IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2020.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE .....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE .....ASSOCIATE JUSTICE
BEFORE HER HONOR: YUSSIF D. KABA… .....ASSOCIATE JUSTICE

His Honor Nelson T. Tokpa, Resident Circuit Judge, Fourth Judicial Circuit, Maryland County Cllr. M. Foulton W. Yancy and Anthony S.W. Bedell, also of the City of Pleebo, Maryland County, Republic of Liberia…….Appellant	
Versus	APPEAL
The Intestate Estate of Kwia Nyene Howe represented by its Administrators (trix), N. Julley Howe, Eliza K. Howe, and Roosevelt Howe of the City of Pleebo, Maryland County Republic of Liberia……..…Appellee	
GROWING OUT OF THE CASE:	
The Intestate Estate of Kwia Nyene Howe represented by its Administrators (trix), N. Julley Howe, Eliza K. Howe, and Roosevelt Howe of the City of Pleebo, Maryland County Republic of Liberia…… Petitioners	
Versus	PETITION FOR THE WRIT OF PROHIBITION
His Honor Nelson T. Tokpa, Resident Circuit Judge, Fourth Judicial Circuit, Maryland County Cllr. M. Foulton W. Yancy and Anthony S.W. Bedell, also of the City of Pleebo, Maryland County, Republic of Liberia……Respondents	
GROWING OUT OF THE CASE:	
The Intestate Estate of Kwia Nyene Howe represented by its Administrators (trix), N. Julley Howe, Eliza K. Howe, and Roosevelt Howe of the City of Pleebo, Maryland County Republic of Liberia…… Petitioners	
Versus	ARBITRATION

His Honor Nelson T. Tokpa, Resident Circuit Judge, Fourth Judicial Circuit, Maryland County Cllr. M. Foulton W. Yancy and Anthony S.W. Bedell, also of the City of Pleebo, Maryland County, Republic of Liberia……Defendants	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of Kwia Nyene Howe represented by its Administrators (trix), N. Julley Howe, Eliza K. Howe, and Roosevelt Howe of the City of Pleebo, Maryland County Republic of Liberia…… Plaintiffs	)	
Versus	)	EJECTMENT
Anthony S.W. Bedell, also of the City of Pleebo Maryland County, Republic of Liberia ……Defendants	)	

HEARD: March 24, 2020 DECIDED: September 4, 2020

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On September 26, 2019, Mr. Justice Yussif D. Kaba, Associate Justice then presiding in Chambers, having entertained arguments *pro et con*, on a petition for the writ of prohibition, ruled thereon, granting the petition in favor of the appellee herein, the Intestate Estate of Kwia Nyene Howe. The appellant herein, Anthony S. W. Bedell, noted exceptions to the Ruling and is now before this Court *en banc*.

We have lengthily reviewed the records of the proceedings in the trial court, as well as those culminating in this appeal. We note that several irregularities were prevalent during the proceedings before the trial court, with the collusion of the trial judge, and which we strongly find unacceptable to the practice and procedure of the laws extant within this jurisdiction and our jurisprudence.

Notable of the irregularities which marred the entire proceedings in the trial court, is the setting aside of a unanimous verdict in favor of the appellee herein, on mere allegation of jury tampering without an iota of proof and without any inquiry or investigation into said allegation by the trial judge as mandated by law.

This Court has unswervingly held that where an allegation of jury tampering is made, the trial court should stop all proceedings and conduct an open investigation to ascertain the veracity of said allegation, and that same is a judicially mandatory duty imposed upon a trial judge by law and moral ethics. *Fangi v RL*, 42 LLR 74 (2004); *RL v Smith et al*, Supreme Court Opinion, March Term (2009).

Also, the records show that a second trial of the same matter between the same parties was again *sua sponte* ordered by the trial judge, heard, and again the jury returned a verdict in favor of the appellee, albeit on a ratio of 10:2, that is, ten (10) out of the twelve (12) jurors returned a verdict in favor of the appellee.

Upon the return of the verdict, the appellant's legal counsel made application to the trial court to set aside the verdict on ground that same was not unanimous. We are appalled to note that the trial judge granted the appellant's motion to set aside the verdict on said ground. Had the said judge being diligent in his knowledge and research of the law and cognizant of amendments to the law, he would have known that the consent of two-thirds majority of the jurors is all that is required for a verdict in a civil trial and not a unanimous verdict as provided for under the Section 22.13 of the Civil Procedure Law, which was amended on February 16, 2006. We quote hereunder the amended provision of Section 22.13 of the Civil Procedure Law, to wit:

"<u>Two-thirds majority verdict required</u>

> The consent of a two-thirds majority of the jurors is necessary for a verdict. If after the jury has been kept together for a reasonable time, the Court is satisfied that there is no prospect of a two-thirds majority verdict, the Court shall discharge the jury and direct a new trial before another jury."

Moreover, in addition to the application erroneously requesting the trial judge to set aside the jury's verdict for not being unanimous, the appellant also requested the trial judge to rule the matter to arbitration; the records show the trial judge granted the application on ground that the appellee failed to object thereto.

It is ludicrous, to say the least, that the trial judge granted the appellant's application for arbitration merely because the appellee did not object to said application. Firstly, we observed from the records that although the appellee had appeared by counsel during the first trial, he was not represented by counsel during the second trial. The trial judge should have addressed this issue even before proceeding with the second trial. Further, Chapter 64 of the Civil Procedure Law, captioned 'Arbitration', stipulates the entire procedure in arbitration proceedings. For the purpose of ensuring instruction to the trial judge and the appellant's counsel, we quote hereunder provisions of said chapter that are pertinent to the case at bar, *viz.*:

> § 64.1. Validity, enforceability, and irrevocability of arbitration agreements.
> A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract.
>
> § 64.2 Proceedings to compel or stay arbitration proceedings.
> 1. Proceedings to compel arbitration; grounds, form of hearing. A party making application to the court may obtain an order directing the parties to arbitrate by showing:
> (a) The existence of an agreement described in section 64.1; and
> (b) That he is a party to such an agreement; and
> (c) The referability of the controversy to arbitration; and
> (d) The refusal of another party to the agreement to arbitrate such controversy.
> Where such issues are raised, the court shall proceed forthwith and summarily to hear and determine the issues raised upon the affidavits submitted in support of and in opposition to the application, except that the court may proceed to try the issues, with or without a jury, where it deems such procedure necessary, and shall order arbitration if the issues are found for the moving party..."

Nowhere in the records is there any arbitration agreement between the parties, or the moving party showing any of the above quoted grounds to move the trial court to grant summarily grant arbitration. But more surprisingly, just as the appellee

was not represented at the second trial, the appellee was also not represented at the arbitration survey by either a technical or legal representative.

We are saddened to note that despite the irregularities discussed *supra*, the appellee failed to seek remedial review of the trial judge's actions and rulings, when represented by counsel. Albeit, the trial judge again failed to take judicial cognizance of the law pertaining to the unauthorized practice of law; that only persons who are licensed to practice law and are in good standing with the Liberian National Bar Association (LNBA) may make legal representation, especially in a court of record. As earlier stated the records show that the trial judge knew or had reason to know that the appellee was represented by a lawyer in the first trial. So we wonder why he allowed a non-lawyer to represent itself (the appellee) in the second trial before a court of record.

This Court decries these irregular practices and procedures adopted by the trial court and note with dismay the trial judge's failure to apply the law appropriately which is tantamount to travesty of justice. We sound the warning to the trial judge and other trial judges so situated, that gross misapplication of the law is unacceptable and will be met with stringent disciplinary actions henceforth, as judges are required to be studious and knowledgeable of the law.

Notwithstanding the above, we take due cognizance that the present appeal grows from a prohibition proceeding and ruling from a Chambers Justice, for which we are constrained to confine our discussion to said Ruling of the Chambers Justice.

Accordingly, we have determined that the sole issue dispositive of this case is whether or not Mr. Justice Kaba, the Justice presiding in Chambers erred when he granted the appellee's petition for the issuance of the writ of prohibition.

We are in total agreement with the determination made by Mr. Justice Kaba, and will not disturb same and herein incorporate pertinent excerpts of the Ruling to form part of this Opinion, to wit:

> "It must be noted that the petitioner herein is an intestate estate established under the Decedents Estate Law, Rev. Code 8. It can, therefore, be said that an intestate estate is a legal person created by

law. The administrator is a fiduciary of the intestate estate. The intestate estate, petitioner, in the present suit is the party and not the administrators. The petitioner as a legal person was required by law to sue by and through its administrators as in the case of a corporation or a voluntary association. It, therefore follows that the representation of Mr. N. Julley Howe, an administrator of petitioner, for and on behalf of the petitioner was not only irregular but was entirely illegal. The outcome of the proceedings in which Mr. Howe, made representation on behalf of the petitioner bears no force or effect in law.

"All authorities or law governing the practice of law in this jurisdiction forbid the unauthorized practice of law by anymore."

"Where it is established that the person who verified the complaint, purporting to be an attorney and participating in the trial, is not a lawyer and therefore not qualified to practice law in Liberia, it would appear to us that all pleadings files by him and any judgement rendered thereon are of no legal validity and effect. Sesay v. Badio, Roberts, et al., supra. Therefore, we hold that any pleading filed by a person who is not a lawyer or party has no legal validity and is declared void ab initio." Firestone Co. v Kollie, 42 LLR 159 (2004).

The counsel for the Co-respondent Bedell strenuously argued before this Chambers that the petitioner submitted to the arbitration, partook in the hearing, excepted and announced appeal from the final judgement. That the petitioner failed to perfect the appeal and that prohibition is not the remedy available to the petitioner. This Chambers says that in view of the fact that a non-lawyer was allowed to make legal representation and to participate in a full trial, renders the judgement entered therefrom a legally nullity and void ab initio.

"where an action or proceeding makes it apparent that the rights of a party litigant cannot be adequately protected by a remedy, other than through the exercise of this extraordinary jurisdiction, it is not only proper to grant the writ of prohibition, but that should be granted". 42 AM JUR. Prohibition, 8." Togba v RL 35 LLR 389 (1988).

Notwithstanding the holding of this ruling that prohibition is the office to adequately eliminate the several irregularities as gleaned from the record of this case, this Chambers Justice is equally concerned with the fact that the claim and counterclaim of the parties center on

whether the piece of land the co-respondent is said to have occupied is distinct and separate from the two lots of land claimed by the petitioner. The law extant in this jurisdiction is that a town lot certificate, otherwise known as squatter right certificate, cannot prevail against a title deed. Dasusea et al v. Coleman 36 LLR 102 (1989) supra. However, when it appears that the piece of land in question is distinct and separate from the one claimed by the title holder, can it be said that the titleholder must still prevail in the absence of certainty of mind about the location of the land, subject to the dispute? Should the co-respondent be ousted, evicted and ejected from the piece of land on mere showing of title deed by the petitioner? This Chambers Justice holds the view that in as much as a town lot certificate cannot prevail against a title deed, the petitioner/plaintiff is required by law to oust, evict and eject the co-respondent on the strength of its title.

"Put differently, for the party plaintiff in a ejectment suit to ably illustrate the defects in the defendant's title is insufficient legal ground to render title. Miller v. Mclain, [1956] LRSC 20; 12 LLR 356 (1956); Tay v. Tay [1968] LRSC 18; 18 LLR 310, 315 (1968); Cooper v. Gissie et al. [1979] LRSC 35; 28 LLR 202, 210 (1979); The United Methodist Church and Consolidated African Trading Corporation v Cooper et al. [2001] LRSC 11; 40 LLR 449, 458 (2001)." Kollie v Jarbo, Opinion of the Supreme Court, October Term, A.D 2013.

The allegation that the two lots of land claimed by the petitioner is diametrically different from the one lot of land occupied by the co-respondent begs the need for an investigative survey to ascertain the ground location of the petitioner's two lots of land. It is, therefore, the considered view of this Chambers Justice the trial court resumes the jurisdiction over this case with instruction to conduct an investigative survey with the participation of the parties' technical and legal representatives consistent with this ruling…"

Our agreement with our Colleague's Ruling stems from the fact that as the parties are asserting that the metes and bounds described in their respective title instruments are for two distinct and separate parcels of land, and in the interest of

substantive justice and for an expeditious settlement of this matter, an investigative survey is necessary, but with the mandate that the trial judge ensures the full participation of the legal and technical representatives of both parties without fail and that this matter is prioritized on the docket.

WHEREFORE AND IN VIEW OF THE FOREGOING the Ruling of our Colleague, Mr. Justice Kaba, is affirmed, and the peremptory writ granted. The Clerk of this Court is ordered to send a mandate to the lower court directing the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Ruling affirmed

When this case was called for hearing Counsellor Lawrence Yeakula of the Liberty Law Firm appeared for the appellant. Counsellor Festus K. Nowon of the Dugbor & Dugbor Law Firm appeared for the appellee.