SAMUEL CHEBO, Appellant, *v.* **DOUGBA KARMO CARANDA,** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard November 6, 1985 Decided December 18, 1985.

1. The failure by the defendants in an action to file an answer to the complaint or bill does not preclude them from making a motion or submission, or from participating in the trial.
2. The failure to seek a default judgment within the time allowed by law constitutes a ground for the dismissal of the complaint or bill in equity.
3. Where a plaintiff fails to move the court for the entry of a default judgment within one year after the default, vests in the court the authority to refuse entry of such judgment and to dismiss the complaint on the principle of abandonment.
4. A motion or application raising the issue of the court's jurisdiction to hear a case may be raised at any stage of the proceeding, even at the appellate level, regardless of the defendant's failure to file an answer.
5. When the issue of a court's jurisdiction is raised, it is proper for the court to first determine its own status from a jurisdictional standpoint, and to refuse to hear the case if it determines that the case doe not lie within its jurisdiction.
6. Where a party brings an action to have the court give him title to a parcel of land which was previously the subject of litigation between the same parties, and which resulted in a judgment for the opposing party, the action will be dismissed under the doctrine of res judicata.
7. The proper procedure for a title holder of real property to remove cloud from the title is to pray for the removal of the cloud by reformation or rescission of the instrument of title (i. e. conveyances, mortgages and tax-levies). This presupposes that the person bringing the action has a deed or other instruments for the property in question, and where he holds no such deed of title, his action is subject to dismissal.

Appellant appealed from the dismissal by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, of an action filed by him against the appellees, entitled "bill in equity to remove cloud and acquire title". The court had entertained a submission made by the appellees challenging the jurisdiction of the Court, even though they had failed to file an answer to the bill of information. In its appeal, the appellant raised two main points: (1) That the trial judge had erred in entertaining the submission, and (2) that the trial judge had erred in dismissing the action on the ground that there was no form of action entitled "bill in equity to remove cloud and acquire title".

The Supreme Court upheld the trial judge's dismissal of the appellant's action. The Court opined, as to appellant's first contention, that the failure by the appellees to file an answer to the bill in equity did not preclude them from making a motion or submission, or from participating in the trial, especially where the appellant, after a period of more than two years following appellees' failure to file an answer, had neglected to seek a default judgment against them. The neglect itself, the Court said, constituted a ground for the dismissal of the bill in equity. The Court observed in particular that as the submission had raised a jurisdictional issue regarding the parties, the subject matter and the principle of *res judicata*, the trial judge was duty bound to decide whether the court had the jurisdictional authority to hear the bill in equity, the subject matter of which had already previously been determined by the Supreme Court, the highest court in the land. Indeed, the Court said, the issue of the trial court's jurisdiction over the subject matter of the litigation could have been raised at any stage of the proceeding, even at the appellate level, and regardless of the failure of the appellees to file an answer.

With regards to the issue of the dismissal of the bill in equity, the Supreme Court held that the dismissal was proper, given that while the appellant had filed a bill in equity to remove cloud and acquire title, he had failed to point out the cloud on the title or to show the title upon which there was an alleged cloud. The Court noted that since in a case where there is alleged to be cloud on a title, the proper procedure for the title holder to follow is to pray for the removal of the cloud or reformation of the deed in a court of equity, such action presupposes the existence of a deed or other instrument of title. In the instant case, it said, the appellant had no title but sought instead to have the trial court give him title to a parcel of land which he claimed was public land, but which in fact the Supreme Court had already determined belonged to the appellees. The previous action, the Court observed, involved the same parties and the same subject of the dispute. As such, it said, the trial court acted properly in dismissing the bill in equity.

On the basis of the foregoing, the Court *affirmed* the trial judge's dismissal of the appellant's action.

E. Wade Appleton appeared for the appellant. *Toye C. Barnard* appeared for the appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal emanated from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, where the appellant filed a petition entitled "bill in equity to remove cloud and acquire title", which was dismissed on the issues of law. Appellant excepted to the ruling of the trial judge, and has brought this case up to the Supreme Court, contending in substance that the trial judge committed a reversible error when he allowed counsel for the appellees to spread a submission on the minutes of court when indeed appellees were not legally in court because of their failure to file an answer to the petition. The appellant also contended that the trial judge erroneously dismissed the bill on the ground that there was no such action in equity entitled "bill in equity to remove cloud and acquire title". These were the two basic contentions raised in the bill of exceptions, and which counsel for appellant strongly argued before this Bench. These formed the basis for appellant's prayer to the Court to reverse the ruling of the trial judge dismissing the bill.

For the benefit of this opinion, we deem it appropriate to quote the six counts and the prayer of appellant's petition, filed before the court below, sitting in its September 1979 Term. They read as follows:

"1. That he (appellant) has been living for the past 22 years on a piece of property identified by him to be in the public domain which he has improved and was eventually surveyed by government surveyor Alfred B. Lewis as will more fully appear from surveyor's certificate hereto attached as exhibit 'A' of petitioner's petition.

2. That John Caranda, son of Dougba Karmo Caranda, has been molesting your humble petitioner by summary ejectment which ended in favor of John Caranda because of the illness of petitioner's counsel, the late J. Everett Bull, Sr.

3. Your humble petitioner further submits that under the statute extant, petitioner could not have recovered against co-respondent, John Caranda, then plaintiff in the court below, without exhibiting a title in himself for that part of the property now occupied and improved by your humble petitioner.

4. And also because petitioner further submits that the facts in the case were not introduced into evidence in the magisterial court before his rendition of judgment by default, because of the illness of petitioner's counsel. With the hope of giving your humble petitioner his day in court, he appealed the default judgment to the circuit court, but the circuit court blamed Counsellor J. Everett Bull, Jr. for failing to appear in defense of petitioner since he knew his father J. Everett Bull, Sr. was fatally ill and died afterwards. For these reasons, petitioner never had his day in court since his appeal could not be completed in the Supreme Court before the death of Counsellor J. Everett Bull, Sr.
5. And also because at the time petitioner entered the piece of property, subject of these proceedings, and commenced squatting thereon, respondents seeing petitioner constructing a concrete house now at roof level did not say anything to petitioner that the property was theirs and that the government of the Republic of Liberia having surveyed this area as can more fully be seen, said property is for the Republic of Liberia instead of the respondents.
6. And also because your humble petitioner submits that in an effort to amicably settle the problem between the respondents and himself, he wrote through his counsel the attached letter, marked exhibit 'A', to which petitioner gives notice that he will apply for writ of *duces tecum* for respondents have religiously avoided the conference for compromise.

WHEREFORE, and in view of the foregoing, petitioner prays that it will so please your Honour to appoint a board of arbitration for the area to be retraversed so as to enable your humble petitioner to complete title in himself for lot No. 92 which has already been declared public land by the civil authorities and surveyed on his behalf by government surveyor Alfred B. Lewis, with costs against respondents."

The records show that on the 22nd day of June, 1979, appellees were returned served with the writ of summons and the petition but no answer was filed by them. On the 30th day of June, 1981, when the case was called, counsel for appellees made the following record, followed by argument by counsel for both parties, and ruling was then reserved to be given upon notice of assignment:

"Counsel for respondents (appellees) says that this case was decided by the Supreme Court. A judgment without opinion was rendered on the 15th day of June, 1979, and counsel for respondents asks court to take judicial notice of that judgment. That the filing of a bill in equity to remove cloud is an attempt by counsel for petitioner to

review or have this court review the final decision of the Honourable Court which is contrary to law. That Dougba Karmo Caranda who died April 3, 1981, was represented in court prior to his death by his son John Caranda who held a legal power of attorney from Dougba Karmo Caranda and therefore these proceedings should be dismissed since them have no legal basis.

Wherefore, in view of the foregoing, respondents respectfully pray to dismiss the action 'bill in equity to remove cloud' with costs against the petitioner."

Although counsel for appellant has contended that the trial judge committed reversible error by allowing counsel for appel-lees to spread a submission on the record when indeed appellees were out of court by their failure to file an answer, in our opinion the failure of the appellees to file an answer to the bill did not preclude them from making a motion or a submission, or from participating in the trial, especially so when about two years after the filing of the action appellant neglected to seek a default judgment, which failure in itself constituted ground for dismissal of the bill.

Under our statute, if the plaintiff fails to take proceeding for entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned upon its own motion or on application by the defendant or on plaintiff's application for entry of judgment unless sufficient cause is shown why the complaint should not be dismissed. For reliance: Civil Procedure Law, Rev. Code I: 42.4.

The submission made by counsel for appellees, in our opinion, was in effect a jurisdictional issue raised appraising the court that the matter was *res judicata* since indeed, according to appellant's own averments in his petition, the parties and the subject matter involved are the same in the summary proceedings case adjudicated by this Court. The trial judge was therefore not in error when he first decided to hear and determine whether the court below had authority to hear a matter that had been finally determined by the highest court of the land. In our opinion, an application raising the issue whether the court has jurisdiction to hear a particular case may be raised at any stage of the proceeding, even at the appellate level, regardless of the defendant's failure to file an answer. When such an issue is raised, it is proper for the court to first determine its own status from a jurisdictional standpoint, and to refuse to hear the case if it determines that it does not have jurisdiction. For reliance, see *Barclay v. Thompson*, 17 LLR 351 (1966) and *Richards v. Commercial Bank,* 20 LLR 349 (1971). It is therefore our candid opinion that allowing the appellees to spread their submission on the record was no error on the part of the trial judge.

Appellant also contended that the trial judge committed a reversible error when he

dismissed the petition. Because we are in full agreement with the conclusion of the trial judge, we quote hereunder the last five paragraphs of his ruling dismissing the petition:

> "For title to be beclouded and disturbed, there must exist title to the property which is evidenced by a deed. The documents presented in this petition are: a letter requesting the sale of a property addressed by petitioner's counsel to the respondents, a surveyor's certificate signed by one Alfred B. Lewis, government surveyor with the corresponding diagram. There is no land commissioner's certificate, survey order, or public land surveyor's certifi-cate attached to the documents which, even if they were attached, would only evidence possessory right and not title in fee simple. There being no evidence of title, there can be no beclouding thereof nor disturbing, hence the action is unfounded in law.
>
> Requirement of proof of specifically equitable right of relief would be a title to the property; title not yet acquired cannot become beclouded nor disturbed. Before equitable right can be exercised, there must be some specifically equitable right to relief . . .
>
> The court is also of the opinion that it is incompetent to order the survey of public land, for same would be illegal and contrary to the law made and provided; in that, it is the duty of the land commissioner to give such orders.
>
> If the facts were to establish title of the holder of real property, the court would decree in favor of the petitioner to remove the cloud and quiet the title, and the best evidence would be the title deed. This not having been proven by the petitioner, the relief sought cannot be granted.
>
> In view of the foregoing, the petition is denied and dismissed; the petitioner not being able to defeat summary proceedings between the same parties, relating to the same property, the petition is also dismissed and denied and costs of these proceedings against the petitioner. AND IT IS HEREBY SO ORDERED."

Although appellant averred in his petition, quoted *supra*, that the summary ejectment action instituted against him by the appellees in the magisterial court ended up in the Supreme Court, with a judgment without opinion rendered against him, yet in his prayer for relief, appellant prayed the court, in his own words, "to appoint a board of arbitration for the area to be 'retraversed' (sic) so as to enable your humble petitioner to complete title in himself for lot No. 92 which has already been declared public land by the civil authorities and surveyed on his behalf by government surveyor Alfred B. Lewis, with costs against the respondents."

From the averments of the petition and the relief sought by appellant, it is hard to understand what relief appellant really intended to seek in the court below. He had filed the bill in equity to remove cloud and acquire title, but he did not point out in his petition the cloud on the title; nor did he show the title on which there is cloud, the removal of which he sought. But what is clear from the records is that appellant is seeking to have the court give him title to a parcel of land which was the subject of litigation between the same parties (appellant and appellees) and which ended up in a judgment for appellees, and which now makes the case *res judicata*.

If there is cloud on title as a result of the indefinite description in the deed of the pertinent acreage; that is, for example, the use of the words "more or less" when indeed 25 acres can be found on the parcel of land while the deed for same is executed for 10 acres, the proper procedure for the title holder to follow is to pray for the removal of said cloud by reformation or rescission of the deed in a court of equity because there is a cloud as to whether or not the title holder is not entitled to the remaining 15 acres. For reliance, see *Republic v. Massaquoi,* reported in 10 LLR 350 (1950). A conveyance, mortgage, judgment, tax-levy, etc. may all, in proper cases, constitute a cloud on title. It is an outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be invalid or inapplicable to the estate in question. For reliance, see BLACK'S LAW DICTIONARY 322 (4th ed.), "*Cloud on Title*".

In this case, although appellant had petitioned the court below, sitting in chancery, to remove cloud and acquire title, yet he did not show title in himself; nor did he point out any cloud he intended to be removed. Instead, the appellant is seeking title to the parcel of land from which he was ousted in a summary ejectment action decided by the court. If the civil authorities have declared the parcel of land to be public land, as contended in appellant's bill and argued by his counsel, then title in that land is in the Republic, and it is from the Republic alone, not the court, that title can be acquired. The court can only quiet title of a title holder of an estate provided there is a cloud on the title.

In view of all that we have narrated herein above, and the legal authorities cited, it is our candid opinion that the trial judge committed no error when he dismissed appellant's bill. The ruling of the trial judge dismissing the petition is therefore hereby confirmed and affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.