

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

Heard May 15, 1985. Decided June 21, 1985.

1. A complaint in any controversy should be clear, concise and certain to enable the court to grant the relief sought; it must be so drawn that, assuming all the facts in it to be true, it would justify a court in giving a judgment under some principle of law.
2. Under our practice and procedure, pleadings must state definitely the cause of action upon which the parties rely; they must not only be clear and logical, but they must also be in conformity with set and established principles of law.
3. The fundamental principle of all pleadings is the giving of notice of what a party intends to prove at the trial.
4. The complaint in an action of ejectment must state with certainty the quantity of land claimed or the portion occupied by the defendant, being fully described to put the defendant on notice as to the land claimed and for which an award is sought.
5. If a defendant appears within the time prescribed by statute, being ten days after the service of summons or resummons, his failure to interpose an answer shall be deemed as a general denial of all the allegations in the complaint. Thus, at the trial, such defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial.
6. An affirmative defense, being a plea in confession and avoidance, admits the truthfulness of allegations made, expressly or by implication, but sets forth facts which tend to avoid the legal consequences attendant upon bare admission.
7. All documentary evidence which are relevant and material to the issues of fact, and which are received and marked by the court, shall be presented to the jury.
8. The jury's verdict in an action of ejectment must sufficiently describe the land awarded so that a writ of possession can be issued based upon the description.

Appellee instituted an action of ejectment against the appellant, claiming title and ownership to an un-described parcel of land. Appellant filed a formal appearance, but did not file an answer. At the trial of the case, the appellant appeared and was permitted to cross-examine appellee's witnesses as well as introduce evidence in his own defense. This evidence

was a public land sale deed which was identified and marked by the court. However, when, following the close of appellant's oral evidence, he offered into evidence the deed, objections were interposed to the admission, which objections were sustained by the court and the document not admitted into evidence. Accordingly, the deed was not permitted to go to the jury. A verdict was returned in favor of the appellee, awarding him possession of the disputed property. The trial court rendered judgment thereon, confirming the said verdict. It is from this judgment that an appeal was taken to the Supreme Court.

On appeal, the Supreme Court reversed the judgment, holding that the complaint and the jury's verdict had failed to sufficiently describe and identify the property to which the appellee had claimed title. The Court observed that the complaint, as far as its reference to the property was concerned, was not clear and concise enough to give the appellant notice of what the appellee intended to prove or of the exact land claimed, so as to justify the trial court in making an award and issuing a writ of possession.

The Supreme Court held further that the trial court had erred in refusing to admit into evidence the public land sale deed offered by the appellant. The Court noted that the document had been testified to, identified and marked by the trial court. Under the laws of Liberia, it said, all documentary evidence relevant and material to the issues of fact, which have been received and marked by the court, should be presented to the jury. It rejected the basis upon which the trial court had excluded the document, noting that its presentation did not amount to a confession and avoidance as wrongly concluded by the trial court. The Court therefore *reversed* the judgment and *dismissed* the case in its entirety without prejudice.

*J. Emmanuel R. Berry* appeared for the appellant. *Francis N. Topor* appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The genesis of this case dates back to June 26, 1958, when plaintiff/appellee James B. S. Williams filed an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against defendant/appellant James B. Gibson, praying the court to award him judgment ousting and evicting the latter from the premises of the former, the same being a piece of farmland located in the present Bomi County. Defendant filed a formal appearance but did not file an answer. However, James B. Gibson subsequently died and the administrators of his estate were formally substituted in his place.

The first trial of the case ended with a hung verdict. Hence, a new trial was awarded. In

the course of the second trial, plaintiff produced witnesses who were qualified, and who testified thereafter, and were examined and cross-examined. Following the testimony, plaintiff rested evidence. On the other hand, the defendant, who did not file an answer, appeared and produced witnesses who testified in essence that he was not on plaintiff's land, he being in possession of a public land sale deed from the Republic of Liberia. This deed was testified to, identified and marked by the court. Thereafter, defendant rested evidence.

Defendant's having rested oral evidence, he applied for admission into evidence of the deed. This application was objected to by plaintiff on the grounds that as the document had not been pleaded, it should not be admitted into evidence, as to do so may constitute an affirmative defense which is not allowed when a party is placed on a bare denial of the complaint, as was in the instant case. The judge sustained the objections and denied the admission into evidence of the defendant's deed. The ruling also prevented the document from going to the jury who are triers of facts. Hence appellant excepted to the ruling. The trial ended with a verdict in favor of the plaintiff, which was confirmed and affirmed by the court's final judgment wherein it declared that plaintiff was entitled to the disputed land.

The peculiar thing about this case is that the complaint, the verdict and the judgment referred to plaintiff's land without mentioning the quantity owned and the portion reportedly occupied by defendant. Therefore, and for sundry reasons, defendant excepted to the judgment, and announced and perfected an appeal therefrom. The appellant contended, firstly, that the judge erred when he refused to allow the jury to consider the evidence produced by the appellant and which was marked by the court. Secondly, appellant contended that the verdict was manifestly against the weight of the evidence, in that the complaint having failed to specify the quantity of land owned by plaintiff and occupied by defendant, the verdict should have been otherwise. Appellant therefore argued that the judge erred when he denied his motion for a new trial.

From the foregoing history of this case, the issues germane to resolving this dispute are the followings: Firstly, what is the effect of a complaint which is unscientifically drawn and fails to give defendant the required notice as to plaintiff's claims and entitlements; secondly, whether or not a document testified to and marked by a court, even though not pleaded, must necessarily be admitted into evidence for the jury to determine its credibility; and thirdly, whether or not judgment in an action of ejectment is uncertain and therefore unenforceable, where it fails to spell out a clear definition of the quantity and the exact location of land awarded.

Resolving the first issue, this Court has held that the complaint in any controversy is

important and should therefore be clear, concise and certain to enable the court to grant the relief sought. It must be so drawn that, assuming all the facts in it to be true, it would justify a court in giving a judgment under some principle of law. Under our practice and procedure, pleadings must state definitely the cause of action upon which the parties rely. They should not only be clear and logical, but they must also be in conformity with set and established principles of law. They should at all times be characterized with certainty, clearness, and consciousness, in order that the point or points in controversy may be evolved and distinctly presented for decision. *Salala Rubber Company v. Onadeke*, 24 LLR 441 (1976). In another case the court said that the fundamental principle of all pleadings is the giving of notice of what a party intends to prove at the trial. *Sabeen v. CFAO*, 13 LLR 278 (1958).

In the case before us, as we said earlier, the complaint refers to plaintiff's land without mentioning the quantity owned and the portion reportedly occupied by defendant. There is no description therein to put the defendant on notice as to the exact land claimed and sought to be awarded, nor indeed does it furnish the court itself with the required certainty that would have allowed it to make an award and to issue a writ of possession to effect same.

This was certainly a fatal omission that should not have been overlooked by the court below, and we wonder why the court allowed it to occur at all.

Next, we consider the issue of whether or not documents testified to and marked by a court, even though not pleaded, should be admitted into evidence for the jury to determine their credibility. In this jurisdiction if a defendant appears within the time prescribed by statute, that is, within ten days after service of summons or resummons, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial. Civil procedure Law, Rev. Code I : 9.12.

From what we gather from the records in the present case, the appellant appeared as is required by statute and made a general denial, and again appeared physically during the trial and examined and cross-examined appellee's witnesses. He introduced, in his own defense, a Public Land Sale Deed which was testified to, identified and marked by the court. He thereafter rested oral evidence and prayed the court to admit into evidence the said public land sale deed from the Republic of Liberia, for the jury to determine its credibility. However, the trial judge refused to admit said document on the basis of the objection filed by appellee, to the effect that its admission would amount to an affirmative defense contrary to our statute, especially so, since it was not pleaded. Both the objection and the sustaining thereof appear very ridiculous and betrayed a lack of understanding of the meaning of an

"affirmative defense". For reasons of elucidation, this Court has held that an affirmative defense, being a plea in confession and avoidance, admits the truthfulness of allegations made by implication or expressly, but sets forth facts which tend to avoid the legal consequences attendant upon bare admission. *Good-Wesley v. Dwalubor*, 19LLR 282 (1969).

In the case at bar, the appellant appeared and maintained that the appellee's averments are false and not true, while in an affirmative defense the averment of the complaint is accepted as true. The appellant produced a public land sale deed to show that he was the rightful owner of the property and not the appellee. We must note however that as the appellant's plea was an affirmative defense, he should first have conceded the truthfulness of appellee's allegations and then set up the affirmative defense, such as adverse possession; that is to say, that even though the appellee's complaint was true, yet, having been on the land for twenty years or more, he, the appellant, thereby became the owner by law. But this was not the case here since appellant denied the truthfulness of the complaint, and his evidence of ownership was in support of that denial.

The deed referred to in the appellant's testimony was exhibited at the trial, but because it had not been proferted with the pleadings the judge ruled that it could not be admitted into evidence, although it had been received and marked by the court.

Perhaps if this document had been admitted into evidence along with the appellee/plaintiff's deed, a clearer picture might have been presented to the triers of the facts. But in fact, there was no consideration given the defendant's deed by the jury, even though testified to, identified and marked by the court. In our opinion, the defendant's deed should have been allowed to proceed to the jury. All documentary evidence which are relevant and material to the issues of fact, and which are received and marked by the court shall be presented to the jury. Rev. Code 1: 25.4; *Walker v. Morris*, 15 LLR 424 (1963).

From the foregoing, we have no hesitation in saying that appellant's deed, not being an affirmative defense, should have been admitted into evidence and allowed to be presented to the jury to determine its credibility.

Finally, we consider the issue as to whether a judgment in ejectment is uncertain and unenforceable where it fails to spell out a clear description of the quantity and exact location of the land awarded.

In the case of *Ginger v. Bai*, a case much similar to the one before us, being an action of ejectment, this Court ruled that in such an action the jury's verdict must sufficiently describe the land awarded so that a writ of possession can be issued based upon the description. The Court then remanded the case for a new trial since the verdict was uncertain for lack of proper

description of the land awarded. The rationale was that no valid judgment could be based on such uncertain description to put the plaintiff in possession of the land purportedly awarded in the verdict. *Ginger v. Bai*, 19 LLR 372 (1969).

In the case under review, the records show that not only the complaint, but in fact the verdict and the judgment merely referred to the plaintiff's land without describing it in any way or stating its location. The verdict being so, the judgment based thereon was therefore certainly erroneous, as no writ of possession could properly be issued based upon it to put plaintiff in possession of the property. This amounted to a fatal error which demands a remand of the case.

In view of the foregoing facts and the laws cited, the judgment appealed from is reversed, and the action dismissed in its entirety without prejudice. Costs disallowed. And it is hereby so ordered.

*Judgment reversed; case dismissed without prejudice.*

