Doegbeh v. Dagbe Williams [2017] LRSC 2 (17 February 2017)

Rebecca Doegbeh of the City of Zwedru, Grand Gedeh County, Republic of Liberia (APPELLANT) v. Albertha Dagbe Williams of 1036 Rochelle Road, Tolanda Ohio, United States of America represented by and thru her Agent Edwin B. Zelee of the City of Zwedru, Grand Gedeh County, Republic of Liberia (APPELLEE)

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
OCTOBER TERM, A.D. 2016

APPEAL

HEARD: May 10, 2016DECIDED: February 17, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The appellee, Alberta Dagbe Williams, plaintiff below, residing in the State of Ohio, United States of America, instituted an ejectment action in the Seventh Judicial Circuit, Grand Gedeh County, Republic of Liberia, by and through her attorney-in-fact, Edwin B. Zellee, against the appellant/defendant as follows:

"Plaintiff in the above entitled cause of action, by and thru her agent respectfully complains of the within named defendant in manner and form as follows, in wit:

1. Plaintiff says and avers that Madam Alberta Dagbe Williams is the legitimate and lawful owner, in fee simple, of the piece of land containing three (3) town lots situated and located in the city of Zwedru, Grand Gedeh County, Republic of Liberia, according to her Public Land Sale Deed signed by the late President William V. S. Tubman in 1969, legally probated and registered at the Probate Division of the Seventh Judicial Circuit Court for Grand Gedeh County, Republic of Liberia on the 26th day of February, A.D. 1971 as can be seen from the photocopy of said Public Land Sale Deed herewith attached to form a cogent part and evidence of these proceedings.

ALL WHICH THE PLAINTIFF IS READY TO PROVE

2. And also because plaintiff further says that she has duly empowered and legally authorized Mr. Edwin B. Zellee to act for her and prosecute these proceedings to eject and evict the defendant by court process from her land as can be seen from the photocopy of Power of Attorney herewith attached to form an agent part evidence of these proceedings.

3. And also because plaintiff further says that while Mrs. Alberta Dagbe Williams is in the United States of America taking refuge because of the Liberian civil war, defendant illegally and unlawfully to the damage of the plaintiff [land] entered upon or on plaintiff's land without any legal justification whatever unlawfully withhold plaintiff's land from her up to and including the filing of this suit.

ALL WHICH THE PLAINTIFF IS READY TO PROVE

4. And also because plaintiff further says that defendant's unlawful and illegal entry upon plaintiff's land and built several dwelling houses he damaged plaintiff's property, and as such, plaintiff has sustained pecuniary damages or loss of Twenty-five Thousand ($25,000.00) Dollars.

ALL WHICH THE PLAINTIFF IS READY TO PROVE

Wherefore, and in view of the foregoing circumstances hereinabove mentioned, plaintiff most respectfully prays this Honorable Court and the Judge to eject, evict and oust defendant from plaintiff's land, and also to collect from defendant the damage-sum as mentioned above and to put plaintiff in possession of her land in the name of transparent justice, this the plaintiff so prays and ready to prove.

Respectfully submitted by
Edwin Zellee, Plaintiff by and thru his counsel."

The appellant, defendant below, filed her answer to the complaint, averring that the action was voidable, hinging on several lackadaisical behaviour of Counsellor David D. Gbala, Counsellor for the appellee;in that, firstly, Counsellor Gbala had not renewed his professional license to practice law, as is required in our jurisdiction for all lawyers; secondly, that in keeping with our Decedent Estates Law, the appellee nor her agent had been appointed by the Monthly and Probate Court as administrator, administratrix, or executrix to administer the Deceased F.W.Dagbe Intestate Estate, whose deed the appellant had proffered to her complaint and relied on in her action of ejectment, and in which case made her action wrong, and null and void. Further, the appellees aid that the appellant chose the wrong form of action, in that, the real property for which they sued the appellant was for the late F.W. Dagbe who died some years ago and therefore the action should have been "ACTION FOR INTERFERENCE WITH INTESTATE ESTATE and not and action of ejectment, and that for such failure the appellee's action was null and void and warranted its dismissal.

The appellant, in her answer, further stated that during the February A.D. 2011 Term of Court, the identical case was called for hearing and the appellee's Attorney-in-Fact withdrew all claims against the appellant based on the intervention of family members who asked that the matter be settled out of court in the interest of peace and harmony. The appellee having made application to the court, and His Honor Judge George Wiles, having dismissed the case, it would be wrong for the appellee to come back again to sue out the same action. The "Doctrine of Estoppel" would not permit such suit. Further, the appellant averred that in keeping with law, the deed proffered by the appellee was signed by President Tubman on the 26th day of April, A.D. 1969, but the appellee being unmindful of the period required by law for the probation and registration of land deeds, kept her deed for a period of about two years and did not probate and register her deed until the 26th day of February 1971, and by which act her deed was made null and void ab initio; that the failure of the appellee to probate and register her deed, which the appellant said should have been done within "forty (40) days", meant that the appellee did not own any land in Grand Gedeh. Theappellant denied occupying the appellee's parcel of land, stating that she bought the land from Counsellor Harper Bailey, her legal counsel representing her in this ejectment case,on the 20th day of February, A.D."2000", and said deed was duly probated and registered according to law on the 24th day of February, A.D. 2000.Appellant reiterated that the appellee, having had the action dismissed previously, she is estopped from claiming damages on the grounds that the appellant illegally entered her land and built several houses thereon, and her claim for damages is exorbitant.

The appellee, in reply to the appellant's answer, denied the appellant's claim that her legal counsel, Counsellor David D. Gbala, had not renewed his license for the year 2014, but rather it was appellant's counsel who had not renewed his license. She proffered an exhibit of her counsel's license to her reply.She stated further that in keeping with the legal principle of "SURVIVALSHIP" of joint tenancy, whenone of the spouses dies, the surviving spouse takes the property as though it was originally hers or his alone, and by operation of law, the property having been bought by her and her late husband jointly, she (appellee) is the bonafide owner of the property, having survived her husband; that as to her withdrawal of her action based upon the intervention of family members, she has the right in a civil suit to withdraw and refile an action and it was in this regard that she withdrew and refiled her action; and further that if the appellant so-called grantor had legitimate title for the land he sold to her, the principle of law regarding timely probation and registration would have been considered by the court, but since the grantor did not have title to the land and neither did he proffer a copy of his original deed from the Republic of Liberia, the said count should be denied.

Pleading having rested, His Honour S. Geevon Smith, Assigned Circuit Judge Presiding in the Seventh Judicial Circuit Court, assigned the case for disposition of law issues.

During the disposition of law issues, the judge ruled that he found that both counsels possessed receipts evidencing payment for professional license to practice law, but that both counsels having failed to file legal memoranda to put in proper perspective the background for their respective legal arguments, the court was ruling the case to trial on its merit, having gathered from the pleading that there were mixed issues of law and facts.

The parties having taken the stand and testified in the matter, the case was presented to the jurors who brought a verdict with four jurors in favour of the appellee/plaintiff and seven jurors in favour of the appellant/defendant. There however seemed to be confusion as regards the verdict since few of the jurors stated that they did not know the difference between liable and non- liable. This, the court assigned as ground for the granting of the appellee's request for a new trial.

The case having been again assigned for hearing anew, the appellant filed a motion to dismiss the case on the identical grounds raised in heranswer. The court denied the motion to dismiss on the grounds that it was belated since our Revised Code Civil Procedure Law 1:11.2 requires that the time for filing a motion to dismiss should be at the time of service of the responsive pleading. The matter was therefore ruled to trial. Thereafter, Edwin B. Zelee, the attorney-in-fact of the appellee, took the stand as the appellee's first witness.

Contrary to the appellee's answer that Albertha Dagbe Williams was the surviving spouse of F.W. Dagbe and one of the joint owners of the property, Mr. Zeleetestified that the land was owned by Mr. & Mrs. Dagbe, the father and mother of the appellee, Albertha Dagbeh Williams, and that he was a friend of the appelleewho had asked him to overseeher family property consisting of three lots situated in Zwedru, Grand Gedeh County; that in the 1980s, Mr. Shad Kadiaye and Philip David approached him to build a gas station on the appellee's property and he consented and about 75% of the station was completed when the war started in 1990. The witness further testified that in the mid-2000, he heard that the appellant had encroached on one lot of the property, and, armed with a Power of Attorney from the appellee, he went to Grand Gedeh to pursue the legal means to remove the appellant from the property. When he instituted an action of ejectment against the appellant, Mr. Zelee said, he had no clue that it was Counsellor Harper S. Bailey that sold one of the lots, the disputed property in the case, to the appellant; that he having some family connection with Counsellor Bailey, who had a child by his only sister who had died, and not wanting to be in court with his niece's father, upon an intervention made, he consented to

withdraw the matter out of court; and that , His Honour Judge George Wiles, presiding then, advised that he could withdraw his case, reserving the right to refile.

The witness testified that later in the evening, after the withdrawal of the case, several prominent persons of Grand Gedeh County met with him and appealed to him to allow the appellant to have the land, but because the land was a prime property, he told them that he could not give her the whole lot. Instead, he said, since she had a house and a hotel on the land, she could decide which to take. The appellant chose the house, and with this understanding, Mr. Zellee said, he went to Monrovia to have a lawyer draw up a Memorandum of Understanding regarding the agreement reached, and he also sent two hundred United States Dollars (US$200) to a surveyor in Grand Gedeh to survey the quarter lot that the appellant's house was on. When he thought the matter was settled, Mr.Zelee said, he kept receiving news that the appellant was developing more properties on the land, but that whenever he called her to inquire about this information, she would deny it. He said he then decided to come to Zwedru to ascertain himself, and that upon his arrival in Zwedru, he saw the development on the land. The appellant, he said, insisted that where she was developing was not part and parcel of the appellee's land but that one Patrick Doe had sold her the land that she was developing. The witness further said that he then decided to conduct another survey which confirmed that the appellant was further encroaching on the appellee's property; that when he got back to Monrovia, the appellant came again with one Honorable Pyne Wollo and another person to beg and he told them that he had dealt with her previously in good faith and upon her insistence on constructing on the property, he had decided to refile the case as per Judge Wiles' advice that if the parties went home to settle the matter and he, Zelee, was not satisfied with the negotiation, he had the right to refile. This was the basis for him filing a new action during the February Term, 2014, before Assigned Circuit Judge Smith.

The appellee's 2nd witness was Augustine N. Young. He testified that the appellant attempted to settle the matter with Mr. Zelee and had gone to ask his wife to intervene so that Mr. Zelee could lease the hotel to her after the understanding that she would keep the house but be ejected from the hotel. The appellant, the witness said, had pleaded that she did not want to be the loser, she having built the hotel. According to the witness, the appellant left after his wife promised that she would call Mr. Zelee and talk to him.

Thereafter, the appellee rested with evidence. The appellee's counsel prayed for the admittance into evidence of the deed in the name of Mr. and Mrs. Dagbe, which appellee relied on to file her action of ejectment and to issue the power-of-attorney authorizing Mr. Zelee to institute the action.

Subsequently, the appellant filed a motion for judgment during trial alleging that the attorney in fact of the appellee lacked the legal capacity to sue since his principal gave him a power-of-attorney that was not probated and registered by her; and that Mr. Zelee, in instituting the action, did not proffer or tender into evidence letters of administration or a Will to establish his principal's capacity to act on behalf of her parents' estate.

The court, in ruling on the motion for judgement during trial, held that in keeping with the Supreme Court's ruling in the case Massaquoi vs. Wilkins, 19 LLR 166 (1969),a power-of-attorney from a Liberian to another Liberian is not required to be registered and probated to make it a valid instrument for the agent to act thereon. Referring to the issue of the appellee's failure to obtained Letters of Administration to sue, the judge held that "real property on the death of an ancestor rests immediately in the heirs, whether they are known or unknown. The heirs, he said, as a general rule take legal title with the right to possession and control. The appellee, the court further held, taking legal title of property inherited from her ancestor, can institute an action so that the court can decide whether or not she has a better title as against another person who is not an heir of her ancestor; and that the process having been put into motion, and the appellee, having presented her case, the appellant should proceed to present her side of the case so that the matter could be decided on its merits as to which of the parties had a better title.

The appellant thereafter took the stand and presented her evidence in support of her title, denying that she was occupying the appellee's property. She stated that the land on which she had built her hotel was bought from Counsellor Harper Bailey. She stated that she was given two deeds by Counsellor Harper Bailey, a deed issued by him as grantor to her in fee simple, and his mother deed alleged to be issued to him by the Republic of Liberia. However, we note that she did not proffer the Public Land Deed of Counsellor Harper Bailey to her answer to the complaint. The appellant, in testifying further, said she had two (2) lots which shared boundaries; the one sold by Counsellor Bailey and the other by the family of one Sam Doe. On the land sold her by Counsellor Bailey, she said, she built a hotel and two (2) shops, and the one sold her by the family of Sam Doe, she built four (4) houses. The Doe family, she said, gave her the mother and warranty deeds and that she had been on that parcel of land for seventeen (17) years. We must interject here again that the appellant failed to proffer the alleged warranty and mother deeds from the Doe Family to her answer filed to the complaint. She further denied that she had any discussion with Mr. Zelee regarding the lot that Counsellor Bailey sold to her; that it was her lawyers, Morais Waylee, Harper Bailey and Mr. Zelee who went in the Judge's Chambers, and upon their return stated that Mr. Zelee had said that he did not want to take Counsellor Bailey to court since Counsellor Bailey had a child by his (Mr. Zelee) elder sister; hence, he would withdraw his case.

After the appellant rested with her first witness on the stand, one of her counsels, Counsellor Harper Bailey, requested the court to grant a continuance until the next day, June 14, 2014, to allow the appellant bring her remaining witnesses. Bizarrely, Counsellor Harper Bailey, who, along with others from his Law Firm, had represented the appellee all along, filed a motion to intervene as follows:

"MOVANT'S MOTION TO INTERVENE

NOW COMES the movant Cllr. Harper Bailey and requests the Judge of this Honorable Court to intervene in the above captioned case as a party defendant for the following factual and legal reasons as showeth to wit:

1. That the movant is the Grantor of the parcel of property occupied by the defendant in the aforementioned proceedings and has a property right in the said property which is the subject of this litigation. Movant attached hereto copy of a public land sale deed as exhibit M/1.

2. That movant says that any decision made by this Honorable Court concerning the above subject property will have an adverse effect on his property right as provided for in the Constitution of the Republic of Liberia.
WHEREFORE and in view of the forgoing facts and circumstances, movant requests the Judge and this Honorable court to grant its motion to intervene as a party defendant to protect his property right and grant unto him all other relief that you may deem just, legal and equitable."

On the 21stof June, 2014, Counsellor Bailey filed this withdrawal of representation as counsel for the appellant. We herewith quote the instrument of withdrawal:

"WITHDRAWAL OF REPRESENTATION AS COUNSEL

Now comes one of counsel for the defendant and most respectfully begs to inform the Judge and this Honorable Court that he withdraws his representation as counsel for the defendant Madam Rebecca N. Dogbeh, in that having realized that I personally sold or parted title to her as the grantor of a parcel of land, I will be required to testify as one of her witnesses.

As a grantor for a parcel of land on which she is currently occupying which is in dispute, I am duty bound to prove before any court of competent jurisdiction that I passed title to her

legally and must assist her in establishing superior title to the property that is now a subject of these proceedings.

Respectfully submitted by
Cllr. Harper Bailey"

To also reflect the bizarre conduct of the trial procedure in the lower court, we include herein below the submission by the counsel for the appellee and the ruling of the judge on the motion to intervene:

"Counsel for the plaintiff, in responding to the motion as filed by the plaintiff, cites the following to wit: 1. that motion to intervene is the right of any party who feels that an ongoing trial and the finding therefrom will have adverse effect on him or her; 2. be as it is however, considering the fact that these proceedings have been long running, and owing to the pronouncement of the judge of this court relative to undue baffling and delay of these proceedings, one would have expected that the movant herein would have filed a motion to intervene along with an intervener answer, that way one would proceed with the merit of the case forthwith once the motion is decided.

Wherefore and in view of the foregoing, counsel for the plaintiff interpose no objection to the movant desire to intervene thereby protect whatever interest he has in the premises. However, we again employ the Judge and this Honorable Court to warn the defendant from these delay tactics. AND SUBMITS."

THE COURT: "The respondent having spread his resistance on the record of court on the defendant's motion to intervene, the court shall now rule on the motion to intervene since indeed and in fact the respondent interposes no objection: The court says that in keeping with section 5.61 of the Civil Procedure Law of the Liberian Code of Law Revised, intervention is as of right upon timely application. Recourse to the records shows that the movant for intervention is Cllr. Harper S. Bailey who has been the defense counsel all along in these proceedings when the case first appeared on record; Cllr. Bailey was the counsellor for the defendant when the case was first tried and ended in a mixed trial and the court ruled for retrial, and Cllr. Bailey has been sitting in court during this retrial and has listened to the testimonies of the principal defendant. Cllr. Bailey has now applied to be an intervener wherein he will give a testimony that will be corroborating with the testimony of the defendant. In the mind of this court, it is grossly irregular. However, since the adversary party interposed an objection, the court has no alternative but to grant the intervention of

the movant so the case can be proceeded immediately. AND IT IS HEREBY SO ORDERED."

We shall later on in this Opinion comment on Counsellor Bailey's motion to intervene at this stage of the trial and Judge Smith allowing said intervention.

However, thereafter, the appellant proceeded to put her second witness on the stand, a surveyor, David Sluwar. He took the stand and testified that he was an employee of the Ministry of Lands, Mines, and Energy, and the Resident Surveyor for Grand Gedeh County; that on May 20, 1999 he was called by Counsellor Harper S. Bailey to conduct a survey for a parcel of land in favour of the appellant and he told Counsellor Bailey that as a professional surveyor, he had to firstly write to the adjacent parties; that he asked Counsellor Bailey whether he had any deed for the parcel of land that he was asked to survey and Counsellor Bailey replied that he had a mother deed from the Republic of Liberia to him, and showed him [witness] the deed. Thereafter, the witness said, he cited all the adjacent parties to be present for the survey on May 14, 1999. Those cited appeared, the surveyor said, and he surveyed 0.61lot of land, after which he prepared a deed for Counsellor Bailey, transferring the land to the appellant. It was after the survey and the deed was signed, probated and registered and turned over to the appellant that Mr. Zelee called Counsellor Gbala stating that the Dagbe family had 3 lots in the identical area and he wanted a resurvey. The witness said that he had had an accident and the Land Commissioner asked his field Assistant to carry out the survey. The Assistant, Morgar Flahn, not being a licensed surveyor could not survey the property until the witness returned. Upon his return, the witness said, Mr. Zelee requested him to do the resurvey of the Dagbe family land but after Counsellor Bailey heard the announcement about the survey he wrote the witness and the Land Commissioner that the land Mr. Zelee wanted to survey was in court; therefore, the witness should not survey it. The witness said that as a professional surveyor, the land matter could not be in court and proceed to survey said land. An attempt was made by the appellant's counsel on the direct examination to have the Public Land Sale deed, testified to by the witness, marked by the court but the appellee's counsel rightly objected that the deed was never pleaded, and the objection was sustained by the judge. The surveyor however having testified to the deed he allegedly prepared for the appellant, the judge had same reconfirmed.

During the cross-examination of the appellant's second witness, the appellee sought to bring to the court's attention that the witness had testified that the Honorable Shad Kadydea was present at the survey and that the appellant's deed reflected Honourable Kadydea as one of those sharing boundaries with the appellant; that appellee would bring a rebuttal witness to show that Honourable Shad Kadydea died two years before the purported survey and that Mr. Kadydea owned no property in Zwedru.

The appellant brought a third witness, Elizabeth Doe. She testified that her husband, Philip W. Doe, sold the appellant a piece of land in 2001, and it shared border with the piece of land Counsellor Bailey sold to the appellant.

After the appellant rested with her third witness, Counsellor Harper S. Bailey filed an intervenor's answer to the appellee's complaint averring that he was the grantor of land to the appellant and that he acquired his title from a public land sale deed dated September 6,1965,duly signed by the President of the Republic of Liberia. However, the appellee, in her reply to the intervenor's answer, averred that the deed relied on by the intervenor to convey title to the appellant was a product of fraud and misrepresentation, was not authentic and did not exist as evidenced by a Certificate of Non-Discovery. Besides, the date of probation of the said intervenor's deed was the 12thday of September, A.D. 1965, a Sunday which is a none working day in Liberia. Below are the appellee's attachments to her reply to the intervenors answer:

"May 27, 2014

Cllr. Boakai N. Kanneh
Deputy Minister/Legal Affairs
Ministry of Foreign Affairs
Monrovia, Liberia

Dear Sir,
I present my compliments and herein request the authenticity of the attached title deed issued to Cllr. Harper S. Bailey by Mr. Joseph Jarbah situated at Tchien, Zwedru City, GrandGedeh County registered in Volume 1, pages 29-31 and containing One (1) Town Lot in 1965.

Please see attached a copy of the above mentioned deed.

Kind regards.
Very truly yours,
Jerome B. Kolleh
ATTORNEY-AT-LAW"

"CERTIFICATE OF NON-DISCOVERY

This is to inform that on May 27, 2014, Jerome B. Kolleh, Attorney-at-Law of Legal Consultants, Inc., of the City of Monrovia did request the Bureau of Archives through Legal Affairs, Ministry of Foreign Affairs, for the research and authentication of a photocopy of a Public Land Sale Deed reportedly issued to Harper S. Bailey by Republic of Liberia.

The applicant averred that the aforementioned property is situated at Tchien, Zwedru, Grand Gedeh County, registered in Volume 1 and contains 1 town lot of land in 1965.

This is to further inform that diligent search of the Archives was conducted; volume 1 does not form part of the records of the Ministry of Foreign Affairs Archives thus creating a non-discovery of the deed in favor of Harper S. Bailey. Note, the Bureau of Archives observed that the probate date of the deed September 12, 1965 was Sunday, not a working day as indicated on the deed in question. Moreover, the signature of William V. S. Tubman whom is alleged to have signed the above mentioned deed is not authentic.

The Bureau of Archives therefore hopes that the information provided will satisfy your inquiries.
GIVEN UNDER MY HAND AND SEAL OF THE MINISTRY OF FOREIGN AFFAIRS, THIS 29TH DAYOF MAY A.D. 2014
C. Morris Kollie
ACTING DIRECTOR OF ARCHIVES"

"TO WHOM IT MAY CONCERN

The Ministry of foreign Affairs acknowledges receipt of a request made by Jerome B. Kolleh Attorney-at-Law of Legal Consultants, Inc. of the city of Monrovia dated May 27, 2014 for the research and authentication of a Public Land Sale deed reportedly issued to Harper S. Bailey registered in Volume 1 situated in Tchien, Zwedru, Grand Gedeh County and contains 1 town lot of land in 1965.
The Ministry through its Bureau of Archives, having conducted a diligent search of its records found out that Volume 1 in which the deed in favor of Harper S. Bailey was allegedly recorded does not form part of the records of this Ministry.

In light of the above, the Ministry of Foreign Affairs herewith certifies that the report of C. Morris Kollie, Acting Director of Archives of the Ministry of Foreign Affairs is the result of research conducted by this Ministry.

Signed and sealed on this 29th day of May A. D. 2014.

Cllr. Boakai N. Kanneh
DEPUTY MINISTER/LEGAL AFFAIRS"

When the case was called on June 23, 2014, the appellant's 4th witness, Counsellor Harper S. Bailey, took the stand, alleging that he had sold and conveyed to the appellant the disputed one lot of land based on a Public Land Sale Deed he obtained in 1965, signed by President William V. S. Tubman. But the deed proffered by the witness and previously testified to by the surveyor, who allegedly surveyed and prepared the deed, states and shows that the land conveyed to the appellant by Counsellor Bailey was in fact 0.61 lot and not one (1) lot. During the cross examination of Counsellor Bailey, the appellee's counsel informed the court that appellee would bring a rebuttal witness to produce a calendar to substantiate that the date Counsellor Bailey alleged that his deed was registered and probated, that is the 12th day of September, 1965, was on a Sunday, a day that all government institutions are closed; also, that the deed which was said to be signed by George S. Davis, Sr. as Probate Judge was fraudulent since Judge George S. Davis, Sr. never served as Circuit or Probate Judge in the 7thJudiciary Circuit.

Mr. Zelee again took the stand, this time as appellee's first rebuttal witness. He testified that when he first saw the 1965 Public Land Sale Deed, said to have been issued to Counsellor Bailey, there was an official receipt for $30.00,dated February 1965,attached to the deed and alleged to be issued by the Ministry of Finance. The witness said that the receipt raised eyebrows and he suspected that something was wrong because in 1965, there was no Ministry of Finance. The Ministry of Finance was then called the Department of Treasury. Upon further research, the rebuttal witness said he found out that the Ministry of Finance was created in 1972; further research also showed that September 12, 1965, was on a Sunday; and as Government offices do not open on Sundays, no probation of the deed could have been done on Sunday. Based on this, the rebuttal witness said, he went to the Ministry of Foreign Affairs to authenticate the deed presented to court by Counsellor Bailey, but the Ministry requested his Lawyer to write instead and which his lawyer did, and to which communication the Ministry of Foreign Affairs replied as written supra. In short, the witness said the deed was not registered and no volume 1 was assigned to Grand Gedeh County. The rebuttal witness put into evidence a calendar that he downloaded and printed from the internet showing the complete year from January to December, 1965. The witness further testified that he took Counsellor Bailey's deed to few of President Tubman's children, showing them the signature on the deed, asking them to authenticate same. Upon seeing the signature, Tubman's children began to laugh; the witness stated that comparing the signature on the deed with that of other deeds signed by Tubman, one did not have to be a scientist to know that the signature was not genuine.

Appellee's 2ndrebuttal witness, Mr. David D. Gbala, was brought in by the appellee to testify to the roll call of trial judges who had served the Seventh Judicial Circuit as assigned and resident circuit judges during the period and to the fact that Judge George S. Davis, Sr. served as judge of the Circuit Court in Grand Gedeh County. Mr. Gbala testified that he became a Lawyer and was admitted into the Grand Gedeh Local Bar in 1964.The witness testified that the late Samuel Davis, Sr. was the traffic judge for Grand Gedeh and was later appointed as Debt Court Judge but he never served as Circuit Judge or Probate Judge for Grand Gedeh County.

Evidence having rested in toto, both parties made their final argument before the court. The jury, after its deliberation, found the appellant liable. The judge denied the appellant's motion for a new trial, ruling that the verdict of the jury was in conformity with the evidence as the appellant showing of an outstanding title was in a third party whose title instrument was fraudulent and a complete legal nullity. This negative averment made in the appellee's reply to the intervenor's answer with attached papers from the Ministry of Foreign Affairs, the court said shifted the burden on the appellant to prove otherwise, but appellant failed to do so.

The appellant excepted to the ruling and filed before this Court a 13 count bill of exceptions. Because of its importance to the outcome of this case, we must address the cardinal legal issue consistently raised by the appellant in her pleadings and during trial; that is, the lack of capacity of the appellee to file the action of ejectment on behalf of her parents estate, especially in the form and manner chosen. In count 2 of the bill of exceptions, the appellant states:

"And also because appellant further contended that Madam Albertha Dagba Williams, who is the alleged daughter of the late F. W. Dagba, has not acquired any letters of testamentary or letters of administration, as one of the surviving heirs as evidence according to 1LCLR. page 204, section 25.15, couple with the case Anderson v. Mcgill, 1LLR, page 46,47 (1868) quoted herein the evidence necessary to the proof of the authority of an administrator is his letters of testamentary/(administration) (yet the judge gave deaf ear to these two (2) statutory and common laws which barred the plaintiff from declaring himself as agent of Madam Albertha Dagbe W. Williams,……"

The issue of capacity and standing to institute an action is a cardinal principle of law enunciated by this Court for instituting an action. Our jurisprudence requires that a person instituting a legal action must first establish his/her standing to bring said action. The Doctrine of Standing, the Supreme Court has opined, in the cases Concerned Sector Youth v. LISGIS et al., Supreme Court Opinion, March Term, A.D. 2010 and Citizens Solidarity

Council v. RL, Supreme Court Opinion, March Term, A.D.2016) that standing to sue "ensures that the courts will have the benefit of real adverse parties in cases. Thus, the question [of] whether a party has standing to participate in a judicial proceeding is not simply a procedural technicality but, rather involves the remedial rights affecting the whole of the proceeding. Standing involves jurisdictional issue which concerns [the] power of courts to hear and decide cases and does not concern ultimate merits of substantive claims involved in the action. Before a matter can be decided on its merits the issue of standing must first be decided. And if it is determined that the plaintiff lacks standing to institute the actions, the action will be dismissed without deciding the substantive issues raised in the case." Also the Supreme Court had opined in the case Cooper v Cooper, 20 LLR 554 (1972) that the legal representative of a decedent estate is a proper and necessary party to any action affecting the property rights of the estate.

A review of the caption of the case reveals that the appellee, Albertha Dagbe Williams, appointed Edwin B. Zelee as her representative to sue in her behalf making no mention of an intestate estate or a will. She averred in her complaint that she is the legitimate and lawful owner, in fee simple, of the disputed property, yet attached a deed of Mr. and Mrs. Dagbe allegedly her parents. Further, in her reply to count 2 of the appellant's answer above, the appellee averred in count 3 of her reply the following:

"And also because plaintiff further says that the late F. W. Dagbe was in joint-tenancy with Mrs. Albertha Dagbe Williams who survived the late F. W. Dagbe, and under the principle and doctrine of the survival takes all plaintiffs by operation of law is the bona fide owner of the property the land. Therefore, defendant's count three (3) should be dismissed."

Despite the averment in her complaint and reply, her legal representative, Mr. Edwin D. Zelee, in a question posed to him relative to the title owner of the disputed property, responded that it was Mr. and Mrs. Dagbe, the mother and father of the appellee who were the title owners of the property. The appellee's father predeceased his wife, the appellee's mother who later died. When the appellee rested with evidence, the appellant filed a motion for summary judgment as follows:

"NOW comes movant Rebecca N. Dogbeh in the above-entitled cause of action and requests the judge and this Honorable Court to ignore, deny, disregard and dismiss the above entitled cause of action instituted by the plaintiff for the following factual and legal reasons to wit:

1. That movant/defendant says that the plaintiff who instituted this suit lacks the legal capacity to sue in these proceedings of action of ejectment filed against the defendant/movant because the purported power of attorney presented to this Honorable

Court by the plaintiff lacks the basic requirements outlined by the Honorable Supreme Court of Liberia in *31 LLR582 Syl.l,Hage vs. Moham.* Before any person can hold himself as agent or Attorney-In-Fact of another, he/she should have received a power of attorney which should be probated and registered by law.

2 That furthermore Attorney-in-Fact during the presentation of his side of this case failed to tender into evidence letters of administration obtained from a competent court in favor the plaintiff-in-principal: be it from Circuit or Probate to establish plaintiff-in-principal's superiority of title. He or the plaintiff-in-principal failed to present to the Court and jury a Will from plaintiff-in-principal given by her late father, F. W. Dagbe.

3. Also that under section 5.11, sub paragraph 3 of the Civil Procedural Law (Capacity Generally), the capacity of any person acting in a representative capacity shall be determined by statute.

4. That based upon the plaintiffs evidence adduced before this Honorable Court and jury, and those solemn issues raised in this judgment during trial, movant /defendant says that she is entitled to judgment as a matter of law provided for in section 26.2 of the Civil Procedural Law."

Counsel for the appellee in resisting the issue of the appellee's capacity to sue and to have the appellant ejected from the property, wrote in count 3 of its resistance the following:
"That as to counts two (2) thru four (4), of movant's motion for judgment during trial, respondent avers and maintains that, same also present traversable issues in that, plaintiff as heir of Mr. & Mrs. Dagbe needs not acquire letters of administration before she can assert her claim of ownership of the subject parcel of land which once belonged to her parents, because of her vested interest in said parcel of land as a title holder by descend, which was automatic upon the death of her parents. See: 23 Am Jur under the general caption: Descent and Distribution, and subtitle, when property descends or passes, section 14."

His Honor S. Geevon Smith, the Assigned Circuit Judge presiding over this case, in his ruling on this issue, wrote:

"On the issue whether or not the plaintiff, an heir of a decedent lacks legal capacity to institute ejectment action by not presenting letters of administration to administer the property inherited from her parents, this Court must answer in the negative. This court says that "real property on the death of an ancestor, rests immediately in the heirs, whether they are known or unknown. The heirs, as a general rule, take legal title with the right to possession and control.

In the thinking of this court, the plaintiff Albertha Dagbe Williams taking legal title of property inherited from her ancestors can institute an ejectment action so that the court can decide whether or not she has a better title as against another person who is not an heir of her ancestors. The process has been put into motion, the plaintiff has presented her case and so it is the thinking of this court that the defendant must also present her side so that the case can be decided upon its merits as to which of the parties has a better title.

Wherefore and in view of the foregoing factual and legal circumstances, the movant's motion for judgment during trial must be and same is denied and the case is ordered proceeded with to be decided on its merits. AND IT IS HEREBY SO ORDERED."

As much as this Court agrees that upon the death of an ancestor, title rests immediately in the heirs, and as a general rule the heirs take legal title with the right to possession and control, yet our Rev Code, Civil Procedure Law 1:5.11 (3) states that our statutes shall determine the capacity of any person acting in a representative capacity of an estate, and our Rev Code, Decedent Estates Law8:111.3 requires that "any person interested in the estate of an intestate, or of a person alleged to be deceased, or any person to whose appointment as administrator all distributees consent pursuant to section 111.1, or a curator, creditor or a person interested in an action brought or about to be brought in which the intestate or the person alleged to be deceased, if living, would be a proper party, may present a petition to the court having jurisdiction praying for a decree granting letters of administration to him or to another person upon the estate of the intestate or the person alleged to be deceased.Our Supreme Court has in its opinion further opinioned on this issue of representative capacity. In the case of the Intestate Estate of the late John Lewis v.Judge Metzger, Mohamed Jalloh et al.,38 LLR 404 (1997), the Supreme Court held that "authority to act for an intestate estate is only exercisable by one duly qualified and legally appointed to carry out functions prescribed by court. It is not assumed and must be clearly and specifically authorized. If not, many would be imposters, feasting and enriching themselves at the expense of an intestate estate." One clothed with authority to sue for an estate must establish that he is the legal representative of said estate and the evidence necessary to the evidence necessary to the proof of the authority of an administrator is his letters from a Probate Court or a Probate Division of a circuit evidencing same(McCauley v. Doe 22 LLR 310 (1973).Properly clothe with an authority from the probate court or probate division of a circuit court where no probate court is established, a person granted such authority as an administrator or executor may bring an ejectment action to recover property of the estate illegal occupied by an individual.

What we find unsettling in this case is that the complaint stated that the appellee was owner of the property in fee simple. The appellee showed no evidence that her mother deeded the property to her, since her mother, Mrs. Dagbe, had the authority to transfer the property in fee simply as the survival of a joint tenancy. If appellee's mother is dead, the disputed property is part of her mother's estate, and the question would be, are there other sisters and brothers of the appellee who are beneficiaries of the appellee mother's estate?

The award of the property by the lower court, under the circumstances, gives the appellee the exclusive right to the property when there is clear evidence that she does not own the property and has no legal authority to represent the estate of her mother, the title holder of the disputed property. It is the duty of our courts in handling matters of real property to ensure that disposition is done in accordance with law.

We must now comment on the procedures adapted by the lower court in its handling of this matter. Judge Geevon Smith who presided over the trial of the case himself stated in his ruling on the motion to intervene by Counsellor Harper Bailey that Counsellor Bailey who sold the land to the appellant and other lawyers of his firm represented the appellant throughout the proceedings which included the time the matter was withdrawn to settle it out of court; the second time when a full trial was held and a new trial granted and during the second trial when the appellee rested with evidence but he failed to intervene in the matter to establish his title and right to convey the property to the appellant; that Counsellor Bailey's application to the court to intervene at the point and time of the trial was irregular and untimely but yet the Judge failed to deny the intervention. To see that this obvious farce was allowed by the trial judge is unacceptable and even to the extent that the judge allowed a continuance for Counsellor Bailey to file an answer, and the appellee a reply, after the appellant rested with her third witness, proved even more incomprehensible. What was this hearing, a legal circus? Obviously, the Judge's ruling above shows his inability to independently make a decision.

The Supreme Court has often emphasized the need for a judge to take charge of his/her court and to conduct the proceedings in accordance with the rules and practice of court. It is no excuse that because the appellee's counsel did not object to the intervention that the judge could not have ruled independently and properly. Sections 5.61 and 5.62 of the Civil Procedure Law state that the application for intervention in a proceeding before the court must be timely. In the cases SCHILLING & COMPANY v. James Tirait and Judge John Dennis,16LLR 164, 177 (1965); Gaddini v Iskander et al. 19LLR 490 (1970), this Court held that the law makes it mandatory that the right to intervene in any matter should be asserted within a reasonable time after knowledge of the suit. It takes no effort in ascertaining that the intervention of Counsellor Bailey was not done in good faith.

From the evidence adduced at trial, this Court has determined that the disputed property was owned by the appellee's parents and forms part and parcel of the intestate estate of the appellee's
deceased mother, Mrs. Ella Dagbe. The evidence having substantiated that the disputed property belongs to the appellee's mother, Ella Dagbe, and not Counsellor Harper S. Bailey, he could not have legally conveyed the property to the appellant.

However, under the facts and circumstances of the case, though it was established that the appellee is an heir of Mrs. Ella T. Dagbe, the bonafide owner of the estate in question, the appellee not having obtained Letters of Administration, she had no capacity to institute the action. The lower court by awarding the disputed property to the appellee out-rightly, set out the property in the appellee instead of her mother's estate, and in which case may have divested other beneficiaries of their interest in the said property.
Accordingly, the final ruling of the lower court awarding the appellee the disputed property is hereby reversed. The appellee or any other beneficiary may proceed to apply to the Probate Division of the Seventh Judicial Circuit Court, Grand Gedeh County to obtain the proper authority from the court in order to exercise legal and proper control over the estate. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS COOPER W. KRAUH AND IDRIS SHERIFF OF THE HENRIES LAW FIRM APPEARED FOR THE APPELLANT. COUNSELLOR BEYAN D. HOWARD OF THE LEGAL CONSULTANTS,INC. APPEARED FOR THE APPELLEE.