

COOPERS v. LAWRENCE [2012] LRSC 2 (1 March 2012)

Dr. Emery Cooper of the United Kingdom and **Sharon Cooper** of 24th Street, Sinkor,
Monrovia, Montserrado County, Republic of Liberia, APPELLANTS Versus
Adolph A. & Nyonblee Karnga Lawrence of Congo Town, Montserrado County,
Republic of Liberia, APPELLEES

APPEAL

HEARD: December 7, 2011

DECIDED: March 1, 2012

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

The facts culled from the records certified to us in this case reveal that Adolph A. & Nyonblee Karnga Lawrence, appellees, own property on 24th Street, Sinkor. Dr. Emery Cooper and Sharon Cooper, also own property on 24th Street, Sinkor. The parties acquired their properties from different grantors at different times. The properties were originally acquired from the Government of the Republic of Liberia. The parties had no problem between them concerning the use of their respective properties, until March, 1998. Prior to that time, the appellees entered and left their property through a pathway which the appellants say they own. The appellants maintained that there was an arrangement between them to have the appellees use the passage on portion of the appellants' property so that the appellees would have access to their property on condition of good behavior and a monthly payment of (USD 80.00) eighty United States Dollars. According to the appellants, this arrangement obtained for a while until the appellees decided not to proceed in accordance with the arrangement.

On May 27, 2008, the appellants, through co-appellant Sharon Cooper wrote a letter to co-appellee Nyonblee A. Karnga claiming that the appellees had defaulted on the rental Payment and that the appellees had engaged in conducts indicative of a challenge to the appellants' private rights and title to the premises. The appellants therefore informed the appellees in the letter that they were withdrawing the right of passage they granted to the appellees, and that the portion of their fence left opened to facilitate the appellees' passage would be closed within 15 days effective the receipt of the letter.

On March 13, 2008, co-appellee Nyonblee A. Karnga wrote a letter to Hon. Loseni Donzo, then Minister of Public Works informing him that she had been denied access to her property on 24th Street by co-appellant Sharon Cooper. The letter was referred to the Planning and Programming Department of the Ministry of Public Works.

On December 12, 2008, co-appellee Nyonblee A. Karnga wrote a follow-up letter to Hon. Loseni Donzo informing him that no decision had been taken by the Ministry of Public Works regarding her letter of complaint of March 13, 2008. She further informed the Minister that the only pathway to her property was sealed with concrete fence by co-appellant Sharon Cooper a week as of the date of her follow-up letter to the Minister.

On August 14, 2008, the Minister of Public Works wrote a letter to Attorney Zaiye B. Dehkee of Pierre, Tweh & Associates, Inc. representing the appellants in response to Attorney Dehkee's request to the Ministry of Public Works to clarify whether there was an alley on the property of the appellants. The relevant portion of that letter reads:

After a joint investigation with the Ministry of Lands, Mines and Energy, it was determined that there are no documentations, indicating that the neighborhood in which both parties reside was ever laid out. In addition, the legal documents presented by both the Coopers and the complainant, Ms. Karnga, indicate that there is no alley within the Coopers' boundary lines, nor do they show an access route for Ms. Karnga.

Therefore, the Ministry of Public Work, will conduct a new investigation to determine a feasible means of providing an access route for Ms. Karngar's property.

On January 15, 2009, the Minister of Public Works wrote the following letter to Dr. Emery and Sharon Cooper:

OUR REF NO.: LD/MPW-RL/0006/'09

January 15, 2009

Dr. Emery and Sharon Cooper
24th Street, Sinkor
Monrovia, Liberia

Dear Dr. and Madam Cooper:

I reference the letter of 14 August 2008, in which the Ministry of Public Works promised to conduct a new investigation into the complaint of Ms. Karnga regarding the lack of access to their property and residence. The Ministry, in preparation for the investigation, sought and obtained the deeds to the properties of both the Coopers and Karnga. After a thorough evaluation and verification of the respective deeds as well as an assessment of the physical layout of the neighborhood, we have observed the following:

1. The deed submitted by the Cooper family has not been verified, attested and/or approved by the Ministry of Lands, Mines and Energy.
2. The land area occupied by the Cooper family appears larger than the deed claims.

On the basis of these findings and in a bid to resolve this matter amicably, the following critical steps must be taken:

1. That the Coopers re-survey their property with the full knowledge and participation of the Government of Liberia (Ministry of Public Works and Lands, Mines and Energy) as soon as possible; and,
2. Pending the, re-survey, the Coopers are required to re-open the access road leading to the Karnga's property not later than Wednesday, 21 January 2009.

I urge the Cooper and Karnga's families to exercise restraint and cooperate with the Government in the peaceful resolution of this matter.

Regards,

Sincerely yours,

Loseni Donzo

MINISTER

The appellants did not reopen the access road leading to the appellees' property on January 21, 2009, as required by the Minister of Public Works.

On August 14, 2009, the appellees filed a six-count petition for the enforcement of the order from the Ministry of Public Works contained in the letter quoted above. We quote counts 1, 2, 3, 4, & 5 of the petition:

PETITIONERS' PETITION

1. That petitioners are the legitimate owners of a parcel of land with structure thereon lying and situated on 24th Street, Sinkor, Montserrado County, Republic of Liberia Your Honor is respectfully requested to take judicial notice of the trace of petitioners' grantor's title deeds hereto attached and marked as Exhibit p/1 in bulk.
2. That in March of 2008, respondents herein named created a blockade on the pathway leading to petitioners' property and that in consequence of same, a letter of complaint was sent to the Ministry of Public Works, which necessitated an investigation and it was concluded that the pathway leading to petitioners' property is in no way traceable on respondents' title presented for the investigative survey. Your Honor is respectfully requested to take judicial notice of the exchange of communication between the Ministries of Lands, Mines, and Energy and Public Works, petitioners, and respondents' lawyer hereto attached and marked as EXHIBIT P/2 in bulk.
3. That petitioners say and maintain that the notification of adjoining property owners, an investigative survey was conducted and a finding from same was distributed amongst

the parties (petitioners & respondents). Your Honor is respectfully requested to take judicial notice of the said report hereto attached and marked as EXHIBIT P/3 in bulk.

4 Further to count three (3) above, petitioners say that the findings from the investigative survey conducted reveal [that] the deed submitted by respondents during the survey was not verified, attested and/or approved by the Ministry of Lands, Mines, & Energy and that the land area occupied by the Cooper family larger than what the deed claims, and as a consequences of same, respondents were ordered to remove the blockade, thereby giving the petitioners access to their property. Your Honor is respectfully requested to take judicial notice of the Investigative Survey Report, petitioners ' P/3 in bulk.

5 That petitioners; say and maintain that from the date of issuance of the aforesaid removal order and findings from the Investigative Survey, respondents have since failed, refused and neglected to honor same. Petitioners further maintain that unless the administrative decision of the Ministry of Public Works is adhered to, the potential for violence and chaos exists.

WHEREFORE AND IN VIEW OF THE FOREGOING, PETITIONERS PRAY that Your Honor will cite the respondents, requiring the respondents to adhere to the removal order, grant unto the petitioners any and all further relief as Your Honor may deem just, legal and necessary.

Respectfully submitted,

The above named Petitioners

By and thru their counsels:

KEMP & ASSOCIATES

Legal Consultancy Chambers, Inc

COUNSELLORS & ATTORNEY-AT- LAW

Dated this 14th day of August, A.D. 2009

On August 26, 2909, the appellants, respondents in the lower court, filed twelve-count returns to the petition to enforce the order from the Ministry of Public Works which they withdrew and amended. We quote counts 2, 3, 4, 6, &7 of the amended returns:

RESPONDENTS' AMENDED RETURNS

2 That as to the entire action, respondents submit that same should and must be denied, dismissed and thrown out of the window of this Honourable Court as a matter of law because the subject matter of the petitioners' petition is pending before the Ministries of Public Works and Lands, Mines and Energy.The pendency of the proceedings is confirmed by respondents' letter of appeal to Minister Loseni Donzo, dated January 19, 2009, and various other communications, dated, August 25, 2009, June 9, 2008, June 18, 2009, July 14, 2009, July 16, 2009, August 17, 2009, May 28, 2009, January 19, 2009,

January 15, 2009, August 7, 2008, August 14, 2008, September 15, 2008, (unsigned) and March 18, 2008. Your Honour is requested to take special judicial notice of the differences in the signatures appearing for the then Minister Donzo of the Ministry of Public Works on the copies of letters attached in bulk as respondents' EXHIBIT R/2.

3 That further to count one (1) above, respondents submit that the various communications cited above constitute clear evidence that the Ministries of Public Works and Lands, Mines and Energy are still exercising jurisdiction over the subject matter of the petitioners' petition and no order has been issued by the Minister to remove the Coopers' structures. Respondents say the Ministry of Public Works' letter of June 18, 2009, and August 25, 2009, as well as the various citations from the Ministries of Public Works and Lands, Mines and Energy— further demonstrate the pendency of the proceedings before the two (2) statutory agencies of the Liberian government. Moreover, (the) re-survey requested by the Ministry of Public Works to be conducted by the Ministry of Lands, Mines and Energy constitutes, in clear term, a continuation of investigation which normally confirms fact in dispute or unveil new fact. Hence, respondents pray Your Honour to deny and dismiss petitioners' petition for lack of legal basis to file the petition because the circuit court cannot exercise jurisdiction over a subject matter that is still pending undetermined before an agency of government, having jurisdiction over such matter.

4. Further to counts two (2) and three (3) above, respondents aver and submit that assuming without admitting that the Ministry of Public Works has issued an order directed to the respondents, the petitioners lack the capacity to file petition for the enforcement of the Ministry of Public Works' order because Section 82:9 of Chapter 82 (of the] Administrative Procedure Act provides that: (A) proceeding to enforce such an order shall be commenced when the, head of the agency or authorized officer thereof files a petition for enforcement in the circuit court together with the certified record in the matters. The petition to enforce the order shall be filed within ten days after non-compliance, when the order has occurred. In the instant case, the petitioners petitioned this Honourable Court in their own names, requesting for the enforcement of an order allegedly issued by the Ministry of Public Works. In this jurisdiction case becomes a proper subject of dismissal when the party asserting the claim has not the legal capacity to sue. Section 11.2(1)(e) of the Civil Procedure , Law, Volume 1, page 118. Respondents also submit that the only remedy available to the petitioners, had the Ministry of Public Works finally determined the final outcome of the pending survey and ruled in their favor in the alley dispute before it with order to remove respondents, was to seek redress from the source where the order originated. Respondents also aver that the petitioners' petition is not only deceptive and misleading but also premature; and therefore, must crumble and be thrown out of this Honourable Court. Respondents so pray.

6. That as to count two (2) of petitioners' petition, respondents deny same and say that they lawfully acquired their property free and devoid of any encumbrance or adverse interest, until, based on co-petitioners Nyonblee Karnga's request to respondents to grant her a temporary passage on portion of respondents' property, co-petitioner Nyonblee Karnga was granted temporary passage on terms and condition of good behavior and payment of S\$80.00 per month as consideration for said use. Respondents further submit that co-petitioner Nyonblee Karnga paid the rent for the first month and thereafter defaulted on payment and became undesirable and [exhibited] behavior respondents considered as a betrayal and breach of the terms and condition set forth in the oral agreement and therefore revoked petitioners' temporary right of passage. Copy of respondents' notice of withdrawal of petitioners' right of passage is hereto attached as respondents' Exhibit R/3 to form a cogent part of the records in these proceedings. Hence, the petitioners' averment contained in count two (2) of their petition is not only untrue but also a fairy tale not worthy of consideration by Your Honor and therefore should and must be denied and overruled.

7 That as to count three (3), respondents say that no investigative survey had been conducted by the Ministries of Public Works and Lands, Mines and Energy. Respondents further submit and say that while the investigative survey was pending, Mr. Lahaison Waritay of the Zoning Section of the Ministry of Public Works proceeded to remove a portion of the respondents' fence for the purpose of providing access route for petitioners, only. Respondents submit and say, it was this action of Mr. Waritay that prompted respondents to file a complaint against Mr. Waritay before Minister Samuel Kofi Woods on May 28, 2009, requesting for hearings and equitable relief. Minister Woods then place a halt to, any further action from Mr. Waritay or anyone until a survey was conducted and a clear policy was established. Respondents give notice to this court that they will produce photos of physical destruction illegally carried out by Mr. Waritay for which respondents filed a complaint on May 28, 2009. Copies of Respondents' complaint filed against Mr. Waritay are hereto attached as respondents' Exhibit R/4.

WHEREFORE AND IN VIEW OF THE FOREGOING, respondents pray Your Honour to deny, dismiss and throw petitioners' petition out of the window of this Honourable Court and grant unto respondents further relief Your Honour may deem just, legal and equitable.

Respectfully submitted,

Respondents by & thru their counsel

The Pierre, Tweh & Associates

Palm Hotel Building

Broad & Randall Streets

Monrovia, Liberia

COUNSELLORS & ATTORNEY AT-LAW

Dated this 27TH day of August, A.D. 2009

\$5.00 Revenue Stamps affixed to the original

Simultaneously with the filing of the returns, the appellants, through their counsel, filed a motion to dismiss the petition contending that the pathway dispute between the appellants and appellees, subject of the petition for enforcement was still pending before the Ministry of Public Works undetermined; that until the re-survey requested by the Ministry of Public Works to be conducted by the Ministry of Lands, Mines and Energy is carried out and a decision is made by the Ministry of Public Works on the matter, it was premature for the appellees to file a petition for enforcement.

The appellants also contended in the motion to dismiss that the law on enforcement provides that only the head or authorized officer of the agency where the matter was decided can file a petition with the circuit court for enforcement. Thus, the appellants contended that the appellees lacked the capacity and/or legal standing to file a petition for enforcement of an order from the Ministry of Public; Works.

On October 22, 2009, the motion to dismiss *was* heard and denied by His Honor, Peter W. Gbeneweleh presiding by assignment over the September term, 2009, of the Sixth Judicial Circuit, Civil Law Court, Montserrado County.

On February 18, 20110 the Sixth Judicial Circuit, Civil Law Court, presided over by Judge Yussif D. Kaba heard and granted the petition and ordered that the pathway leading to the appellee property be opened.

The appellants have appealed to this Court for review of the lower court's ruling granting the petition for enforcement of the order contained in the Ministry of Public Works' letter dated January 15, 2009.

Having carefully perused the entire records, as well as the positions of the parties in this case, we have determined that the lone issue for our consideration is whether the appellants should have complied with the order of the Ministry of Public Works contained in the letter dated January 15, 2009 ordering the appellants to reopen the pathway, pending re-survey of the appellants' property?

Let us, on the onset, say that we agree with the appellants that the pathway dispute between the appellees and the appellants was not finally laid to rest by the above quoted

letter written by the Ministry Public Works on January 15, 2009. The letter is clear on its face to this point. The relevant parts read:

On the basis of these findings and in a bid to resolve this matter amicably, the following critical steps must be taken:

1. That the Coopers re-survey their property with the full knowledge and participation of the government of Liberia (Ministries of Public Works and Lands, Mines and Energy) as soon as possible; and,
2. Pending the re-survey, the Coopers are required to reopen the access road leading to the Karnga's property not later than Wednesday, 21 January 2009.

I urge the Cooper and Karnga families to exercise restraint and cooperate with the government in the peaceful resolution of this matter. (Emphasis supplied)

The records in this case do not show that the Coopers have conducted a re-survey of their property "with the full knowledge and participation of the Government of Liberia (Ministries of Public Works and Lands, Mines and Energy) as directed by the Ministry of Public Works. It seems to us that after the conduct of the re-survey of the Cooper's property as ordered by the Ministry of Public Works, findings would be made based upon which a final decision would then be made by the Ministry of Public Works on the main issue of whether there exists an alley on the Coopers' property through which the appellees can have access to their property. So, in our opinion, there is no doubt that until the resurvey ordered by the Ministry of Public Works can be done the core problem between the parties cannot be laid to rest. And the Ministry of Public Works is that agency of Government to make the final pronouncement as to whether or not there exists; an alley on the appellants' property. For all intents and purposes, therefore, this matter has not been decided by the Ministry of Public Works on the contentious issue of whether there exists an alley on the appellants' property. Only an investigative survey can decide.

However, pending the conduct of the resurvey of the Coopers' property, the Ministry of Public Works gave an order that the -Coopers are required to reopen the accessed road leading to the Karnga's property not later than Wednesday, 21 January 4009. We hold that the appellants should have adhered to, and complied with this interim or interlocutory order of the Ministry of Public Works. An interim or interlocutory order is equated with interlocutory rulings sometimes made by judges of court. Such orders or rulings are made before a final decision for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or determining some intermediate matter in the main case, or, preliminary substantive point or plea, or settling some question, or default arising in the process of the case, but does not adjudicate the ultimate rights of the parties or finally put

the case out of court or from the domain of an administrative agency. *Konah et al. vs. Bong Mining Company*, 34LLR, 158, (1986).

In the case before us, the Ministry of Public Works took the position, and we fully agree, that pending the re-survey of the appellants' property, the appellants should reopen the pathway heretofore used by the appellees to enable the appellees enter and leave their property. It must be noted that the Ministry of Public Works, upon the enquiry of the appellants' own lawyer, Attorney Zaiye B. Dehkee, had advised that [A]fter a joint investigation with the Ministry of Lands, Mines and Energy, it was determined that there are no documentations indicating that the neighborhood in which both parties [have properties] was ever laid out. In addition, the legal documents presented by both the Coopers and the complainant Ms. Karnga, indicate that there is no alley within the Coopers' boundary lines, nor do they show an access route for Ms. Karnga. The Ministry of Public Works had also informed the parties that the deed submitted by the Cooper family has not been verified, attested and/or approved by the Ministry of Lands, Mines and Energy; and that the land area occupied by the Cooper family appears larger than what the deed claims. Now, who knows, maybe the excess land said to be claimed by the appellants' deed could very well be the alley on the appellants' property leading to the appellees' property. It could also be that the problem confronting the parties was squarely caused by the Government who originally sold properties to people in the area without first ensuring that the area was laid out, which properties were eventually acquired by the appellants and the appellees. It was on the basis of these considerations that the Ministry of Public Works in our view, correctly decided that the pathway in question be reopened to allow the appellants onto their property while a permanent resolution of the problem is sought. We hold that this interim decision was fair and equitable given the circumstance of this case and ought to have been adhered to by the appellants.

Public policy requires that all owners of real properties abutting on public streets or highways have an easement of ingress and egress subject only to public interest and eminent domain. This right to the easement of ingress and egress on one's legitimate property was fully recognized more than six decades ago by this Court. In the case: *Witherspoon vs. Browne*, 1 LLR 177, (1952) this Court held: The easement of ingress and egress of an owner of real property abutting on a public street or highway is an interest in real property which not even the sovereign may take away without compensation, and which equity will protect against private injunction.

From the records in this case, we see that it was on March 13, 2008, that co-appellee Nyonblee A. Karnga wrote a letter to Minister Loseni Donzo, then Minister of Public Works informing him that she had been denied access to her property. The letter was referred to the Planning and Programming Department of the Ministry of Public Works. On December 12, 2008, she wrote a follow-up letter to Minister Loseni Donzo informing

him that no decision had been reached concerning her complaint .This was about nine months after her complaint was filed with the Ministry of Public Works.

The records further show that it was on January 15, 2009, that the letter to the Coopers informing them to reopen the alley to enable the appellees have access to their property was written by Minister Donzo. The Ministry of Public Works took no step(s) to have its order enforced so that the appellees could have access and enjoy their property right which is guaranteed under our Constitution. It was not until August 14, 2009, that the appellees filed a petition with the court seeking enforcement of the Ministry of Public Works' decision. Under the circumstance, in our opinion, the appellee did the proper thing by seeking recourse to the court to protect their property right.

The fact that Section 82.9 of the Administrative Procedure Act confers the power on the head of the agency entering the final order or any authorized officer thereof to seek enforcement of the final order in the circuit court does not preclude the appellants, who are real parties of interest and in whose favor the order was entered from seeking judicial enforcement of the order in their own name and behalf.

We hold, therefore, that the judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, did not err by granting the petition for the enforcement of the order from the Ministry of Public Works requiring the appellants to reopen the alley in contention to allow the appellees easement of ingress and egress to their property pending the conduct of the re-survey directed in the Ministry of Public Works' letter of January 15, 2009, addressed to the appellants.

The appellants, through their counsel have argued that the appellees do not have the capacity or standing to seek court's enforcement of the interim order made by the Ministry of Public Works. The appellants have relied on Section 82.9, Administrative Procedure Act; Enforcement of Agency Order which provides in part as follows:

1. Instituting proceedings, powers of court. Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceeding in the circuit court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business. A proceeding to enforce such an order shall be commenced when the head of the agency or authorized officer thereof files a petition for enforcement in the circuit together with the certified record in the matter, or such portion thereof as the parties may stipulate [Emphasis supplied.]

We confirm the authority of the head of the agency entering a final, order, or authorized officer thereof to seek enforcement of final order in the circuit court, but we do not agree

that the party in whose favor the final order was entered cannot also seek judicial enforcement of such final order in his or her own name and behalf as contended by the appellants. Here, we are dealing with the properly right of citizens which is a fundamental right under our Constitution.

Article 11 (b) of our Constitution (1986) provides in part:

All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining the security of the person and of acquiring, possessing and protecting property. [Emphasis supplied]

Article 20(a) of our Constitution (1986) provides in part:

No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law, justice shall be done without sale, denial or delay; [Emphasis supplied.]

WHEREFORE, the ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, granting the appellees' petition for enforcement is hereby confirmed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and enforce the order of the Ministry of Public Works accordingly. Costs are ruled against the appellants. It is so ordered.

COUNSELLOR SCHEAPLOR R. DUNBAR OF THE PIERRE, TWEH & ASSOCIATES, INC., APPEARED FOR APPELLANTS. COUNSELLOR THEOPHILUS C. GOULD OF THE KEMP & ASSOCIATES LAW FIRM APPEARED FOR APPELLEES.