

HIS HONOUR JOSEPH ANDREWS, Assigned Judge, Sixth Judicial Circuit,
Montserrado County, **ELOUISE C. DUNCAN et al.**, Appellants, v. **JOSEPH N.
CORNOMIA**, Appellee.

APPEAL FROM RULING OF THE CHAMBERS JUSTICE GRANTING A
PETITION FOR A WRIT OF CERTIORARI.

Heard: October 27, 1999. Decided: December 17, 1999.

1. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed.
2. Ejectment involves mixed issues of law and facts and determines the title and possession of real property where parties in litigation both claim title to the property in question and the right to possession thereof.
3. An ejectment action is triable by a jury under the direction of a judge in our jurisdiction, and the title and possession of the realty can be determined by the trial jury only.
4. The relief sought in an action of ejectment is the eviction of a party wrongful withholding the realty, and the delivery of possession of the disputed property cannot be awarded to the plaintiff by the trial judge without the determination of the title to said real property
5. The sole purpose of ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.
6. An answer to the complaint in the main suit and an indemnity bond are pre-requisites to vacating or modifying a preliminary junction in our jurisdiction.
7. As a condition to granting an order vacating or, modifying preliminary injunction or temporary restraining order, a court may require the defendant to give a bond in an amount to be fixed by the court that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order.

8. If, when defendant moves to vacate or modify a preliminary injunction or a temporary restraining order, the answer in the action has not yet been filed, it shall be filed at the time of making of the motion

9. Where the right and title of a party, to whom the trial judge granted a permanent restraining order in an action of ejectment, has been disputed by the adversary, as shown by the adversary's title deed to the same property, the trial judge has abused his judicial discretion in granting the permanent restraining order.

10. An action of injunction is ancillary and the one who applies for an injunction in connection with realty must stand on the strength of his title in a suit separate from the ancillary injunction action.

11. A trial judge cannot grant a permanent restraining order during the pendency of an ejectment action, ousting one party from possession of a property and placing another party in possession thereof where title is in dispute.

12. An injunction may not issue when title to land forming the basis of the action has not been finally determined.

13. An injunction does not lie except when there is a trespass and trespassing does not lie unless bonafide title is established in one who claims ownership to the land.

14. As a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or others.

Co-appellant Elouise Duncan, based on a deed for the property, filed an action of ejectment against Joseph Cornomia, appellee; and ancillary to that, co-appellant also filed a motion for preliminary injunction, supported by an injunction bond. In response, appellee filed an answer claiming title to the same property based on a deed obtained from a different grantor. In addition to the answer, appellee filed a resistance to the motion for preliminary injunction and also filed an indemnity bond, approved by Judge C.A. Reeves, the assigned judge at the Civil Law Court for the Sixth Judicial Circuit.

After this first group of pleadings had rested, co-appellant filed a bill of information complaining that appellee had violated the dictates of the injunction. Appellee filed

returns to the bill of information; but in addition thereto, he also moved the trial court to vacate the preliminary injunction.

When the matter was called for hearing, Judge Reeves had been succeeded by Judge Joseph Andrews, as the presiding judge at the Civil Law Court for the Sixth Judicial Circuit. Judge Andrews ordered the motion for preliminary injunction, the motion to vacate injunction and the bill of information consolidated and heard together. At the end of the hearing, Judge Andrews entered a ruling, which made the injunction permanent and ordered that all persons on the property under the authority of appellee and all items brought to the property by appellee or his agents be removed.

Appellee excepted to this ruling and applied to the Chambers Justice for the writ of certiorari; which was granted.

After a hearing, the Chambers Justice reversed the ruling of the trial judge and appellants appealed for review of the ruling of the Chambers Justice by the Full Bench.

The Supreme Court found that both co-appellant Duncan and appellee had relied on title deed to support the claim of ownership to the subject property. In the absence of the disposition of the ejectment suit, it was an abuse of discretion and also a deprivation of real property without a trial by his peers as provided by the Constitution, when the trial judge entered a ruling dispossessing appellee and placing coappellant Duncan in possession of the disputed property.

The Supreme Court also found that appellee had posted an indemnity bond and filed a motion to vacate the injunction, in addition to filing his answer to the main ejectment suit. The Supreme Court concluded that appellee had performed all the prerequisite for the lifting of the preliminary injunction and so the trial court erred in making said preliminary injunction permanent.

Therefore the ruling of the Chambers Justice was *affirmed* *Farmere G. Stubblefield* appeared for Appellants. *Ishmael P. Campbell* appeared for Appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During the March 1999 Term of this Honourable Court, our distinguished Colleague, Mr. Justice Elwood L. Jangaba, presiding in Chambers of this Court, granted a petition for the writ of certiorari, growing out of a preliminary injunction proceeding

in an ejectment suit. Co-appellant Elouise Duncan excepted to the ruling of the Chambers Justice and announced an appeal to this Court *en banc* for our appellate review.

This case has its genesis from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, where coappellant Elouise C. Duncan, by and through her attorney-in-fact, Chawlci Bsaibes, instituted an action of ejectment on May 11, 1998, along with a motion of preliminary injunction against Joseph N. Cornomia, appellee. The precepts were issued, served and returned served. Co-appellant Elouise Duncan claimed ownership of the premises and prayed the court below to eject, oust and evict appellee from the property and to restrain him from further occupancy and possession thereof.

On the 29th day of May A. D. 1998, the appellee filed an answer to the ejectment suit and a resistance to the motion for preliminary injunction, along with an indemnity bond. Her Honour C. Aimesa Reeves, Assigned Circuit Judge presiding over the Civil Law Court, approved appellee's indemnity bond for the amount of L\$50,000.00 (Fifty Thousand Liberian Dollars).

Appellee in his answer to the complaint also claimed ownership of the subject property in dispute by means of title deed executed to him on January 19, 1998 by Robert Sartee and Peter Sartee, administrators of the intestate estate of the late Jebo Sartee, Sr. This deed was probated and registered according to law. It is also shown that the property was sold to appellee by the administrators upon the authority of the Probate Court for Montserrado County. The records also indicate that on April 15, 1865, the late Jebo Sartee acquired from the Republic of Liberia ten (10) acres of land, lying and located in Mamba Point in Monrovia, by a Public Land Grand Deed signed by the late President Daniel B. Warner.

Also in the resistance to the motion for preliminary injunction filed by co-appellant Elouise Duncan, appellee claimed a lawful ownership of the premises and denied constructing a fence on co-appellant Elouise Duncan's property. Hence, appellee prayed the trial court to deny and dismiss the complaint and the motion for preliminary injunction.

Later, a bill of information was filed by co-appellant Elouise Duncan, alleging violation of the injunction order by appellee. The bill of information was duly served and returned served; and appellee not only resisted the information but also filed a motion to vacate the injunction.

At the trial court, the bill of information, motion for preliminary injunction and the motion to vacate the injunction, were consolidated and heard by the trial court presided over by His Honour Joseph Andrews. On April 8, 1999, Judge Andrews ruled denying the motion to vacate injunction and granting both the motion for preliminary injunction and the information. The trial judge substantially ruled, as follows:

"Wherefore, and in view of the foregoing, the writ of injunction issued against the respondent/defendant is to continue in full force until the determination of the ejectment action, from which the motion for preliminary injunction grew; and any violation of this injunction will subject the violator(s) to contempt proceeding. The clerk of this court is authorized to notify the sheriff of this court and to direct that the sheriff have removed all materials, equipment, persons and other implements placed on the subject premises during the enforcement of the preliminary injunction, which is now made permanent, in order to preserve undisturbed the status quo of the property by all parties. The clerk is further authorized to order the sheriff to have the fence removed. The bill of information is hereby granted, and the motion to vacate preliminary injunction denied with costs against the respondent/defendant."

It is to this ruling that appellee excepted and fled to this Court upon a petition for a writ of certiorari. The alternative writ was issued upon orders of the Chambers Justice, served and returned served. Appellants, in obedience to the alternative writ, filed their returns. On the 23rd day of June, A. D. 1999, Mr. Justice Jangaba granted appellee's petition and ruled as follows:

"Wherefore, and in view of the foregoing, it is the holding of this Court that the petition for certiorari is granted and the peremptory writ ordered issued. The ruling of the trial judge granting the injunction, permanently restraining petitioner, is hereby reversed. The permanent restraining order is vacated and the petitioner ordered placed in possession of the subject property until the determination of the ejectment action. Costs to abide final determination of the ejectment suit" Appellants, being dissatisfied with this ruling of the Chambers Justice, excepted thereto and appealed to this Court for our appellate review.

The first issue raised in appellants' brief and argued before this Court is that the trial judge's ruling granting the motion for preliminary injunction and denying the motion to vacate preliminary injunction was not an abuse of his judicial discretion to justify reversal of his ruling. In support of this submission, appellants further submitted that

the granting or denial and the vacation of a preliminary injunction rests in the sound judicial discretion of trial judge, which discretion Judge Andrew exercised, owing to the facts that appellee failed to file an answer and an indemnity bond, which are pre-requisites to vacating or modifying a preliminary injunction.

We are in agreement with the contention of appellants that the filing of an answer and an indemnity bond are prerequisites to vacating or modifying a preliminary injunction in our jurisdiction. Civil Procedure Law, Rev. Code 1:7.65(3). It is provided by this law that:

"As a condition to granting an order vacating, or modifying preliminary injunction, or temporary restraining order, a court may require the defendant to give a bond in an amount to be fixed by the court that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order. If, when defendant moves to vacate or modify a preliminary injunction or a temporary restraining order, the answer in the action has not yet been filed, it shall be filed at the time of making of the motion."

We, however, observe from the certified records before us that appellee did file an answer and an indemnity bond, which are statutory requirements or prerequisite for vacating a preliminary injunction. Her Honour C. Aimesa Reeves, on May 29, 1998, approved appellee's indemnity bond for the value of L\$50,000.00 (Fifty Thousand Liberian Dollars) for the purpose of indemnifying the co-appellant Elouise Duncan for any loss that she might sustain from vacating the preliminary injunction. Appellee therefore met the statutory prerequisites for vacating a preliminary injunction. We are therefore in disagreement with appellants' contention that the trial judge exercised his judicial discretion in granting the preliminary injunction.

The second issue of importance raised and argued by appellants is that Judge Andrews' ruling, which ordered that all materials, equipment, persons and other implements placed on the subject premises, including the removal of the fence, was not erroneous, but that said order was to preserve the status quo of the property pending the ejectment action. Appellant relied on the case *Togba et al. v. Smith et al.*, 24 LLR 458, 460 (1976), wherein this Court held that the sole object of a preliminary injunction is to preserve the *status quo* of the parties until the merits of the case are heard.

In the *Togba, et al.* case, the appellants filed a motion for preliminary injunction to restrain the appellees therein from evicting them from certain premises occupied by

them. Appellees in that case filed a motion to vacate the preliminary injunction issued against them and prayed the trial court to deny a final injunction. Judge Frank W. Smith, the trial judge in the case, granted the motion vacating the preliminary injunction without a hearing upon the facts. The appellants appealed to this Court contending that the trial judge erred when he dismissed or dissolved the injunction without first hearing evidence. This Court, relying on the case *Raynes-Frederick v. George et al.*, 14 LLR 593 (1961), held that "dissolution of an injunction on the initiative of the court without a hearing is an abuse of discretion."

In the case at bar, the trial judge had a hearing of the facts of the preliminary injunction and granted a final injunction permanently restraining appellee from further construction pending the determination of the ejectment suit on the theory of preserving the status quo of the property, notwithstanding the fact that both parties in this litigation claim legal title and possessory rights of the disputed premises in their pleadings. The trial judge further ordered the removal of all materials, persons, equipment and other implements placed on the subject premises, including the fence, in order to preserve the status quo of the property.

The ruling was indeed prejudicial to appellee's rights and interests. The right and title of appellant, to whom the trial judge granted a permanent restraining order in this action of ejectment, has been disputed by appellee, as shown by his title deed of 1998 and his grantor's deed of 1865 as against the coappellant Elouise Duncan's deed of 1958. The trial judge indeed abused his judicial discretion.

In the case *Jackson et. al v. Irons et al.*, 21 LLR 328, 333 (1972), this Court held that "an action of injunction is ancillary and that one who applies for an injunction in connection with realty must stand on the strength of his title in a suit separate from the ancillary injunction action..." The trial judge cannot therefore grant a final injunction permanently restraining appellee where co-appellant Elouise Duncan's right or title to the subject property is substantially disputed by appellee, by virtue of the latter's title deed as well as his grantor's deed, the validity of which can only be determined by a jury under the control and supervision of the trial court. The facts and circumstances in the *Togba et al.* case and the instant case are not analogous, in that Judge Smith, in the *Togba et al.* case, granted a preliminary injunction without a notice to the respondents for hearing; while in this case, Judge Andrews had a hearing and erroneously and prejudicially granted the motion for preliminary injunction permanently restraining appellee from further construction until the determination of the ejectment suit.

The last issue raised and argued by appellants is that the ruling of Judge Andrews did not usurp the office of the action of ejectment, but that the said ruling was an enforcement of the injunction, which had been violated by appellee and the ruling was rendered in order to preserve the status quo of the premises pending the outcome of the ejectment action. It is contended by appellant that those persons or violators, be it family members of appellee, who were removed from the property, could not have possibly been dwelling on the property which has been in the actual possession and control of co-appellant Elouise Duncan for more than forty (40) years, as opposed to appellee, who had recently in 1998 been trying to dispossess co-appellant Elouise Duncan. We shall decide this issue later in this opinion.

In submitting its case to this Court, appellant prayed this Court to reverse the ruling of Mr. Justice Jangaba and sustain the ruling of Judge Andrews in order to preserve the status quo of the subject property until the ejectment suit is determined.

The sole issue raised and argued by appellee's counsel is that the ruling and order of the trial judge ordering the sheriff to remove all materials, persons, fence, etc. from the subject premises prior to the final determination of the ejectment suit is manifestly prejudicial to appellee's rights and interests. Appellee also contended that the aforesaid ruling of the trial judge clearly shows that co-appellant Elouise Duncan is the rightful owner of the subject property in dispute to the effect of ordering the sheriff to remove the fence, equipment and other persons from said property in spite of the pendency of the ejectment suit filed by co-appellant Elouise Duncan.

It is further contended by appellee that an ejectment suit is a form of action involving both the right of possession and the right of property or a mode of trying title to land. Appellee maintained that an ejectment suit is purely a possessory action or remedy to obtain the actual physical possession of real property, whereas, an injunction is a restraining or prohibitive proceeding, which is an equitable remedy. As such, appellee submitted, equity will not take jurisdiction as a substitute for the ejectment suit, which is an action at law.

Appellee argued that the ruling and order of the trial judge ordering the sheriff to remove the fence, equipment, persons, etc. is not only erroneous and prejudicial, but it is in violation of appellee's constitutional rights; in that, Article 20 (a), of the 1986 Constitution guarantees the right to property to the effect that no person shall be deprived of his property unless as a result of the outcome of a hearing judgment of his peers consistent with the due process of law.

Based on these contentions and submission, appellee prayed that the ruling of the Chambers Justice should be affirmed, the permanent restraining order vacated, and the ejectment suit ordered proceeded with.

From the foregoing arguments, contentions and submissions, we have noted one decisive issue for the determination of this case, and it is, can a trial judge grant a permanent restraining order during the pendency of an ejectment action, ousting one party from possession of a property and placing another party in possession thereof where title is in dispute?

The answer to this question is in the negative. The records in this case reveal that co-appellant Elouise Duncan instituted an action of ejectment along with a motion for preliminary injunction praying the trial court to evict and eject appellee from the disputed property and to restrain appellee from further occupancy and possession thereof. Co-appellant Elouise Duncan claimed lawful ownership of the property by virtue of a 1958 deed. Appellee claimed lawful ownership of said property by virtue of a deed executed by the administrators of the intestate estate of the late Jebo Sartee, Sr., who, as also shown by the records, acquired ten (10) acres of land from the Republic of Liberia on April 15, 1865, under the signature of the late President Daniel Warner. It is also evident that appellee filed an answer and an indemnity bond to reimburse Co-appellant Elouise Duncan for any injury or loss should the motion to vacate the preliminary injunction be granted. The indemnity bond was approved by Her Honour C. Aimesa Reeves on May 29, 1998 for an amount of L\$50,000.00 (Fifty Thousand Liberian Dollars). The trial judge however granted the injunction, permanently restraining appellee until the determination of the ejectment action, and also ordered the removal of all materials, equipment, persons and other implements placed on the disputed property to preserve the *status quo* of the property.

Our statute provides that "any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed. Civil Procedure Law, Rev. Code § 1:62.1.

An action of ejectment pursuant to the language of the above quoted statutory provision is the proper remedy where title to real property and the right to possession thereof is in dispute. It also involves mixed issues of law and facts and determines the title and possession of a real property where parties in litigation both claim title to the property in question and the right to possession thereof. An ejectment action is

therefore triable by a jury under the direction of a judge in our jurisdiction, and the title and possession of the realty can be determined by the trial jury only. The jury is the trier of facts which determine the validity of the titles or deeds presented into evidence by both parties and the jury subsequently award the disputed property to the rightful party, who has shown evidence of a stronger title and better right of possession thereof as against his adversary. The relief sought in an action of ejectment is the eviction of a party wrongful withholding the realty, and, therefore, the delivery of possession of the disputed property cannot be awarded to the plaintiff, co-appellant Elouise Duncan, by the trial judge without the determination of the title to said real property.

As stated earlier in this opinion, the party litigants claimed title and possession to the property in dispute. We are therefore in agreement with Mr. Justice Jangaba when he ruled that the sole purpose of ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.

In the case, *Donzo v. Tate*, 39 LLR 72 (1998), this Court, speaking through Mr. Justice Morris, held that courts of justice are therefore established to prevent insecurity of property, personal or real, in a society, and as such, a person cannot be deprived of his property unless by a judgment of his peers." We uphold our decision in the *Donzo* case that the appellee cannot be deprived of his property without a judgment of his peers, as guaranteed by Article 20(a) of our Constitution.

In the case *Glapob v. Bolado Sawmilling Co.*, 19 LLR 451, 456 (1970), this Court held that an injunction may not issue when title to land forming the basis of the action has not been finally determined. This Court also held in that same case that an injunction does not lie except when there is a trespass and trespass does not lie unless bonafide title is established in one who claims ownership to the land. This is not the situation in this case, since the ejectment suit still remains undermined. In this case, the bonafide title of the disputed property claimed by both parties by their deeds has not been established due to the pendency of the ejectment suit.

In *Young et al. v. Embree*, 5 LLR 242, 247 (1936), this Court held that injunction does not lie where title to real property is an issue involved, more especially, where the party sought to be enjoined sets up adverse possession to said land. This Court further held in the *Young et al.* case that indeed it would not only be unjust, but an absurd paradox for any court of justice to enjoin a party, at the suit of another, from

occupying or exercising other acts of dominion over lands of which he is the owner in fee simple.

Thus, the ruling of the trial judge ordering the removal of all materials, equipment, persons, including the fence, and other implements placed on the disputed premises is surely an absurd paradox; for a court of justice to restrain appellee at the suit of appellant from occupying or exercising other acts of dominion over the property of which appellee claims ownership in fee simple is plain error. The trial court ought not to have granted a final injunction permanently restraining appellee and removing his materials, equipment, persons and other implements placed on the premises, where title to the real property is an issue still undetermined. In our jurisdiction, it is a court of law, and not one of equity, that has jurisdiction over cases involving title to real property. *Johnson v. Cassell*, 1 LLR 161 (1883).

It is provided that "as a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or others. The rule apparently applies to both real and personal property". 42 AM JUR 2d, *Injunctions*, § 79. This indeed is a proper remedy of ejectment action, but not injunction which is a prohibitive or preventive relief. It therefore follows that the ruling of the trial judge clearly usurped the function of the jury in the ejectment suit which was still pending before the trial court undetermined; and this conclusion is based on the fact that appellee was ousted from the subject property without a judgment of his peers.

As to the alleged damage done to appellee's property, this Court holds that appellee has a remedy at law, because an injunction proceeding is not intended neither is its office to recover money for damages done to one's property. *Johnson v. Powell and Russell*, 4 LLR 221, 223 (1934).

Wherefore, and in view of the foregoing, it is the candid opinion of this Court that the ruling of the Chambers Justice granting certiorari should be, and the same is hereby affirmed. The ruling of the trial judge granting preliminary injunction and permanently restraining appellee is hereby reversed; the permanent restraining order is vacated; and appellee is ordered placed in possession of the subject property and that the materials, equipment and other implement removed from the premises be returned to appellee, pending the final determination of the ejectment action. The Clerk of this Court is hereby ordered to send a mandate to the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia, instructing the judge presiding

therein to resume jurisdiction over this case and give effect to this judgment consistent with this opinion. Costs to abide the final determination of the ejectment action. And it is hereby so ordered.

Petition granted.