

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

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBEASSOCIATE JUSTICE
BEFORE HER HONOR: YUSSIF D. KABAASSOCIATE JUSTICE

David Johnson and Lawrence P. Johnson , Co-Administrators)
of the Intestate Estate of Stephen R. Johnson)
..... Appellants)

Versus)

APPEAL

His Honor J. Vinton Holder, Judge of the Monthly and Probate)
Montserrado County, Valesius Johnson & Garshon Johnson,)
Co-Appellees of the Intestate Estate of Stephen R. Johnson)
.....Appellees)

GROWING OUT OF THE CASE:

Valesius Johnson & Garshon Johnson,Co-Appellants of the)
Intestate Estate of Stephen R. Johnson Intestate Estate of the)
Intestate Estate of Stephen R. Johnson..... Petitioners)

Versus)

) PETITION FOR
) CLOSURE OF THE
) INTESTATE ESTATE
) OF STEPHEN R.
) JOHNSON

David Johnson and Lawrence P. Johnson , Co-Administrators)
of the Intestate Estate of Stephen R. Johnson....Respondents)

HEARD: October 30, 2018

DECIDED: February 8, 2020

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The Parties in these proceedings are siblings who are in accord that their late father’s intestate estate be closed, and the residue of said intestate estate be distributed amongst them in accordance with the applicable provisions of the Decedents Estates Law. However, the contention which brings this matter before the Supreme Court is a ruling by the Monthly and Probate Court, Montserrado County, granting the petition of co-appellee Valesius Johnson, that during the lifetime of the decedent, the latter gifted a portion of the estate to co-petitioner and in reliance on the gift, he constructed thereon a three-story building; and as such, the said portion of land with the building thereon be excluded from the inventory of properties of the decedent. The present appeal is a challenge by the respondents/appellants to the trial court’s ruling.

The pertinent facts we have gleaned from the certified records reveal that on October 31, 2007, the administrators of the intestate estate of Stephen R. Johnson in persons of Valesius Johnson, Garshon Johnson, the appellees herein, and David Johnson, and Lawrence Johnson, appellants herein, filed a petition before the Monthly and Probate Court for Montserrado County, praying for the closure of their late father's intestate estate. The petition signed by Counsellor Zaiye B. Dehkee, carried the names of both the present appellants and appellees, an indication of a joint petition.

The petitioners averred that the intestate Stephen R. Johnson gifted a parcel of land situated in Kakata, Margibi County to David Johnson and Lawrence Johnson, and likewise gifted a parcel of land situated on Camp Johnson Road to Valesius Johnson; that in reliance on the gift, Valesius Johnson constructed a three-story building on the property gifted to him; that it being the desire of the intestate Stephen R. Johnson that his children hold the property he gifted to them in fee, the parties prayed that the property on which Valesius Johnson constructed the three-story building be exempted from the intestate estate, and that a curator's deed be issued him for said portion of land. We quote below the entire petition verbatim:

“IN RE: THE PETITION OF VALESIOUS S. JOHNSON, GARSHON JOHNSON,
DAVID JOHNSON AND LAWRENCE R. JOHNSON,
ADMINISTRATORS OF THE INTESTATE ESTATE OF THE LATE
STEPHEN R. JOHNSON FOR CLOSURE OF THE INTESTATE
ESTATE OF THE LATE STEPHEN R. JOHNSON

PETITIONERS' PETITION

Petitioners in the above entitled Petition respectfully pray Your Honor for the closure of the Intestate Estate of the Late Stephen R. Johnson and showeth the following factual and legal reasons to wit:-

1. That Petitioners are Administrators and four (4) of the six (6) beneficiaries of the Intestate Estate of the Late Stephen R. Johnson. Your Honor is requested to take judicial notice of the Letters of Administration granted Petitioners by this Honorable Court.
2. That the Petitioners being both Administrators and four (4) of the six (6) beneficiaries of the Intestate Estate of the Late Stephen R.R. Johnson, and in keeping with their duties and function as Administrators, have efficiently protected and secured the Intestate Estate of the Late Stephen R. Johnson by executing and performing the mandatory statutory duties as are more fully evidenced below.

3. That in keeping with their mandatory statutory duties, Petitioners on October 30, 2007, filed an Inventory of the properties of the Late Stephen R. Johnson. Copy of the Inventory of the properties of the Late Stephen R. Johnson filed before this Honorable Court is hereto attached as Petitioners' Exhibit "P/1".

4. That in an effort to establish, discover and verify the Late Stephen R. Johnson's indebtedness to individuals, entities, and others up to the time of his death on June 14, 1987, prudent and diligent searches were conducted and discussion held with and interview of several individuals, including associates of the Late Stephen R. Johnson, but no one has been found to claim indebtedness against the Late Stephen R. Johnson.

5. That also through searches and discussions held with and interviews of several individuals, including associates of the Late Stephen R. Johnson relative to any money due the Late Stephen R. Johnson, no one has been found to be indebted to the Late Stephen R. Johnson.

6. That Petitioners have assiduously searched through the National Achieves, the Bureau of Lands and Surveys and have held discussions with various individuals and have identified no other properties other than those properties listed in the Inventory filed before this Honorable Court.

7. That Petitioners and several individuals acknowledged and testified to the fact that the Late Stephen R. Johnson during his lifetime granted and perfected a deed of a parcel of land lying and situated in Kakata, Margibi County as gift to David Johnson and Lawrence R. Johnson; and also gave as a gift to Valesius R. Johnson the spot on his parcel of land located on Camp Johnson Road, Monrovia, Liberia, where Valesius Johnson built his house in which he presently resides.

8. That Petitioners acknowledged that it was the wish and desire of the Late Stephen R. Johnson to convey title to Valesius S. Johnson and his heirs forever on the spot on which Mr. Valesius built his house.

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioners respectfully prays that Your Honor will subtract from the Intestate of the Late Stephen R. Johnson, the spot on which Mr. Valesius Johnson's story building is located and have a Curator's deed issued by this Honorable Court to him and distribute the remaining Estate pursuant to intestacy law in this jurisdiction."

Surprisingly, on April 23, 2008, when the case was called for hearing, Counsellor Emmanuel A. Tulay appeared and made representation as counsel for the appellants and made a submission upon the trial court's records, resisting counts 7 and 8 of the jointly

filed petition for the closure of the intestate estate, to the effect that the exemption of a portion thereof, comprising a portion of the intestate's 1/8 acres of land situated on Camp Johnson Road and on which a three-story building is situated, which co-petitioner Valesius Johnson claimed was gifted to him by his late father, Stephen R. Johnson, was not supported by any record or by law. The appellants' counsel further averred that it was not the desire of the decedent that Valesius Johnson be possessed of the said property in fee since he did not execute any deed to that effect. As to the other counts of the petition requesting closure of the intestate estate and the distribution of the property among the beneficiaries, the appellants interposed no objections thereto.

At the commencement of trial, the appellees, Valesius Johnson and Garshon Johnson, testified in behalf of themselves, and also presented one (1) special witness in person of Roberto Doe, one (1) subpoenaed witness in person of Lawrence P. Johnson, one of the appellants herein; both Valesius Johnson and Garshon Johnson also testified as rebuttal witnesses.

Valesius Johnson testified that the intestate, Stephen R. Johnson, during his lifetime, granted to him (Valesius Johnson) a house spot of his 1/8 acre of land located on Camp Johnson Road as a gift, with the intent that he construct his dwelling residence thereon and hold same in fee; that the granting of the said gift was done in the presence of his siblings, Lawrence P. Johnson, Garshon Johnson, and Stephen Johnson, and mother Boryonor Johnson; that he began construction of a three story building on the subject property in 1965 with earnings from his job and a loan he acquired from the International Trust Company (ITC); that after the completion of the first floor, same was leased, and the rental therefrom, augmented by his salary, was used to begin and complete the construction of a second floor; that in the same manner, the rental from both the first and second floors were used to erect and complete the third floor of the building in 1970. The witness further testified that the late Stephen R. Johnson also owned real properties in Kakata City, Margibi County, Bong Mines, and Zwedru, Grand Gedeh County; that the deceased informed him (Valesius Johnson) that the property in Kakata City was intended for his siblings; that he gave the deed for said property to Lawrence P. Johnson, and same remained in his possession.

Thereafter, the appellees' counsel made an application to the trial court for the issuance of a writ of *subpoena duces tecum* to be served on Lawrence P. Johnson, ordering him to present to the court the deed for the property of the intestate estate of Stephen R. Johnson

located in Kakata City, Margibi County, to which order he complied and upon presenting the deed to the court, was discharged.

Co-appellee Garshon Johnson testified that their late father granted a portion of his property located on Camp Johnson Road to co-petitioner Valesius Johnson in the presence of he, Garshon Johnson, and his other siblings, inclusive of the appellants herein. He also testified that he sold a portion of the Kakata property, and so did Lawrence P. Johnson. The records are silent as to the type of title instruments issued to the buyers of the Kakata property by Garshon and Lawrence Johnson. Co-appellant Lawrence P. Johnson did not deny that he sold a portion of the Kakata property, but testified that he did so based on misinformation from Valesius Johnson as to the ownership of the said property.

The appellees' witness, Roberto Doe testified that the intestate, Stephen R. Johnson with his wife, Boryonor Johnson and children, Valesius Johnson, Garshon Johnson, Powerson Johnson, Stephen Johnson being present, offered what he referred to as a "house spot" to Valesius Johnson to build a house for himself thereon; that Garshon Johnson was employed by his brother, Valesius Johnson, to construct the three-story building, and for which services he was compensated; and that during his lifetime, the intestate never attempted to take possession of or exercise control over the subject property.

Thereafter, the appellants first witness, Stephen Momo testified that his brother-in-law bought a parcel of land situated in Kakata, Margibi County, from Valesius Johnson, and that the deed for said property has been in his possession since the death of his brother-in-law. The records reveal that the deed testified to by witness Momo was entered into evidence, but we have reviewed the certified records, but same are void of the said deed. Nonetheless, co-appellee Valesius Johnson testified that the property in question was sold by his mother, although he executed the deed in her behalf because she was very ill at the time. It is worth noting that the property that was allegedly sold by co-appellee Valesius Johnson constitutes a portion of the intestate estate, a portion of which was also sold by co-appellant Lawrence P. Johnson and co-appellee Garshon Johnson.

The appellants second witness, Lawrence P. Johnson, testified that the first and second floors of the subject property was constructed by their father; and that following the completion of the second floor of the building, it was then that their late father requested Valesius Johnson to complete the third floor to be used as a dwelling for he and his family. The witness also testified that after the death of their father, their brother, David Johnson, informed him and his other brothers that their father had informed him, David prior to his death that the first floor of the building was intended for their sister, Cecelia Johnson; that

the second floor was to be leased and the proceeds therefrom deposited in a bank to be used in time of need by the family; and that the third floor was for Valesius Johnson, since he had carried out the construction of said portion of the subject building. The witness also testified that he sold a portion of the deceased property located in Kakata based on misinformation from Valesius Johnson that he (Lawrence Johnson) was the owner of said property because their father had placed his name on the deed. We find it hard to believe that having produced the deed to the Kakata property that was always in his possession, witness Lawrence Johnson is asserting that his action in selling a portion of the said property was driven by misinformation by his brother, co-appellee Valesius Johnson.

The appellants' third witness, David Johnson, a co-appellant also testified that the first and second floors of the subject building was constructed by their late father commencing in 1966; that Garshon Johnson aided in the construction as a masonry worker, while Stephen and Valesius Johnson served as steel bender and supervisor respectively. He further testified that the third floor of the building was constructed by Valesius Johnson; that their late father informed him that the first floor of the building was for Cecelia Johnson, she being his only daughter, and the third floor was for Valesius Johnson, since he had constructed said floor; that the second floor was to be leased and the rental proceeds therefrom be deposited in a bank account for use by the family in time of need.

Following the testimonies of the witnesses, the trial court entertained final arguments *pro et con* and thereafter rendered its judgment decreeing the closure of the intestate estate in the following manner:

“...the petition for the closure of the intestate estate of Stephen R. Johnson is hereby granted, and the curator for Montserrado County is hereby ordered to prepare two curators' deed, one in favor of Valesius Johnson for the subject land on which he built the three story building on the 1/8 acre of land located on Camp Johnson Road, City of Monrovia, registered in volume 65, page 249-250 of the records for Montserrado County, on one hand, and prepare another curator deed in favor of Lawrence P. Johnson, David Johnson, Stephen Johnson (or his heirs) for the three (3) lots located on 14 Road Kakata, Margibi County, registered in volume 70, pages 720-723 of the records of Central Province, Montserrado, now Margibi County; and subtract same from the intestate estate of Stephen R. Johnson, and distribute the remaining property listed in the inventory of the estate among them in accordance with the Decedents Estates Law; and thereafter, the clerk of this court is hereby ordered to issue court's decree declaring the said estate closed in keeping with law...”

The appellants' counsel noted exceptions to this judgment of the trial court and announced an appeal to the Supreme Court, and subsequently filed an eight (8) count bill of exceptions.

Having extensively reviewed the certified records, and considered the alleged errors imputed to the trial judge, as presented in the bill of exceptions, we have determined that this case hinges on a singular issue for our consideration, to wit:

Whether or not the trial judge properly ruled on the petition for the closure of the Intestate Estate of Stephen R. Johnson when he ordered the issuance of curator's deeds for specific properties of said estate to Valesius Johnson and to Garshon Johnson, Lawrence P. Johnson, and David Johnson, respectively.

We first focus on the petition for the closure of the intestate estate, which as earlier stated, mentions the names of both the appellants and the appellees, which we determined is an indication that the petition was jointly filed by all the parties in these proceedings, in their capacities as administrators of the Intestate Estate of Stephen R. Johnson. In keeping with the laws and practice extant in this jurisdiction, the said petition was verified, also indicating that the parties swore to the truthfulness and certainty of the allegations contained in each count. The records are void of any challenge by the present appellants as to their non-participation in the preparation and filing of the petition. We note that it was only after the petition was called for hearing that the appellants chose to express their objections to only counts 7 and 8 of the petition, but without denying their involvement in the filing thereof. We view the appellants' action as being evasive and contradictory, in that they do not challenge their acquiescence to the petition, which amounts to an admission thereof, especially in view of the affidavit executed to that effect, but rather raise a challenge to the two counts. When a party ought to speak, whether in confession or denial of a matter, but fails to so do, silence is deemed as an ascent thereof and we so hold with regards to the appellants as they had remedy under the law to dissociate themselves as parties to the filing of the petition. *Constance et al. v. Ajavon et al.*, 40 LLR 295, 304 (2000).

As to the issue at bar, it is the law extant in this jurisdiction that:

- the acquisition of real property is evidenced by a title deed issued and signed by the grantor to the grantee, although in some instances, acquisition of realty may be by virtue of inheritance, but conveyance thereof is ultimately achieved via execution of a title deed; "*that unless one holds a legitimate title to a piece of land,*

the quality of investment made thereon makes little or no difference whatsoever in the eye of the law. The size of one's investment on land for which you hold no title does not and will not, as a matter of law, divest the legitimate owner of his/her title or deprive him/her of the right to hold and enjoy same, nor would construction or development confer legal title to the developer . Only by proper means of conveyance shall title be transferred from one person to another. Building on a land is not one of those means recognized by law in our jurisdiction.” Marwolo v. Reeves, Supreme Court Opinion, October Term, 2009.

- “...Any oral gift of land, or promise to give land, followed by the vendee's taking possession of the land in pursuance of the promise and making valuable and permanent improvements in reliance thereon, may be enforced by a court of equity against the donor or his heirs or grantees with notice. If the promise to give is conditioned on the donee making improvements, a compliance with the condition furnishes a consideration for the transaction. But it is not necessary that there be a technical consideration. If the promise to give was wholly unconditional, the same relief will be given to the donee, based upon the same reasons of estoppel against the donor and virtual fraud upon the donee because of his change of condition as in the case of a parol sale with possession and improvements...” *Pennoh v. Pennoh*, 13 LLR 489, 490 (1960)

The afore-stated principles of law are all in reference to real property, beginning with the standard of evidence necessary to prove acquisition thereof, the legal requirements to authenticate same, and the quantum of evidence required to prove acquisition of real property by virtue of a gift. It is also worth noting that the validity of a gift is predicated on satisfying the elements of the donative intent of the donor, the delivery of the gift to the donee, and the acceptance of said gift by the donee.

In keeping with the law that acquisition of real property ought to be substantiated by a title deed, this Court takes judicial notice that the issuance of a deed for any portion of an estate to its beneficiaries thereof, is by order of the Probate Court through the administrators of the estate, or alternatively, the curator of the county or territory in which the Probate Court sits; and, that the records certified to this Court are void of a title deed in the name of co-appellee Valesius Johnson for the subject property located on Camp Johnson Road. Thus, the alleged development of the subject property by co-appellee Valesius Johnson, did not *ipso facto* confer legal title to him.

Howbeit, the records show that both the appellees and appellants concede that co-appellee Valesius Johnson did develop the subject property located on Camp Johnson Road, albeit disagreeing on the level of development he carried out or caused to be carried out. Moreover, the appellees have sternly argued that Valesius Johnson's development of the subject property was triggered by their father oral grant to Valesius said portion of property as a gift, intending he hold and use said property in fee simple; that their deceased father made similar oral gifts of land located in Kakata to the appellants and co-appellee Garshon Johnson; that each of the donees relied on the oral gift of land from their father and took possession thereof; that Valesius Johnson obtained a loan from the International Trust Company (ITC) and augmented same with his salary and constructed a three story building on his gifted portion of land; and that in reliance on the oral gift co-appellee Garshon Johnson and co-appellant Lawrence P. Johnson sold portions of the Kakata property. The appellees cited the case *Pennoh v. Pennoh*, 13 LLR 489,490 (1960) as the legal basis of their claim.

On the other hand, the appellants challenge the appellees' assertion that their deceased father made oral gifts of land to both parties during his lifetime; that is, an oral gift of a house spot, situated at Camp Johnson Road, to Valesius Johnson, and three (3) lots of land to Garshon Johnson, David Johnson, and Lawrence P. Johnson, situated at 14 Road, Kakata, Margibi County. As set forth in their bill of exceptions, the appellants aver that the trial judge misconstrued their testimonies when he held that they conceded to receiving oral gifts of land from their late father; and that his action constitutes reversible error.

The appellees' contention that's the portion of the decedent's estate located on Camp Johnson Road was given to co-appellee Valesius Johnson as gift requires us to examine if the elements required to establish the validity of a gift were satisfied.

As we stated earlier, a key element to establish the validity of a gift are donative intent, delivery to the donee, and acceptance thereof by the donee.

While the evidence to establish donative intent is essential to justify the transfer of property as a gift, it is worth noting that said intent to donate a gift need not be expressed in any particular form, rather, the intention of the donor may be inferred from the surrounding facts and circumstances, including the relationship and conduct of the parties all of which can prove the intention of the donor.

Moreover, in the case of a gift of realty, as in the present case, the absence of a transfer of title does not vitiate the validity of the gift if the facts and circumstance show that it

was the intent of the donor to make a gift of said real property. 38 Am Jur 2d, *Essential Elements of Gifts*, §19

Additionally, the element of delivery which requires an actual or constructive transfer of property to the donee, is also essential to validity of a gift. The delivery of the subject matter of a gift consists of an act or acts on the part of the putative donor displaying an intention or purpose to part with dominion over the subject of the gift and to confer it on some other person; the delivery must clearly manifest the donor's intention to divest himself or herself of title and possession. It is not sufficient to establish the delivery of a gift by the merely proving declaration thereof by the donor; the fact of delivery must be shown by evidence other than such a declaration. *Id.* §22

As to acceptance, it is conventionally acceptable that the exercise by the donee of dominion over the property which is the subject of a gift, or an assertion of a right to the property by the donee, will constitute valid acceptance. *Id.* §33

We shall delve into the records to determine whether the elements essential to proving a gift were satisfied by the evidence adduced during trial.

In establishing that the subject property on Camp Johnson road was given to co-appellee Valesius Johnson as a gift, the appellees testified, and it remains unrebutted, that the decedent, during his lifetime, authorized Valesius Johnson to take possession of and construct his dwelling residence on the subject property; that it was during the lifetime of the decedent that Valesius Johnson carried out construction on the property and resided thereon without any interference from the decedent or the appellants herein; that Valesius Johnson continued to reside on the subject property after the death of decedent, and still does up until present.

Moreover, the records establish that there exists a three-story building on the subject property located on Camp Johnson Road; that co-appellee Valesius Johnson does live on the third floor of said building; that the testimony of Roberto Doe, an uninterested party, to the effect that co-appellee Garshon Johnson was hired and paid by co-appellee Valesius Johnson to construct the three-story building, was not controverted or rebutted by the appellants; that the appellants have not rejected the decree by the trial judge that a curator deed be prepared in their name for the Kakata property, but is objecting to the issuance of a curator's deed to their brother, co-appellee Valesius Johnson for that portion of the Camp Johnson Road property on which a three storey building is constructed. We therefore hold that these undisputed facts are strong and probative evidence satisfying the

intent of the decedent to transfer ownership of his property, accompanied by the delivery of said property and acceptance thereof by co-appellee Valesius Johnson.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the Monthly and Probate Court for Montserrado County decreeing the closure of the intestate estate of Stephen R. Johnson and the issuance of curator deeds to both the appellants and the appellees for those properties they presently occupy and the residue of the estate divided in accordance with the provisions of the Decedents Estates Law on succession, is hereby affirmed. The Clerk of this Court is ordered to send a Mandate to the court below, ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellants. IT IS HEREBY SO ORDERED.

Judgment Affirmed

When this case was called for hearing, Counsellors Emmanuel A. Tulay of the Tulay & Associates Law Offices., Inc. appeared for the appellants. Counsellor Ziaye B. Dehkee, I. of the Pierre, Tweh & Associates Law Firm appeared for the appellee.