

A. BENEDICT CLARKE, SR., Petitioner, *v.* **THE HONOURABLE MINISTER OF FINANCE**, R. L., Chairman, Permanent Claims Commission, and **THE MINISTER OF JUSTICE**, R. L., Secretary, Permanent Claims Commission, Respondents.

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

Heard: November 5, 1984. Decided: November 23, 1984.

1. Under the principle of *estoppel*, a party is precluded from disavowal of his own act.
2. Under the doctrine of estoppel, personnel of the same agency are estopped from attacking the authority of their colleagues of similar ranks, as with the Assistant Minister of Justice for Litigation.
3. Where the statute of limitations does not run against the government, it is fair that the statute also not run against a private individual in a case in which the government is a party.
4. A petition for the correction of a deed should be filed by the party seeking the correction, with notice to adjoining owners, inviting them to file their claims or objections.
5. The writ of mandamus is the appropriate writ for the just compensation of a person whose property has been taken by the government.
6. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty.
7. A writ of mandamus should issue whenever the petitioner can make it plain (a) that he has the legal right to have the act done; (b) that it is the legal duty of the respondent to perform said act; and (c) that if the writ is granted, petitioner will obtain relief for which no other plain, speedy and adequate remedy exists.

Petitioner sought a writ of mandamus against the Minister of Finance and the Minister of Justice, in their respective capacities as Chairman and Secretary of the Permanent Claims Commission, to compel them to compensate petitioner for two lots claimed by petitioner and occupied by government agencies. The petitioner had earlier written the Permanent Claims Commission requesting compensation for use by government agencies of the mentioned parcel of land which petitioner said had devolved upon him from his grandmother.

Although a survey of the land had been conducted by the Ministry of Lands, Mines and Energy, at the request of the Permanent Claims Commission, and the petitioner had been certified as the owner of the land, the Commission had failed to compensate the petitioner. Also, when in response to a letter from the petitioner, the Head of State suggested that the matter be settled through court proceedings, the Ministry of Justice, acting by the instructions of the Assistant Minister of Justice for Litigation, commenced proceedings for cancellation of the deeds of the only other claimants to the property.

When payment was still not received from the Permanent Claims Commission, petitioner filed the instant petition praying for issuance of a writ of mandamus against the respondents. In response to the petition, respondents, represented by the Ministry of Justice, challenged the authority of the Assistant Minister of Justice for Litigation to instruct cancellation of the deed of the other claimants to the property. The respondents also asserted that the petitioner was time barred under the statute of limitations from instituting the mandamus proceedings, and that in any case, mandamus would not lie since title to the property was not clear.

The Justice in Chambers granted the petition and ordered the writ issued. An appeal was taken from the said ruling to the full Bench, where, after a hearing, the ruling was affirmed. The Supreme Court, in affirming the ruling, held that the Ministry of Justice legal counsels were estopped from disavowing the act of the Ministry or challenging the authority of the Assistant Minister of Justice for Litigation, he being of the same agency. In response to the government's assertion of the statute of limitation, the Court held that where the statute of limitation does not run against the government, it should also not run against a private party to a suit in which the government is also a party.

On the question of whether mandamus was the proper remedy, the Court held that it was

the appropriate remedy to compel an official to perform an act where such official was clothed with the duty to perform the act or take the action but had failed to do so. The Court observed that the Ministers of Finance and Justice were duty bound to act in compensating the petitioner since there were no other claimants to the land, the deeds of the only other claimants having been cancelled in an earlier court proceeding undertaken at the instance of the government. The Court therefore *affirmed* the ruling of the Chambers Justice and ordered that the writ be issued and that prompt compensation be made to the petitioner.

M. Fabnbulleh Jones appeared for the petitioner/appellee. *Abraham Kromah, Solicitor General of Liberia* and *S. Momolu Kiawu* appeared for the respondents/appellants.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The petitioner, son of the late Eva Watson-Clarke, grand-daughter of the late R. J. Watson of Grand Cape Mount County, has filed this petition claiming payment from the Government of Liberia for occupying two lots of his. According to the records, the petitioner inherited the two lots from his mother who became owner of said lots by virtue of a Last Will and Testament of her grandfather, R. J. B. Watson, dated January 30th, 1906. The petition states that the petitioner had communicated with the Permanent Claims Commission about his lots, Nos. 30 and 31, with buildings thereon, which were being used by the government and for which he had requested compensation.

The Permanent Claims Commission had in turn written Major Fodee Kromah, the Minister of Lands, Mines and Energy, on July 20, 1983, requesting him to dispatch a team of surveyors to Robertsport, Grand Cape Mount County, to investigate, ascertain and confirm the physical existence of the property, survey it and have transfer deeds made and forwarded to the Commission, with the appropriate engineering advice, for the Commission's consideration. In compliance with this letter, Minister Komag, on January 16, 1984, wrote the Auditor General informing him that in response to his letter of July 20, 1983, relative to the claim submitted by Mr. A. Benedict Clarke, Sr., for his two lots situated in Robertsport, Grand Cape Mount County, the Ministry had conducted an exhaustive investigation into the issue and was now submitting documentary evidence of its findings. In his letter, the Minister intimated that although the land referred to was not contested during the

investigation and survey, it was important to indicate that a substantial portion of Robertsport City Hall (2,722.5 sq. ft.) was located on the property. Additionally, he continued, the building currently used by the Young Men Christian Association (YMCA), as well as the Post Office building in Robertsport, were entirely located on the property. These were indicated on the attached Site Plan, he said.

The Minister further indicated in his letter that it was necessary to prepare a corrected survey certificate reflecting the adjustment to the metes and bounds of lots Nos. 30 and 31, now 5 and 6, in Block D-42, which certificate he also attached to the letter. The Minister expressed the hope that the information and material which he had provided would assist in the negotiations with Mr. Clarke. The Ministry was prepared to provide any additional technical information on the issue, he concluded.

The petitioner/appellee has filed this petition praying that this Court orders the issuance of the writ of mandamus against the respondents herein to appear and show cause, if any, why they should not be ordered to appear and compensate the petitioner/ appellee for his two lots which the Government of Liberia was enjoying and for which he had not refused to execute deeds in its favor.

There are four major contentions presented in the records before us, which, in our opinion, if settled, will resolve the issues raised in this case. They are:

- a. The statute of limitation
- b. The principle of estoppel
- c. The correction of the numbers of the lots by the probate court upon the request of the Ministry of Lands and Mines.
- d. The principle of adverse claim

The respondents/appellants have contended that the petitioner/appellee is barred from instituting this action because petitioner/appellee was aware that the property had descended to him in the 60's, over 20 years ago, prior to the filing of this petition for mandamus on the

12th day of June A. D. 1984.

The petitioner/appellee, in countering this argument, asserted that prior to the filing of this petition, he wrote the Head of State of Liberia on the 27th of November 1980, informing him that he is the owner of the two lots which were being used by the Government of Liberia and that therefore he was claiming ownership and compensation. In the letter to the Head of State, petitioner/appellee expressed his willingness to execute the appropriate deeds in favor of the Government of Liberia upon payment of consideration for same. It would appear that the Head of State suspected that someone else was also claiming title to the property, for in his January 7th 1981 acknowledgment of the letter of the petitioner/appellee, the Head of State suggested that petitioner/appellee should resort to a court of competent jurisdiction to establish his ownership of or title to the property.

Accordingly, on the 26th of August 1983, Elwood L. Jangaba, Sr., Assistant Minister of Justice for Litigation, addressed a letter to the county attorney for Grand Cape Mount County, forward-ing the pertinent documents in connection with the claim of petitioner/appellee to the two lots and instructing the county attorney to file a proceeding in the 5th Judicial Circuit for cancellation of deeds against respondents named in that suit. The letter stated that the Azango Law Firm would associate with the county attorney in the cancellation proceedings. The records in this case evidence that the cancellation proceedings were had, in consequence of which a decree was, on the 18th day of January 1982, entered by the then Circuit Judge, His Honour E. S. Koroma, now our colleague. The case was captioned as follows:

“A. Benedict Clarke, Sr. of the City of Monrovia, sole surviving lineal heir of the late Eva Watson-Clarke of Grand Cape Mount County, and the Republic of Liberia, by and thru the Minister of Justice, R. L...PETITIONERS VERSUS Mamie Gordon Dukuly and E. D. E. Hoff, Special Administrator of the Estate of the late William S. Hoff, of Robertsport, Grand Cape Mount County, Liberia,RESPONDENTS
ACTION: BILL IN EQUITY FOR THE CANCELLAT1ON OF TWO FRAUDULENT DEEDS FOR LOTS NOS. 30 AND 31, SAME BEING SITUATED AND LYING IN ROBERT-SPORT, GRAND CAPE MOUNT COUNTY, R. L.”

This is the basis of the doctrine of *estoppel* invoked by the petitioner/appellee against the

Ministry of Justice assertion of the statute of limitation.

At first, during the argument before us, we were focused on addressing ourselves to the doctrine of *estoppel*, as opposed to the statute of limitation. However, our attention was redirected when, in answer to a question from the Bench, counsel for respondent/appellants said that the Assistant Minister of Justice for Litigation, who wrote the County Attorney for Grand Cape Mount County to file the cancellation proceeding in favor of A. Benedict Clarke, Sr., the petitioner/appellee, had no legal authority to authorize the cancellation of the deeds of Mamie Gordon Dukuly and E. D. E. Hoff. To this, petitioner/appellee responded that respondents/appellants could not repudiate the letter of their colleague, the Assistant Minister of Justice for Litigation, who was from the same Ministry of Justice, which counsel is now representing respondents/appellants in this case.

The contention of petitioner/appellee that the respondents/ appellants could not disavow their own act, *In re* the letter of Minister Jangaba to the County Attorney, mentioned *supra*, is sound, for the house that is divided cannot stand. Therefore, in our opinion, the doctrine of *estoppel* invoked by petitioner/ appellee is applicable, and the respondents/appellants are *estopped* from attacking the authority of their colleague, the Assistant Minister of Justice for Litigation at the Ministry of Justice. *East African Company v. Dunbar*, 1 LLR 279 (1895).

As to the statute of limitations contention, the petitioner/ appellee cited the following authority:

"Unless otherwise specifically provided by statute no statute of limitations shall bar any action brought or any defense or counterclaim interposed by the Government of the Republic of Liberia." Civil Procedure Law, Rev. Code I :2.7.

Counsel for petitioner/appellee argued that since indeed under this statute, one cannot plead the statute of limitation against the government, the converse is also true, that the government's defense based upon the plead of statute of limitation against an individual should also not prevail. Therefore, he said, the plead of statute of limitation should be overruled.

The statute merely provides that the statute of limitation cannot be pleaded against the

Government of Liberia. There is no provision in the statute stating that the government cannot succeed in a suit against it on the basis of the statute of limitation. Indeed, there is space for judicial deduction to supply the gap and construe the statute to make it effective under the notion of equal justice in order to balance the equation. The contention of the petitioner/appellee has posed a question, in our opinion, to be decided for the first time in the judicial history of this country. In our view, the argument of the petitioner/appellee is logical, for if the statute does not run against the government, it is fair enough for the statute not to run against an individual in a case in which the Government of Liberia is a party.

The record also shows that originally the numbers of the two lots in question were 30 and 31, but that after the survey of the said property, the numbers were changed to 5 and 6. The reason for the changes is obvious in the records, as indicated in the letter signed by the Minister of Lands and Mines, together with the certificate issued by him, after resurvey of the two lots, all of them being in accordance with the two deeds of the petitioner/ appellee. The relevant part of the letter from the Minister of Lands and Mines is quoted below, as follows:

“The Auditor General
Permanent Claims Commission
Monrovia, L I B E R I A.
Mr. Auditor General:

This is in response to request contained in your letter Ref. No: PRC-4001/'84, dated 20 July, 1983, relative to claim submitted by Mr. A. Benedict Clarke, Sr. for two (2) lots situated in Robertsport, Grand Cape Mount County.

Let me assure you that this Ministry has conducted an exhaustive research into the issue, and now submits documentary evidence of our findings.

Although the land referred to was not contested during our investigation and survey, it is important to indicate that a substantial portion of Robertsport City Hall (2,722.5 sq. ft.) is located on the property. Additionally, the building currently used by the Young Men Christian Association (YMCA) as well as the Post Office Building in Robertsport are entirely located on the property. This situation is indicated on the attached Site Plan.

It was necessary to prepare a corrected survey certificate reflecting the adjustment to the metes and bound for lots Nos. 30 and 31, now 5 and 6 in Block D-42. Copies of corrected survey certificate have been duly probated and are attached.

We have prepared transfer deeds for lots 5 and 6 in Block D-42 which are also attached. We hope the information and material which we now provide will assist you in your negotiation with Mr. Clarke.

Meanwhile, this Ministry is prepared to provide any additional technical information which you may require on the issue.”

From the tenor of the letter we have quoted, *supra*, the identity of the land in dispute claimed by petitioner/appellee is clearly established as being that of the petitioner/appellee per his deeds, except that in keeping with the letter and the certificate, the nos. of the lots were subsequently changed from 30 and 31 to 5 and 6 respectively. These changes were the result of the layout of the City of Robertsport in 1972. All of the communications we have quoted, the certificate and court's decree were written or undertaken predicated upon the request of the Ministry of Justice and the Permanent Claims Commission, prior to the filing date of the petition for a writ of mandamus. It is therefore strange for respondents/appellants to again question the petitioner/appellee's ownership to the property and the changes made to the numbers of the two lots which were done upon their requests.

We do not want to give the impression here and sanction that the Ministry of Lands and Mines, or any surveyor for that matter, has the right to unilaterally petition the probate court for correction of deeds without notice to the adjourning owners of the premises. However, the facts and circumstances in this case seem to support the position taken by the Ministry of Lands, Mines and Energy in asking the probate court to correct the deeds. As we have stated *supra*, the deeds of the only claimants, Mamie Gordon Dukuly and E. D. E. Hoff, who were claiming title to the property, had been cancelled by the said court in that county. During the survey of the premises, nobody else interposed objections; nor has anybody else claimed ownership to said lots up to this moment. We want to emphasize further that whatever may be the reason for the correction of the deeds, the petition therefor should be filed by a party seeking the correction, with notice to adjourning owners, inviting them to file

their claims or objections, if any. This procedure will definitely avoid future controversy.

Lastly, respondents/appellants maintained that mandamus will not lie in this case because the title of petitioner/appellee to the two lots is not clear.

Under normal circumstances, we would be in accord with this theory, but in view of the decree of court referred to above, in which case the respondents/appellants participated as one of counsels for petitioner/appellee, coupled with the absence of another claimant to the property, we hold that the title of petitioner/appellee, A. Benedict Clarke, Sr., to the two lots in issue is not in doubt. Hence, mandamus is the appropriate writ for just compensation of petitioner/appellee for his property. The respondents/appellants in this case, as can clearly be seen from the title of the case, are agencies of the government and one of the functions of one of the agencies, that is, the Permanent Claims Commissions, is to settle all just and lawful claims against the Government of Liberia. It performs this function in collaboration with the Ministry of Finance, and as necessary, with the legal advice of the Ministry of Justice. In case of any refusal by any of the agencies to perform the functions assigned to them, the statute provides:

"Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Rev. Code I :16.21(2).

This provision of the statute quoted above has been the same, almost word for word, prior to and after this country was founded in 1847, and throughout the several revised statutes up to this moment. In *Karnga v. Coleman*, 5 LLR 405 (1937), this Court held that:

"A writ of mandamus should issue whenever petitioner can make it plain;

(1) that he has a legal right to have the act done for which he is petitioning;

(2) that it is the legal duty of defendant to perform said act;

(3) that if granted, petitioner will obtain relief for which no other plain, speedy and adequate remedy exists."

See also *Wiles v. Simpson*, 8 LLR 365 (1944) and *King et al. v. Howard et al.* 9 LLR 135 (1946).

In view of the above, the ruling of the Justice in Chambers is confirmed in its entirety. The Clerk of this Court is ordered to send a mandate to the respondents/appellants ordering them to adequately compensate petitioner/appellee for his two lots, formerly nos. 30 and 31 and now 5 and 6 respectively, located in the City of Robertsport, Grand Cape Mount County, Republic of Liberia. The Clerk of this Court is further ordered to place in the hands of the Marshal of this Court three copies each of the opinion and judgment in this case to be hand delivered by the Marshal to each of the respondents/appellants. The Marshal is further ordered to report to this Court or the Justice presiding in Chambers as to how he has carried out these instructions, and to do so within a week from the date of receipt of the mandate. And it is so ordered.

Petition granted.