay and Sando Gbassay along with the court's decree of sale authorizing them to sell the subject property. From the records before this Court, it is not settled whether the letters of administration and the court's decree of sale combined the two estates; in that, the administrator's deed issued to the appellee is from the estate of Boymah Zulu and not the Intestate Estates of Boimah Zulu and George Carey.

The appellee testified that his purchase of the subject property was based on the title instruments that were presented to him by his grantors' representatives, which included the aforementioned

instruments and the mother deed, all of which were identified on the witness stand and admitted into evidence as P/1 in bulk. This testimony was corroborated by additional witnesses, including Joseph Boone Narbo and Isaac D. Okai, both of whom confirmed the authority of the administrators and the authenticity of the conveyance.

Even though it is in line with trite law that every title deed and other instruments pertaining to real property must be duly probated and registered to constitute *prima facie* evidence of ownership, and where such deed traces title to lawful administrators acting under court authority, it enjoys superior legal standing. *Suah-Belleh v Oniyama*, Supreme Court Opinion, October Term (2015), this position of the appellee in proving the supremacy of his title and his right to possession to the disputed property does not *ipso facto* means that the probaton and registration makes the deeds superior. The presentation of the chain of title would have entitled the appellee to possession of the said property had there not been the variances in the appellee's complaint and his testimony during trial.

We quote verbatim the testimony of the appellee, testifying on his own behalf:

Q *Mr. Witness, I have in my hand your grantor's deed which shows that your said grantors allegedly bought this land from the government and signed by President Joseph Jenkins Roberts in July, 1856. Please look at this deed and tell this court whether it is the deed you testified to and confirmed before this court?*

A Yes.

Q *Mr. Witness, am I correct to say that your administrator's deed grew out of this deed that you just made reference to?*

A *It should.*

Q *Mr. Witness, you told court that the land was purchased November of 1993. My question to you, during your purchase of the property, did you see a fence on this property, subject of dispute?*

A Yes.

Q *Mr. Witness, after seeing a fence during your purchase, did you care to know who owned the fence?*

A *I just explained to you that Samuel B. Varwon who used pseudonym to sell the estate's property was sent to prison and all the deeds that he issued were declared null and void and all properties he sold were given to the rightful owners.*

It is settled law in this jurisdiction that all admission made by a party or his agent acting within the scope of his authority are admissible and conclusive evidence against such party, Civil Procedure Law, Rev. Code 1:25.8.1. *NPA v. Dougbah et al.* [2016] LRSC 22 (5 February 2016). All admissions made by a party himself or by his agent acting within the scope of his authority are admissible". This legal principle is further accentuated in *Knowlden v. Johnson et al.*, 39 LLR 345, 358 (1999). An admission, whether of law or of fact which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct has thus influenced. It is

immaterial whether the thing admitted was true or false. *Smith et al. v. Barbour* [1944] LRSC 5; 8 LLR 229 (1944).

The records before this Court show, the appellee, while testifying on his own behalf, acknowledged the existence of a fence on the property. Knowing this information, the appellee who has the burden to prove the supremacy of his title stated that the reason given by his grantor for the fence was due to the fact that the deeds that purportedly transferred title of the fenced property to the appellant was canceled, but did not produce any evidence of the cancelation thereof during trial.

It is trite law that the burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party. *Civil Procedure Law Revised* Code:1.25.5.1

In the case, *WATAMAL et al v Heirs of Cooper et al* [2013] LRSC 1 (4 January 2013), this Court said that the first principle which this Court has consistently adhered to in any determination of title to real property is that the burden of proof to establish title to real property rests exclusively on the plaintiff, and that any failure by the defendant to show title to any property, the subject of litigation, cannot serve to thereby vest title in the plaintiff, without the plaintiff first having to demonstrate legally and to the satisfaction of the court that he or she does have legal title to the property claimed by him or her. *The Intestate Estate of the Late Karman Dassen v. Bawo, Captain et al.*, Supreme Court Opinion, March term, 2012, decided August 16, 2012; *Neal v. Kandakai*, [1966] LRSC 72; 17 LLR 590 (1966); *Cooper v. Gissie et al.*[1979] LRSC 35; 28 LLR 202 (1979); *Donzo v. Tate* [1998] LRSC 23; 39 LLR 72 (1998).

The law also placed the onus on the plaintiff in an action of ejectment to recover on the strength of his own title and not upon the weakness of the defendant's title; and the burden of proof to establish title to real property rests exclusively on the plaintiff and not on the defendant, we have determined that the sole issue for our consideration is whether the appellee, the plaintiff below proved its title to the disputed property by a preponderance of the evidence. *Neal v. Kandakai*, 17 LLR 590 (1966); *Cooper v. Gissie et al.*, 28 LLR 202 (1979); *Donzo v. Tate* 39 LLR 72 (1998); *The Tower of Faith Church v. The Intestate Estate of the Late Wheagar Blaybor*, Supreme Court Opinion, March Term A.D. 2010; *The Intestate Estate of the Late karman Dassen v. Bawo, Captan et al.*, Supreme Court Opinion, March Term, A.D. 2012.

In the interpretation of this law, the Supreme Court has consistently and unequivocally held that the onus is on the party who alleges a fact. The appellee having testified that the title deed to the fenced property was cancelled, it was upon the appellee, by preponderance of evidence to show that the deed to the fenced property was cancelled. So, to prove that the deed to the disputed fenced

property was canceled, the appellee presented the ruling of the Supreme Court in the case: Jack D. Gbassana, Amos Gbassana and Benjamin Gbassana, appellants/petitioners v. His Honor Emmerly S. Paye Assigned Judge Presiding, Civil Law Court, 6th Judicial Circuit, Montserrado County and the Intestate Estate of George Carey by and thru its administrators, Roland G. Daye and Martha K. Clark. In the said case, the Supreme Court, sitting in the March Term, 2010, on August 18, 2010, opined in the petition for certiorari *“that the respondents’ remedies to cure the alleged irregularities arising from the trial judge’s disposition of the law issues are fit subjects for appeal in view of the foregoing, we affirm the ruling of the Chambers Justice, Her Honor Jamesetta Wolokolie out of which this appeal grew and deny issuance of the peremptory writ.....the Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and commence trial of this cause from whence it had stayed further proceeding by orders of the Chambers Justice.”*

This Opinion of the Court denying the writ of certiorari and ordering the parties to proceed to trial did not include the appellee, Intestate Estate of Boymah Zulu and George Carey nor the appellant and Samuel B. Varwon as parties to that cancellation proceeding. From these records of the certiorari, this Court sees that the appellee succinctly failed to provide any nexus between the Intestate Estate of Boymah Zulu and George Carey and the appellant.

This Court also notes that the records certified before this Court is void of any evidence that the warranty deed issued by Samuel B. Varwon was a part of the Intestate Estates of Boymah Zulu and George Carey, from whom the appellee claimed title. Secondly, when the Supreme Court ruled in the Certiorari, upholding the ruling of the Chambers Justice, it mandated the lower court to resume jurisdiction and commence trial of the cancellation proceedings, stating that the remedies to cure the alleged irregularities arising from the trial judge’s disposition of the law issues are fit subject of appeal and not certiorari. The appellee, by his own evidence, has failed to show whether or not the cancellation trial was completed and has also failed to show that the appellant’s warranty deed was a part of the cancellation proceedings that the Supreme Court ordered the trial court to proceed and determine. However, the records before us are void of any evidence of the cancellation of neither the appellant’s deed nor the deed of the grantor of the appellant.

Lastly, the appellee, informed the trial court that the appellant’s grantor, Samuel B. Varwon along with some other persons allegedly working in concert with him, had been investigated by the Ministry of Justice for illegally selling portions of the Intestate Estate of Boymah Zulu and George Carey; that a public caveat was issued warning the public against dealing with him; and that those deeds issued by them were declared null and void. In support of this allegation, the appellee provided oral and documentary evidence to include a newspaper article allegedly issued by the then County Attorney for Montserrado County, Abraham Kroma, and a letter dated July 4, 1982, purporting to have been a communication from former President Samuel K. Doe to the then Minister

of Justice, Counsellor Winston Tubman, wherein the Former President acknowledged the result of an investigation that was conducted by the Ministry of Justice revealing that Samuel B. Varwon was illegally selling property of the Intestate Estate of Boymah Zulu and George Carey prior to his appointment as administrator of said estate on September 27, 1979, and as such recommended that all deeds executed by him prior to that time be declared null and void and should be cancelled. This Court finds it necessary to quote herein below the referenced letter from the President's Office:

*"Office of the Chief of Staff
And commander of the People's
Redemption Counsel
PRC/III/DM-5/2067/82*

Mr. Minister:

I acknowledge receipt of your letter No. 1942/AM-L/82 of June 17, 1982, in response to mine of June 2, 1982, in which I directed you to investigate a complaint lodged by Messrs. Varney Gbesse, Jr., and Sando Gbesse against their uncle, Boymah Zulu of Paynesville, Greater Monrovia, for allegedly mismanaging and misappropriating their later father's property.

I note that as a result of your investigation, you have discovered that Mr. Samuel B. Varwon, who was administering the property, acted fraudulently and illegally since indeed the court's letter of administration did not become effective until September 27, 1979; and Mr. Samuel B. Varwon was already selling the property as late as 1976. Therefore,, you recommend that all the deeds issued in their transaction by Mr. Samuel B. Varwon be declared null and void and by so doing, should be cancelled.

Furthermore, that Mr. Samuel B. Varwon be dealt with according to law for the criminal acts committed by him during the administration of said property.

*Counsellor Winston Tubman
Minister of Justice
Ministry of Justice
Monrovia*

I am in accord with your recommendation and you will take appropriate measure to ensure that the deeds in question are duly cancelled and the property revert to its rightful owners

IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES

Cordially yours

*CIC Samuel Doe
Chairman, People's Redemption Counsel
And head of State"*

This Court finds that the instruments referenced immediately herein above and entered into evidence are not conclusive to determine whether or not the title deed relied upon by the appellant is invalid, or that at the time of its execution, Samuel B. Varwon lacked legal capacity to have executed same because the records are also void of any evidence that the administrators of Boimah Zulu and George Carey estate sold land to anyone for Samuel B. Varwon to have purchased same and resold to the appellant's husband.

To summarize this evidence presented by the appellee, we note that we are of the view that the Ministry of Justice was without authority by law to have declared the deeds issue by the appellant's grantor for a private property invalid; but rather the purported intestate estate of Boimah Zulu and George Carey have remedy at law.

Assuming and not admitting that this order or caveat issued by the Ministry of Justice was legal, the records before this Court revealed that said order referred to deeds that were allegedly issued by Samuel B. Varwon prior to his appointment as administrator on September 27, 1979. Moreover, the records further revealed that Samuel B. Varwon issued the title of this property to the appellant, a warranty deed and not an administrator's deed. Therefore, we are not persuaded by the appellee's contention that said deed is part of the cancellation proceeding that was before the trial court. In the absence of an investigative survey to show that the warranty deed issued by Samuel B. Varwon was a part of the purported intestate estate of Boimah Zulu and George Carey and subject to the cancellation proceedings and with all of the variances in the testimony of the appellee which also create doubts that operates against the supremacy of his title, this Court does not see how the appellee established the superiority of his title by a preponderance of the evidence as against the title of the appellant. This Court so hold.

As to the second issue, this Court, in addressing whether the appellant established ownership of the subject property by virtue of adverse possession, this Court reiterates the settled principle that an action to recover real property or its possession is barred where the defendant or his privy has held the property adversely for the statutory period. Civil Procedure Law, Rev. Code 1:2.12(2).

As far back as 1906, the Supreme Court, in *Page v. Harland*, 1 LLR 463, 468 (1906), defined adverse possession as a method of acquiring title to real property through possession for a statutory period under prescribed conditions. The Court held that a claimant must prove, by a preponderance of the evidence, that such possession is continuous, exclusive, hostile, open, and notorious, and exercised under a claim of right.

While the Civil Procedure Law prescribed a period of twenty (20) years, this requirement has since been superseded by Article 22 of the Land Rights Act (2018), which reduces the statutory period to fifteen (15) years while retaining the essential elements of the doctrine.

Accordingly, for adverse possession to lie, the claimant must establish that: the property is private land; possession is without the permission of the true owner; such possession is actual, visible, exclusive, and notorious; it continues uninterrupted for at least fifteen (15) years; and the claim is pleaded as an affirmative defense.

The appellant asserts ownership both by title and, alternatively, by adverse possession. This form of alternative pleading is permissible under Section 9.6 of the Civil Procedure Law, which allows a

party to assert multiple claims or defenses in the alternative to prevent failure of justice on technical grounds. Thus, a party may rely on a title instrument while simultaneously asserting adverse possession. *Max Dennis et al. v. Christian Reed*, Supreme Court Opinion, October Term, 2012.

In effect, an alternative plea of adverse possession operates as a fallback: it concedes that even if the title instrument is defective, the claimant's possession, if continuous, open, and hostile for the statutory period, may confer a superior right by operation of law, thereby barring the true owner's claim.

The appellant asserts title in her deceased husband and, in the alternative, adverse possession. Although, the law precludes asserting title in a third party while simultaneously claiming adverse possession (*Morris v. Keita*, 39 LLR 710 (1999)), the appellant's position is sustainable, as she precedes in a representative capacity as administrator of her husband's intestate estate.

The records before this Court established that the appellant is the widow of Edward B. Dagoseh and the duly appointed administrator of his estate. In support of her claim, she annexed a warranty deed allegedly conveying the property from Samuel B. Varwon to her deceased husband, along with letters of administration issued by the Monthly & Probate Court for Montserrado County. The appellant alleged that her husband purchased the property in 1987 and thereafter exercised possession for about thirty (30) years and constructed a house and a fence around the property.

This Court wonders why will the trial court conclude that the appellant failed to establish the elements of adverse possession when the appellant asserted that upon the purchase of the property, she erected a fence and a house and during the trial, appellee admitted that he saw fence and a foundation on the said property, but that the said foundation was constructed by the former Representative, Ballah Zayzay, instead of the appellant. This answer of the appellee corroborated the claim of the appellant's possession of the subject property prior to the purchase of the property by the appellee when he failed to produce the former Representative, Ballah Zayzay to testify to the statement that he was the one who built the said foundation, as narrated by the appellee. In the absence of this, the alternative claim of adverse possession by the appellant remains an issue for consideration, as even a defective title may constitute color of title sufficient to support such a claim.

For the purpose of adverse possession, a "claim of right" shall mean any asserted ownership of private land whether supported by a document of title or not, while a "color of title" shall mean any claim of ownership of private land founded on a written instrument such as deed, a will or a judgment that is for some reason defective or invalid. Land Rights Act. Article 22(2). Furthermore, in addition to the requirement of Article 22(1), to constitute the defense of Adverse Possession, one claiming private land must present evidence or proof of regular payment of taxes for the entire period of fifteen (15) years along with any of the following: Where the land has been usually

cultivated or verifiably improved by the claimant, where the land has been protected by a fence or some substantiated enclosure; and where the land, although not enclosed, has been used by the claimant for the ordinary need or use by the claimant. Land Rights Act. Article 22(3).

The appellant having shown a color of title by the construction of a fence and a foundation as admitted to by the appellee, along with the time of thirty (30) years occupancy on the subject property, by placing a caretaker on said property which was not rebutted to during trial, it is in accordance with the law quoted supra. We so hold.

Accordingly, this Court says that it finds variances in appellee's evidence and testimony: the appellee having failed to provide proof that the appellant's deed was canceled or was a part of the cancellation proceedings that was ordered by the Supreme court on August 18, 2010 and at the end of that proceedings to show that the appellant's deed was amongst the deeds that were filed to be cancelled, this Court says that the appellee failed to prove superiority of his title as against appellee's title.

Further, this Court finds that the appellant proved her case by the production of a warranty deed which is not proved to be linked to the appellee's grantor's estate. The appellant further proved her right of possession both by a title deed and adversity as evidenced by the construction of a fence which was corroborated by the appellee, it is the holding of this Court that the title of the appellant being a warranty deed rather than an administrator deed, the cancellation proceeding cannot be applied to the appellant's title, therefore, the appellant is entitled to the subject property.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is hereby reversed. The Clerk of this Court is ordered to send a Mandate to the Sixth Judicial Circuit, Civil Law Court for Montserrado County, commanding the Judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

Reversed.

When this case was called for hearing, Counsellor Jimmy Saah Bombo of the Central Law Offices, Inc., appeared for the appellant. Counsellor James N. Kumeh of Torch Professional and Consultancy Inc. appeared for the appellee.