

Gulley v Gayflorzee [2016] LRSC 1 (22 January 2016)

Diannamae Gulley, Denise Gulley and Dorraine Gulley by and thru their natural

Guardian and Father, **Mr. Tommy Gulley** of the City of Monrovia , Liberia,

APPELLANTS Versus **The intestate Estate of the late Ethel Kaba Gayflorzee**

Represented by its Administrators, **Ericson S. Kaba and Kaba D. Akoiwala** and those occupying the premises located and situated at Old Road, Smythe Road, Sinkor commonly

Known as the Gayflorzee Building to be identified of the City of Monrovia, Liberia,

APPELLEES

APPEAL

Heard: November 3, 2014

Decided: January 22, 2016

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

In the 1970s, the National Housing and Savings Bank (NHSB) developed a mortgage loan scheme to enable Liberians own their own homes. Many Liberians applied for loans to build their homes, and after an assessment as to an applicant's ability to pay back the loan, certain instruments were required as collateral for approval of said loan. When approved, the borrower would sign a loan agreement, a promissory note, and would give collateral(s), preferably real property to secure the loan. (Citation)

The genesis of this case now before us, was that Mr. (Major) John K. Gayflorzee and Mrs. Ethel K. Gayflorzee, in 1978, applied to the National Housing and Savings Bank (NHSB) for a loan in the amount of Twenty Thousand United States Dollars (US\$20,000.00) for the purpose of constructing a building. It was understood that the loan would be paid within a period of twenty (20) years. As security for the loan, besides signing the required bank instruments including a promissory note and a loan agreement, the Gayflorzees presented to the NHSB a warranty deed in their names for the land upon which the building would be constructed. Thereafter, the National Housing and Savings Bank disbursed the loan amount of Twenty Thousand United States Dollars (US\$20,000.00) to the Glayflorzees.

The deed for the real property presented as collateral for the loan and which is located on the Smythe Road, Old Road, Sinkor, reads as follows: [Please see pdf file for warranty deed]

Under Chapter 5 of our Property Law, a mortgage of real property is a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. It gives power to the mortgagee to sell the mortgaged premises upon default being made in any condition of the mortgage, and foreclosed in the manner provided.

This transfer of the property by Mr. and Mrs. Gayflorzee, mortgagors, however, was much unlike the present practice where a mortgaged deed document is made and signed by the bank as mortgagee and the borrower as the mortgagor, and the original deed for the property is presented to the bank for future redemption by the payment of the debt. During the period, in 1978, when the loan was obtained, the practice in our jurisdiction inherited from the 1956 Mortgage Law was that the real property put up as collateral for a loan was conveyed to the mortgagee and redeemable upon full payment of the loan and upon which payment the bank would then re-convey the property to the borrower/mortgagor. On the other hand, upon failure of the borrower to pay the debt as due, the bank would resort to court's action to foreclose the mortgage in exercise of its rights under the mortgage agreement.

With this practice in vogue and though the mortgage law had been revised when Mr. and Mrs. Ethel K. Gayflorzee requested the loan in 1978, upon request of the loan from the NHSB, the lawyer required them to convey the mortgage deed to the Bank as collateral; thereby, having the parties transfer the property over to the NHSB, as is seen from the deed incorporated above in this Opinion. The deed presented to the Bank as collateral for the loan carried the names of the two mortgagors, John K. and Ethel K. Gayflorzee.

The failure of the borrowers, Mr. John and Ethel K. Gayflorzee, to settle their outstanding loan, in more than twenty (20) years, which with accumulation of interests on the principal amounted to Forty Two Thousand Six Hundred Seven and sixty-nine cents United States Dollars (US\$42,607.69), precipitated the NHSB to file a petition for foreclosure of mortgage with the Civil Law Court, Sixth Judicial Circuit for Montserrado County, on May 1, 2001.

At the time of the filing of the petition, Mrs. Ethel Kaba Gayflorzee had predeceased her husband, and it is not known from the records whether the NHSB knew that Mr. John Gayflorzee had died. The Bank named Mr. (Major) John K. Gayflorzee as the respondent in the petition and a summons was issued for service of the petition on him as co-mortgagor. The sheriff's returns showed that his whereabouts were unknown. After the second attempt to serve the summons, the sheriff reported that Mr. John Gayflorzee could

not be found within the bailiwick of the Republic of Liberia. Therefore, the National Housing and Savings Bank proceeded to serve the writ of summons by publication, consistent with our Civil Procedure Law, Section 3.40. The records reveal that the service of the summons by publication was followed and the summons published four (4) successive times over a period of one (1) month in the Inquirer Newspaper.

Upon the official returns of the Sheriff of the Civil Law Court relative to the service of the writ of summons by publication, the court proceeded to hear the petition for foreclosure *exparte*, and on July 31, 2001, ruled that the respondent, Mr. John K. Gayflorzee, was liable to the NHSB in the sum of US\$42,607.69. Judge William B. Metzger, Sr. who presided over the foreclosure proceedings made the following final ruling: "It is decreed by this court that the mortgage is hereby ordered foreclosed and the property so mortgaged is hereby exposed to public sale to be sold after thirty (30) days as of the date of this Court's final judgment to enable the petitioner recover its money from the respondent should the respondent fail to satisfy the court's final judgment within thirty (30) days."

Following the rendition of final judgment, the sheriff of the Civil Law Court, Major Charles B. Washington, on the 31st of July, 2001, placed a public notice of sale out for the foreclosed property, noting that on August 31, 2001, at 10:00 a.m. there would be a public sale of the property. The sheriff's report, thereafter, dated August 31, 2001, stated that the appellants were the highest bidder and the appellants who were minors at the time of the judicial purchase, by and through their father, Mr. Tommy Gulley, proceeded to buy and pay for the property for an amount of Forty Two Thousand, Six Hundred and Seven Hundred United States Dollars and sixty nine cents (US\$42,607.69).

The Sheriff thereafter issued a Sheriff's Deed in favor of the minor children, Dinnamae Gulley, Denise Gulley, Danny Gulley and Dorraine Gulley. On September 3, 2001, the deed was duly probated in the same September 2001, and registered according to law in Volume 3-2001, pages 286-288, of the records of Montserrado County.

The appeal now before us arise from an action of ejectment filed by Diannamae Gulley, Denise Gulley and Dorraine Gulley by and thru their natural guardian and father, Mr. Tommy Gulley, against the Intestate Estate of Ethel K. Gayflorzee, appellees, represented by its administrators, Ericson S. Kaba and Kaba D. Akoiwala, and all those occupying the mortgaged property. The administrators of the Intestate Estate has refused to turn over the foreclosed property to the appellants, stating that the property was part of their aunt, appellee's intestate estate and that the appellee was not summoned for the foreclosure proceedings.

A review of the records of this matter is that Mr. John K. Gayflorzee died prior to the foreclosure proceedings; both parties died leaving no issue of their bodies. Ericson Kaba and Kaba D. Akoiwala, nephews of Ethel K. Gayflorzee, upon the death of John K. Gayflorzee, had filed a petition in the Probate Court of Montserrado County for Letters of Administration. They averred in their petition to the Probate Court that the property was acquired by their aunt, Ethel K. Gayflorzee, before her marriage to Mr. John K. Gayflorzee, and that upon his death, with no children of the marriage, they, representatives of the brothers and sisters of Ethel Kaba Gayflorzee, were the proper party to administer their aunt's property instead of Mr. Gayflorzee's nephew and son who were administering the property after his death. Ericson Kaba and Kaba D. Akoiwala proffered a deed for the property showing a transfer of the property, in 1963, by Edwin J. Gabbidon to Ethel Kabbah Uso, the name of the Ethel Gayflorzee before her marriage to John K. Gayflorzee. The Monthly and Probate Court for Montserrado County, on granted the nephews of Mrs. Ethel K. Gayflorzee Letters of Administration to administer her intestate estate.

Accordingly, two (2) months after the final judgment and conclusion of the foreclosure proceedings with title to the foreclosed property having been passed on to the appellants, on September 3, 2001, the administrators of the intestate estate of the Ethel Kaba Gayflorzee, by and through their legal counsel wrote the Clerk of the Civil Law Court the following letter:

September 13, 2001

Madam Ellen Hall

Clerk of Court

Sixth Judicial Circuit Court

Montserrado County, Liberia

Madam Clerk:

We represent the legal interest of the intestate estate of the late Ethel C. Kaba Gayflorzee. We have just received information that an action for foreclosure of mortgage against John K. Gayflorzee has been filed by the National Housing and Savings Bank and that the Civil Law Court has ruled foreclosing said mortgage.

In view of the above, we are kindly requesting you to search the records in this case to find out whether or not a sheriff's deed has been issued relative to the sale of said property. We would be pleased were you to issue us a clerk's certificate if a sheriff's deed has not been issued.

Respectfully submitted,

Cllr. Ishmael P. Campbell

Executive Director

There is no response in the file to this letter written to the Clerk of the Civil Law Court, but what we see is a petition for a writ of prohibition filed by the appellees on the same date, that is September 13, 2001, before the then Chambers Justice, Justice M. Wilkins Wright. We have deemed it expedient to quote verbatim here below the appellee's petition for writ of prohibition:

PETITIONER'S PETITION

"Petitioner in the above entitled cause of action, most respectfully petition this Honourable Court for a writ of prohibition against respondents Judge Wynston O. Henries, Sixth Judicial Circuit Court, Charles B. Washington Esq., Sheriff for Montserrado County and His Deputy of the Sixth Judicial Circuit Court, and the National Housing and Savings Bank represented by its President, Charles E. Sirleaf for the following reasons to wit:

1. Petitioner, the intestate estate of the late Ethel Kaba is represented by its administrators, Ericson S. Kaba and Kaba D. Akoiwala. Please find attached copy of the letters of administration issued in favor of said administrators marked Exhibit P/1.
2. That during the lifetime of the late Ethel Kaba, she acquired several pieces of property (real) in the City of Monrovia and other parts of Liberia and that one of said properties was mortgaged as a security for the payment of a loan that she received from the National Housing and Savings Bank in the year 1978 in the amount of Twenty Thousand Liberian Dollars (LD20,000.00) for the construction of a building on said piece of property. Please find attached copy of the Deed marked exhibit P/2, and all relevant documents relating to the loan agreement marked in bulk as Exhibit P/3.
3. That the National Housing and Savings Bank required that Ethel Kaba's husband be a party to the loan agreement since indeed she was legally married and as such the documents relating to said loan agreement also carried the name of John K. Gayflorzee, husband of Ethel Kaba. Petitioner requests court to take judicial notice of Exhibit P/3.
4. That after the death of Ethel Kaba Gayflorzee, her estate was managed exclusively by her husband and that the petitioners were told that payment on the loan agreement had been made as per the schedule of payment.
5. That unfortunately, the late Ethel Kaba's husband, John K. Gayflorzee, died and his son and nephew took over the management of the Estate of the late Ethel Kaba to the

exclusion of Ethel Kaba's brothers and sisters. Petitioners say they also approached the son and nephew of the late John K. Gayflorzee as to the payment of the loan and they told petitioners that they have made payment as per the schedule of payments.

6. Petitioners say in order to verify these information, they also communicated with the bank to inquire as to the payments made thus far relative to the loan agreement and the bank promised to get back to them. Please find attached copy of ' the communication addressed to the bank marked Exhibit P/4.

7. Petitioners say while they were in the Probate Court yesterday, September 12, 2001, based on the complaint filed against the son and nephew of the late John K. Gayflorzee for the illegal management of the properties of the late Ethel Kaba without any authority, they were told that an action had been filed against John K.

Gayflorzee to foreclose the mortgage for the said loan for which Ethel Kaba's property was used as security. Petitioners say they approached the clerk of the Civil Law Court, Sixth Judicial Circuit and obtained copies of the records in the petition to foreclose mortgage. Please find copies of the petition and the ruling made by the judge presiding marked Exhibit P/5 in bulk.

8. That the petition to foreclose mortgage was filed against John K. Gayflorzee and not Ethel Kaba Gayflorzee who is the owner of the property which is the subject of the petition to foreclose mortgage. Petitioners say the intestate estate of the late Ethel Kaba not having its day in court as prescribed by law, said property cannot be sold.

9. That the Civil Law Court has no jurisdiction over the intestate estate of the late Ethel Kaba on ground that no writ of summons was issued and served on the Estate for the foreclosure of mortgage. Hence, the ruling made by the judge presiding cannot bind the estate of Ethel Kaba.

10. That the intestate estate of the late Ethel Kaba not being party to the proceeding and the subject property being part of the estate of Ethel Kaba, the property cannot be sold without the estate having a day in court.

11. That even though the authorities at the National Housing and Savings Bank had knowledge that the property is owned by the late Ethel Kaba and that she had died, yet, the bank proceeded to institute the action against John K. Gayflorzee without notice to the petitioners who earlier requested the bank for information on the payment of the loan.

12. That the judge proceeded with wrong rule by ordering the sale of the property of the late Ethel Kaba without her having a day in court when indeed it is clear that the subject property is owed by Ethel Kaba and not John Gayflorzee.

13. That prohibition will lie against the respondents herein to undo their illegal acts and as such, petitioners request the Honourable Court to mandate the respondents to stay all proceedings by not issuing and releasing a Sheriff's Deed to anyone since this has not been done, especially so when Ethel Kaba is not a party to said foreclosure proceedings.

14. Petitioners say the property of the intestate estate of the late Ethel Kaba has been auctioned by the Court as per the Ruling of the Judge who presided over the Sixth Judicial Circuit Court, Montserrado County, Liberia, and the estate of the late Ethel Kaba not being party to the proceeding, prohibition will lie to save the Estate from this irreparable injury.

16. That the petitioners in the action for foreclosure of mortgage perpetrated fraud on the court by instituting the action against John K. Gayflorzee when indeed the property used as security for the loan is solely owned by the late Ethel Kaba and that it is the late Ethel Kaba who acquired the loan.

WHEREFORE AND IN VIEW OF THE FOREGOING, petitioners pray Your Honor and this Honourable Court for the issuance of an alternative writ of prohibition against the respondents mandating respondents to stay all further proceedings against the Estate of Ethel Kaba, order that no sheriff's deed should be issued or released to anyone as a result of the outcome of the ruling made in the petition to foreclose the mortgage against John K. Gayflorzee until the hearing of the petition at a date and time to be appointed by Your Honour for the respondents to appear and show cause why, if any, they have, and why the peremptory writ should not lie and grant unto petitioners all that is just, proper and equitable under the circumstances."

On the same date, September 13, 2001, Justice Wright sent a mandate to stay all further proceedings in the foreclosure proceedings pending the outcome of a scheduled conference slated for September 25, 2001. Justice Wright however failed to further act on the petition though several citations were sent out for the parties to appear for conference. On June 13, 2002, ten (10) months after the final judgment of the Civil Law Court and the transfer of the property to the appellants, Justice Elwood L. Jangaba, then Justice in Chambers, sent a mandate to the court below, ordering the trial court to resume jurisdiction in the above entitled cause of action; proceed according to law and allow the respondent to file their returns. There is no evidence in the records that the

alternative writ was issued by Justice Jangaba, heard and a ruling made thereon. The mandate signed by Martha G. Bryant, Clerk of Supreme Court, reads:

"By directive of his Honor Elwood L. Jangaba, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction in the above entitled cause of action and proceed with the case in keeping with law allowing the respondents to file their returns to the petition."

It is worth noting here that the final ruling foreclosing the mortgage was made on July 31, 2001 and Justice Jangaba's mandate above to have the appellee file its returns to the petition for foreclosure was issued on June 13, 2002. Almost a year after the foreclosure proceedings was made final. Thereafter, in the file is a notice of assignment from the Civil Law Court dated July 17, 2002, ordering the parties to appear for the reading of the mandate on July 20, 2002. Though the record showed that both counsels signed for the assignment; nevertheless, there is no evidence in the record that the court had session for the reading of the said mandate on July 20, 2002. What we see from the records is another assignment dated January 28, 2009, sent out by Ellen Hall, the Clerk of the Civil Law Court, more than six (6) years later, and calling for reading of this Supreme Court's mandate on February 3, 2009. This meant reading of the Supreme Court's mandate about seven (7) years after the mandate was sent down, and five (5) years after the appellants had instituted an action of ejectment, on April 23, 2004, which is now before us on appeal, in which they complained against the appellee intestate estate and other occupants of the building, alleging that the administrators of the appellee estate and others were illegally occupying appellants' property which they had acquired from the court by legal purchase.

The administrators of the appellee after the reading of the Court's mandate on February 3, 2009, then filed their returns to the petition for foreclosure on February 12, 2009. We shall deal with the filing of the appellees' returns later on in this opinion.

Reverting to the appeal before us from the action of ejectment filed by the appellants, the nature of the case requires incorporation of the full text of the complaint and the answer in this opinion.

The appellants/plaintiffs complaint in the action of ejectment, filed April 23, 2004, reads:

"PLAINTIFFS' COMPLAINT"

"Plaintiff in the above entitled caused of action complain of the within named defendants in the manner and form as follows, to wit:

1. That the plaintiffs Dinnamae Gulley, Denise Gulley and Danny Gulley are the rightful and legitimate owners of the two storey, four-apartment building lying, located, situated and being on a parcel of land on Smythe Road, Old Road, Sinkor and commonly known as the Gayflorzee Building, with the following metes and bounds:

"Commencing at the Southwestern corner of Nancy Kaba's adjoining Eastern lot marked by a concrete monument and running parallel with it, North 45 degrees East 132 feet; thence running North 45 degrees West 82.5 feet parallel with a 30 feet alley; thence running South 45 degrees West 132 feet; thence running South 45 degrees East 82.5 feet to the point of beginning containing V.S acre of land and no more."

2. That plaintiffs acquired title, by honourable purchase, to the above described premises through a judicial sale conducted by the Civil Law Court, Sixth Judicial Circuit, Montserrado County on the 31st day of August, A.D. 2001, as evidenced by a Sheriffs Deed executed in their favour and which deed was duly probated on the 1st day of September, A.D. 2001, and registered according to law in Volume 3-2001 pages 286-288 of the Records of Montserrado County. Attached hereto is a photocopy of Plaintiffs' Deed marked as Plaintiffs' EXHIBIT "P/ 1" to form a cogent and integral part of plaintiffs' complaint.

3. That after the purchase of the above-mentioned property, plaintiffs then conducted their own investigation and confirmed to themselves that the defendants are illegally and wrongfully occupying plaintiffs' property. And so plaintiffs' counsel, Sherman & Sherman, Inc. wrote a letter dated February 4, 2002 to the defendants informing them that the property which they were occupying is owned by the plaintiffs and invited defendants to a conference for the purpose of enabling them determine the authority and/or basis, if any, pursuant to which the defendants are occupying said property. Attached hereto and marked as Plaintiffs' EXHIBIT "P/2" is a copy of said letter to form a cogent part of this complaint.

4. That in response to the letter mentioned in count three (3) above, Julius C. W. Kromah, Sr. wrote a letter to Counsellor G. Moses Paegar informing him that he is occupying the premises, subject of this action of ejectment upon the Strength of a Letter of Administration issued to the Ethel Kaba's family and he has since been paying rent to Ethel Kaba's family. Further, a meeting was held on February 14, 2003, between Sherman & Sherman, Inc., legal counsel for plaintiffs, and the administrators of the intestate estate of the late Ethel Kaba Gayflorzee along with their legal counsel, Counsellor Ishmael P. Campbell, during which Counsellor Campbell informed counsel for plaintiffs that the property, subject of this action of ejectment was owned by the intestate estate of the late Madam Ethel Kaba and therefore, the estate of Ethel Kaba and its

tenants will not vacate said premises as requested by plaintiffs. Attached hereto and marked as plaintiffs EXHIBIT "P/3" is a copy of said letter from Julius C. W. Kromah, sr., to form a cogent and integral part of this complaint.

5. Plaintiffs say that, since the exchange of the aforesaid communication and the conference of February 14, 2003, the defendants have failed, refused and neglected to vacate and surrender the said property to plaintiffs. Plaintiffs submit and say that the defendants' unlawful and illegal possession and occupancy of plaintiffs' property has caused plaintiffs financial loses as plaintiffs have foregone numerous opportunities to lease the building to several persons who have expressed interest in leasing the said property from plaintiffs.

6. Plaintiffs say that unless defendants are ousted and evicted from their property, they will continue to suffer incalculable inconveniences and enormous financial losses.

WHEREFORE AND IN VIEW OF THE FOREGOING, plaintiffs pray this Honourable Court for judgments as follows:

(a) A judgment of liable against defendants, evicting, ejecting and ousting them from plaintiffs' property and possessing plaintiffs of said property.

(b) A judgment of damages in an amount to be determined by the Jury, but sufficient to compensate plaintiffs for the wrongful and illegal withholding of plaintiffs' property.

(c) A judgment of costs against the defendants; and

(d) A judgment of any other and further relief as in such matter is made and provided by law."

Upon service by the court below of the appellants complaint above written, the appellees/defendants filed the following answer on June 10, 2004.

DEFENDANTS' ANSWER

"AND NOW COME, defendants in the above entitled cause of action, most respectfully pray Your Honour and this Honourable Court to deny and dismiss plaintiffs' baseless and unmeritorious complaint for the following legal and factual reasons to wit:

1. As to counts one (1) and two (2) of the complaint, defendants submit and say that said counts are fit subjects for dismissal in that the subject property does not belong to plaintiffs but instead it is the bonafide property of Ethel Kaba Uso and that they are the Administrators of said property as can more fully be seen from a copy of the deed attached and a copy of the Letters of Administration as Exhibit D/1 in bulk.

2. That further to counts one (1) and two (2) of the complaint, defendants aver that said property was purchased by the late Ethel Kaba in 1963 during her first marriage to the late Mr. Theophilus Uso, and that she had said property before she got remarried to John K. Gayflorzee in 1967 after her husband's death and therefore, said property remained hers and in no way can it be part of John K. Gayflorzee's estate.

3. Further to counts one (1) and two (2) of the complaint, defendants say they have no knowledge to form a belief that their property has been a subject of a judicial sale nor were they a party to the alleged petition for foreclosure of mortgage out of which the purported sale was conducted. Defendants further submit that when they heard about said proceedings, they filed a petition for a writ of prohibition on September 13, 2001 against the Judge of the Sixth Judicial Circuit Court, His Honour Wynston O. Henries; the Sheriff of said court and his Deputy and the National Housing and Savings Bank represented by its President, Charles E. Sir/eat, before Chambers Justice Micah W. Wright because the defendants who are the owners of the property did not have their day in Court. Please find attached copy of the Petition for a Writ of Prohibition marked Exhibit D/2.

4. Defendants say that a stay order was issued by the Chambers Justice staying all further proceedings in the matter pending a conference to hear the petition for a writ of prohibition which was assigned for September 25, 2001, and reassigned for October 2, 2001. Please find attached copy of the stay order and the citation for hearing on October 2, 2001 marked in bulk as Exhibit D/3 and that said hearings did not take place until later.

5. That as an outcome of the hearing in the prohibition proceedings, which was conducted by Chambers Justice Elwood L. Jangaba on June 13, 2002, a mandate was sent to His Honour Yussif D. Kaba, assigned Circuit Judge residing, to resume jurisdiction in the above entitled cause of action and proceed with the case in keeping with law allowing the respondents, now defendants, to file their returns to the petition for foreclosure of mortgage. Please find attached copies each of the Supreme Court mandate and the notice of assignment issued by the Civil Law Court for the reading of said mandate marked Exhibit D/4 in bulk.

6. As to count three (3), four (4) and five (5) of the complaint, defendants submit that said counts should be dismissed for the fact that the subject property belongs to Ethel Kaba-Uso and that the plaintiffs having derived their alleged title from an irregular judicial sale from a petition for foreclosure of mortgage of which defendants were not party and which proceedings were a subject of Prohibition. The plaintiffs cannot claim title to said property prohibition has undone the irregular proceedings conducted by the Court and mandated the Court to resume jurisdiction and continue the hearing for the foreclosure of mortgage, which matter is still pending before the very Civil Law Court undetermined.

7. Further to counts six (6) of defendant's answer, defendants submit and may indeed and in fact that their legal counsel at the time, Cllr. Ishmael P. Campbell, Informed Plaintiffs' Counsel, Cllr. G. Moses Paegar, that the property belongs to the late Ethel O. Kaba and not the National Housing and Savings Bank and that said proceedings for foreclosure of mortgage against John K. Gayflorzee were irregular and therefore the Justice in Chambers, following hearing in the prohibition proceedings filed by petitioner/defendants, petitioner/defendants were mandated to file their returns. Please find attached copy of said letter marked. Exhibit D/5.

8. That count six (6) of the complaint be crumble and be dismissed for the fact that plaintiffs are not suffering any incalculable inconveniences and enormous financial losses because the property does not belong to them (plaintiffs).

9. Defendants submit and contend that in the absence of the conclusion and final determination of the petition for foreclosure of mortgage, which is still pending before the Civil Law Court undetermined in the wake of the Supreme Court's mandate, ejectment will not lie against defendants, who are indeed and in fact the bonafide owners of the subject property.

10. Defendants deny all and singular the allegations contained in plaintiffs' complaint which are not a subject of special traversed in this Answer.

WHEREFORE AND IN VIEW OF THE FOREGOING, defendants pray Your Honour and this Honourable Court to deny and dismiss plaintiffs' baseless and unmeritorious complaint, rule all costs against plaintiffs and grant unto defendants all that is just, proper and legal."

The appellants filed their reply confirming their complaint. They reiterated their right to the disputed property and requested the court to rule the appellee to bare denial for filing their answer outside the ten day period allowed by statute.

The appellants in their reply confirmed that the mortgage property was pledged as collateral security and mortgage by John Glayflorzee and Ethel Kaba Gayflorzee to the NHSB for a loan amount of US\$20,000 and instead of issuing a mortgages deed as usually obtained in a mortgage transaction, the Gayflorzee's family executed, issued and delivered to the NHSB a warranty deed for the property and the Honorable Supreme Court has held that where a conveyance, assignment, or other instrument transferring an estate in a security for money or a mortgage the conveyance must be determined from the original intention of the parties, and the loan document taken together leads to one conclusion that the warranty deed was intended to operate as a mortgage; that Ethel K. Gayflorzee having conveyed the property along with her husband John Gayflorzee, the property no longer formed part of her

estate as alleged by the appellees; on the contrary, the appellants having purchased the said property in the form and manner and under the circumstances mentioned, they are the legal, lawful, legitimate and rightful owners of same; that the prohibition proceedings were instituted by the intestate estate of the late Ethel Kaba Gayflorzee subsequent to the enforcement of the judgment of this Court; that the Chambers Justice Jangaba's mandate allowing the appellees to file their returns was insusceptible to enforcement since in fact the judgment in the foreclosure proceedings filed against John Gayflorzee had already been rendered and enforced and the judgment of the court below enforced and there was nothing left to be done as the matter had been brought to finality.

Judge Yussif Kaba, who presided over the Civil Law Court when the ejectment action was filed, had the appellees' answer to the complaint stricken because filed outside the statutory period of ten (10) days and as provided for in the Civil Procedure Law, Section 9.2 sub-paragraph (3). Thereafter, Judge Peter W. Gbeneweleh, presiding over the Civil Law Court during its March Term, 2011, called the case and the appellants proceeded to produce evidence of their legal title to the property. After the appellants rested with evidence, the appellees filed a motion for judgment during trial.

The appellees motion for judgment during trial contended that the witnesses of the appellants had testified that the NHSB was the highest bidder and purchaser of the mortgaged property, and the appellants could not claimed to have acquired title to the property through said judicial sale. Besides, the sale, was contrary to the mandate of the of the Supreme Court as the Supreme Court's mandate provided that the court below resumed jurisdiction in the case and allow the appellees to file their returns to the petition; that the mandate being pending, any prior sale of the property was contrary to the Supreme Court's mandate and illegal; that the law in this jurisdiction provides that, before a party institutes an action of ejectment, he must have title to the property and the appellants had no title to the to the subject property as the NHSB was the purchaser of the property.

The Respondents resisted the motion for summary judgment, stating that the transaction was legitimate and authentic, supervised by the court presided over by Judge Metzger. That the appellants' witnesses, employees of the NHSB who testified, testified that the appellants went to the NHSB when he heard that the Bank had won the bid and the Bank took the appellants to the court and instructed the Sheriff to have the appellants pay the foreclosure amount and the deed issued to the appellants; that nowhere in the testimonies of the appellant's witnesses did they admit that the property was ever sold to the Bank.

Our Civil Procedure Law (1973), Section 26.2 provides:

"After the close of evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case, if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2).

The lower court's Judge granted the motion for judgment during trial. He ruled that the issue before the court for the determination of the motion for judgment during trial was whether or not the appellants had title and had the right to possession of the disputed property; that is, proof of the appellants title beyond questioning. He held that from the evidence, the NHSB won the bid and that the appellants did not participate in the bid, how then could the appellants have acquired a sheriff's deed. The second issue the Judge ruled on was the mandate of Justice Jangaba in 2002, which he said the Justice in Chambers mandate to the court below set the entire foreclosure proceedings aside and undid Judge Metzger's final judgment, including the sale. The institution of the ejectment action in 2004, the Judge held, was therefore irregular and illegal. He referred to the various Supreme Court's Opinions upholding the principle of law that the plaintiff in an ejectment action must have valid conveyance. In this case, he ruled there was no valid conveyance of the property as the entire foreclosure proceedings were set aside by the mandate of the Chambers Justice Jangaba in 2002, before the institution of the ejectment action in 2004.

The Judge therefore directed the Jury as follows:

THE COURT: Honorable forelady and members of the empaneled jury, the law says we should direct you when we grant a motion for judgment during trial which verdict you should bring. In this case, the plaintiff's do not have title to the property and the right to possess the property on grounds that the foreclosure proceedings that was filed at which time the property was sold was set aside by the Chambers Justice Elwood Jangaba in 2002 before the ejectment was filed. The foreclosure proceeding is still before this court because the respondent file a returns and this court has not heard the foreclosure proceeding to sell the property. That means, the first sale that was done having been set aside by the court is not before you except where there is a subsequent hearing and sale and the plaintiff bought the property then you can bring a verdict that it's for him. But there has been no

other hearing and subsequent sale since the first sale was cancelled, so they have no title. You may now go in your room of deliberation and bring a verdict consistent with our ruling and the law controlling."

Thereafter, the Jury brought a judgment of non-labile for the appellee and the appellants excepted to the judge's ruling and filed a 32 count bill of exceptions which mostly comprised narration of the facts of the case. For the purpose of review of the case on appeal, we shall consider counts 5, 12, 13, 14, 15, 21, 22, 24, 25, 26, 27, 29, 31 and 32, which raise legal issues adequate for our review of this matter:

5. Appellant/plaintiff says that at the time of the filing of this petition for foreclosure, Mrs. Ethel Kaba Gayflorzee had predeceased her husband, Major John K. Gayflorzee and therefore, because the property being jointly owned, the principle of survivorship was employed and as such, there was no need to have included the wife, Ethel Kaba Gayflorzee in the petition for foreclosure.

12 That the prime contention of the petitioners, (The intestate estate of the late Ethel Kaba Gayflorzee) was that the property, the subject of the foreclosure at the Civil Law Court did not belong to Major John K. Gayflorzee but rather, to the intestate estate of the late Ethel Kaba Uso and as such, her estate did not have its day in Court. Based upon this Petition filed as aforesaid, the Chambers Justice placed a stay order to the proceedings when in fact the court had lost jurisdiction since it had by then concluded its judgment.

13. Appellant/plaintiff says that the Judge below had nothing to be stayed since the transaction had been legally conducted. Then on June 13, 2002, about eleven (11) months after the final judgment of the Civil Law Court into the foreclosure proceedings, Justice Elwood L. Jangaba, issued a mandate to the Court below, mandating it to resume jurisdiction in the above entitled cause of action; proceed according to law and allow the respondent to file their returns.

14. That because appellant/plaintiff says that not only was a mandate of Justice Elwood Jangaba issued ordering the judge below to resume jurisdiction and allow the appellees/respondents to file their returns but that there was no indication that a conference was ever had nor a writ was ever issued by the Chambers Justice to afford an opportunity to the appellant/petitioner in the prohibition proceedings to except to and announced an appeal to the full bench.

15. That since the issuance of Justice Jangaba's mandate of June 13, 2002, and ironically so, the petitioner who had petitioned the Justice in Chambers alleging that they never had their day in court, never took any further step into filing their returns within statutory period of ten (10) days, but rather they, according to the records in the foreclosure File, filed a

returns on February 6, 2009, that is, seven (7) years from the time the mandate of the Chambers Justice was rendered, and eleven (11) years since the Civil Law Court entered its final judgment.

21. This Motion was heard and granted by the court. The trial Judge assigned reasons for sustaining the appellees/defendants' motion of May 17, 2011, when he said that indeed, based upon the mandate of Justice Elwood Jangaba in 2002 mandating that the court below should resume jurisdiction, proceed according to law and allow the appellees/respondents to file their Returns, meant that the entire petition for foreclosure had been set aside and that accordingly, the plaintiff in the ejectment action had no title to the property until a hearing could be had by allowing the respondent participate in the foreclosure proceedings. Attached as A/8 is the judgment from the motion for judgment during trial dated May 17, 2011.

22. That because during testimonies by appellant/plaintiff's witnesses, they stated that the bidder in the foreclosure proceedings was the National Housing & Savings Bank but instead of the Bank conveying title to the appellant/plaintiff, it was the court. This misunderstanding was immediately clarified by reference to the court's file in the foreclosure proceedings which clearly shows that indeed it was Mr. Tom Gulley, the father and Guardian of the four (4) minor children who participated in the bidding proceedings, and not the bank. As evidence of his participation, he was given a cash receipt for the amount of US\$45,000.00 under the signature of the sheriff of the Court, Major Washington, Esq. Attached as A/9 is a copy of the sheriff's receipt for Your Honors' easy reference.

24. Appellant/plaintiff contends and maintains that the case that was being heard was that of an ejectment. The petition for foreclosure was decided and concluded since July 2001. While it is true that the Chambers Justice had mandated that the court below should resume jurisdiction and proceed according to law and allow the petitioners/respondents in the foreclosure proceedings to file their returns, technically and legally so, there was nothing before the court to be done or undone and therefore Prohibition could not lie to undo that which was legally done free of any semblance of fraud or wrongdoing by the judge and the Court of the Civil Law Court. Moreover, a mandate ordering a court below to stay further proceedings suggests that the case remains in status quo ante. Or at the stage where the case had ended, meaning that since the foreclosure proceedings had been concluded, the mandate could not set aside the final judgment.

25. Appellant/plaintiff says that His Honor Judge Peter W. Gbeneweleh committed a reversible error when he interpreted the Judgment to mean that the mandate set aside

the final judgment of the ruling of the 2001 rather than taking due note that the case having been concluded, the mandate put the entire process at status quo ante.

26. That appellant/plaintiff says that by the interpretation of the mandate by Judge Peter W. Gbeneweleh to set aside a valid judgment that was rendered by his predecessor without any evidence of fraud and/or wrongdoing, violates the right of the appellant in that he is a holder in due course who acquired the property for value, without notice of any encumbrance and upon the payment of just consideration, hence, the court is under legal obligation to honor the judicial act performed by its predecessor, Judge William Metzger.

27. That the appellant/plaintiff having acted in accordance with the sheriff's notice of sales for property that was foreclosed by the Civil Law Court and additionally, the very court having received the sum of money of United States Forty Five Thousand (US\$45,000.00) for the property, your honors are under legal duty to protect the rights of the innocent purchaser and render judgment not only by reversing the judgment of Judge Peter W. Gbeneweleh, but also, to set aside the mandate of Justice Elwood L. Jangaba and enter final judgment that the judge of the Civil Law Court should have rendered.

29. That because appellant/plaintiff says that in the instant case, there are all indications that the appellees/petitioners in the prohibition proceedings were within the bailiwick of the City of Monrovia when the foreclosure proceedings was being published in the Inquirer Newspaper in four (4) successive times but they neglected to participate in the process. Therefore, they elected to take a short cut rather than to proceed upon a bill of error, they opted for a prohibition which this court should take judicial notice of.

31. That appellant's/plaintiffs says that he crave the indulgence of this Honorable Court to reverse Judge Peter W. Gbeneweleh's ruling to ensure that justice and equity will prevail in his favor to protect the continuity of decisions of not only the Civil Law Court but other courts performing their judicial functions.

32. That the appellees/defendants have continued to have appellant/plaintiff's two storey building, comprising of more than four (4) apartments leased/rented and have accrued huge sums of money, some of which they have used to employed the services of counsel to fight against the appellant/plaintiff, for which appellant/plaintiff prays for a judgment in the full sums of United States Dollars two hundred thousand (US\$200,000.00) for their unauthorized and illegal withholding of appellant/plaintiff's property, counsel fees in the full sums of United States Dollars of Ten Thousand and rule all costs arising out of these proceedings against the appellees/defendants.

Wherefore and in view of the foregoing facts and circumstances, appellant/plaintiff prays that Your Honor, kindly approve his Bill of Exceptions so that the Honorable the Supreme Court Sitting in its October Term, A. D. 2011, may

- a. grant relief to the appellant/plaintiff by reversing and set aside the mandate of Justice Elwood L. Jangaba issued in 2002; and conduct final judgment in these proceedings;
- b. that your honors reverse, amend and modify Judge Peter W. Gbeneweleh's Ruling of March 20, 2011 holding the appellees/defendants not liable to the appellant/plaintiff;
- c. award unto the Appellant/Plaintiff the just amount of United States Dollars Two Hundred Thousand (US\$200,000.00) as damages sustained as a consequence of the more than eleven (11) years of the appellees/defendants with-holding of his legally acquired property as well as counsel fees and rule all costs arising out of these proceedings against the appellees/defendants.

And grant unto the appellant/plaintiff any and all other relief as Your Honors and this Honorable court may deem just, legal and equitable; appellant/plaintiff so prays."

Issues rising from these exceptions and cardinal to the determination of this matter are:

1. Where Ethel K. Gayflorzee reissued her deed for land in the name of both she and her husband and subsequently transferred said deed to the Bank for a loan, when she dies is her husband, John K Gayflorzee, the proper party to be summoned in the foreclosure proceeding?
2. Whether the mortgage property under the facts and circumstances of this case could be deemed a part of the intestate estate of Ethel K. Gayflorzee.
3. Whether Justice Jangaba's order was proper and where he failed to issue the alternative writ, hear and decide the matter before sending a mandate to the court below?
4. Under the facts and circumstances, could prohibition have lie?

The first issue of whether the writ of summons of the foreclosure proceedings was properly designated brings us to a review of the transaction between Mr. John and Mrs. Ethel K. Gayflorzee the mortgagors and the National Housing and Savings Bank (NHSB) the mortgagee and the nature of the deed executed by the mortgagors in favor of the NHSB in 1978.

This conveyance of real property, absolute in form, was the practice in vogue in our jurisdiction at the time the loan was taken and was required in equity as mortgage intended as security for debt to be redeemed upon performance of the conditions or

stipulations manifested by a separate instrument executed as part of the same transaction thereof. At the time of the conveyance, where the parties entered to a mortgage agreement entered an agreement that the deed was to serve as a mortgage to be voided if a certain debt is paid, upon failure to pay or meet up with the conditions, a foreclosure proceedings was deemed the appropriate course of action to grant the mortgagor his/her day in court. Until foreclosure, the mortgagor continued to be the real owner of the mortgaged property in fee though the property had been conveyed to the mortgagee. *Saunders v. Gant*, 3 LLR 152 (1930); *Brown v. Settro* 8 LLR, 286, 293 (1994).

Mr. and Mrs. Ethel K. Gayflorzee, as previously stated, defaulted on their loan payment taken from the NHSB in 1978. In fact, one of the witnesses, from the NHSB testified that Mr. John and Ethel Gayflorzee were one of the Bank's most delinquent customers. After twenty three (23) years without payment of the loan, the Bank proceeded to foreclose on the deeded property for an outstanding amount of US\$42,607.69, naming the co-mortgagor, John K. Gayflorzee as the lone respondent since the co-mortgagor, Ethel his wife, had died. The representatives of Ethel K. Gayflorzee's intestate estate, however, alleged that the loan was intended for Ethel K. Gayflorzee who wanted to construct on her property which she had acquired before her marriage to Mr. John K. Gayflorzee; that the law at the time required that her husband joined her in taking the loan. She therefore had her husband signed the loan papers along with her. To substantiate their claim that she was the sole owner of the property, they proffered a deed for the mortgaged property in the name of Ethel Kabbah Uso, Ethel Gayflorzee's name before her marriage to John K. Gayflorzee. The appellee contend that both John and Ethel Gayflorzee having died, the summons should have been directed to Ethel K. Gayflorzee's estate, sole owner of the property and not to Mr. John Gayflorzee; that the summons having been directed solely to Mr. John Gayflorzee, the foreclosure was fraudulent and did not give the appellee its day in court.

The appellants contended in its bill of exceptions that the appellee's contention that the estate did not have its day in court is not legally tenable since the deed as presented to the Bank was a deed in the name of both John K. Gayflorzee and Ethel Gayflorzee, evidencing joint property, and where Ethel Gayflorzee died before her husband the property being jointly owned, the principle of survivorship was employed and as such there was no need to have included Ethel Gayflorzee's estate as defendant in the petition for foreclosure.

The transaction of the loan with the NHSB must be drawn from the intent of the parties and from the supporting documents. In this case, the intent of the parties to take the loan must be deduced from the loan documentations. Did the co-mortgagor, Ethel K. Gayflorzee,

intend to have her husband John K. Gayflorzee as co-mortgagor with both of them acting jointly in the taking of the loan, and by her reissuance of the deed did she intend that they hold the property jointly?

A review of the loan documents shows that the promissory note to the NHSB was signed by Mr. John K. Gayflorzee as the borrower and Ethel Gayflorzee as the co-maker, and all other documents show him signing first followed by his wife, Ethel Kaba Gayflorzee, which is an indication to this Court that John Gayflorzee was the principal borrower and not Ethel Gayflorzee. If John Gayflorzee was simply called in to guarantee the loan on behalf of his wife as alleged by the appellees, he would have signed as guarantor or surety of the loan and not as a one of the borrowers or co-mortgagors. Signing the document with his wife, Ethel K. Gayflorzee as the co-maker, as is seen on the loan documents, indicates that the loan was taken jointly. Black's Law Dictionary 8th Edition defines co-maker as, "one who participates jointly in borrowing money on a promissory note; especially one who acts as surety under a note if the maker defaults". If anything then, Ethel K. Gafloyzee was the surety of the loan and not the reverse.

A further review of the records shows an affidavit of clarity made by Mrs. Ethel Gayflorzee, and it reads:

"REPUBLIC OF LIBERIA) OFFICE OF THE JUSTICE OF THE PEACE,
MONTSERRADO COUNTY
MONTSERRADO COUNTY) REPUBLIC OF LIBERIA

IN RE: AFFIDAVIT OF CLARIFICATION EXECUTED BY MRS. ETHEL KABAH
GYFLORZEE OF THE CITY OF MONROVIA

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, A DULY QUALIFIED JUSTICE OF THE PEACE for Montserrado County, at my office in the City of Monrovia, Mrs. Ethel Kabah Gayflorzee, made OATH according to law that she is the lawful owner of Warranty Deed from Edwin J. Gabbidon to Ethel Kabah Uso, Lot No. Block No. three (3) situated at Sinkor, Old Congo Town Area, Montserrado County.

Mrs. Ethel Kabah Gayflorzee further says, that at the time she purchased this piece of property, she was married to Mr. Uso, but later got her divorce from him and married to Major John K. Gayflorzee.

Mrs. Ethel Kabah Gayflorzee further appeared, made OATH according to law and says that she has come before me a duly qualified Justice of the peace saying that she wants for her husband Gayflorzee and herself to transact business in the name of the deed purchased from Edwin J. Gabbidon to her, that is to say, to have it given to any bank(s) for certain amount of money, etc., etc.[emphasis ours]

Because the said deed was legalized through the Monthly and Probate Court at the time it was probated and registered and has not been cancelled, it can be accepted into any agreement.

And that all singular the allegations contained herein this Affidavit are true and correct to the best of her knowledge and belief.

Sworn and Subscribe to before me, this 28th, day of June, A.D. 1978.

Susanna E. Williams

JUSTICE OF THE PEACE,
MONTSERRADO COUNTY

R.L.

Mrs. Ethel Kabah Gayflorzee

AFFIANT/DEPONENT"

Subsection 3.4 (2) of our Domestic Relations (1973) states:

(2) Power as though married. A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and make contracts in respect thereof with any person, including her husband, and to carry on any business, trade or acquisition, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried.

Mrs. Ethel Gayflorzee did own the property originally and legally could have contracted the loan without the intervention of her husband. Our Civil Procedure Law (1973), Section 5.14 "Married Woman" states when a husband is required to be joined with his wife. It reads:

"When a right of action accrues in favor of or against a married woman, her husband must be joined with her except when the action is between her and her husband or when she sues or issued in connection with a business enterprise in which she is engaging under her own name in accordance with the provision of the Domestic relation relations law."

In the case *Dennis v. Reffell*, 9 LLR 26, (1945) the Court stated that the appellee Helen Reffell could convey property of which she was possessed otherwise than through her husband. This principle based on the constitutional right to own property and to contract also applies to Ethel Gayflozee who could have arranged and entered the mortgage arrangement with the NHSB in her own name, particularly as she owned the property before they were married and did not need her husband to join her in conveying the property to the Bank. At most, he could have stood as a guarantor if he so desired.

What we have gathered from the records before us is that during her marriage to Mr. John K. Gayflorzee, Ethel Gayflorzee and John K Gayflorzee, the mortgagors, jointly agreed to construct on Ethel's property and John Gayflorzee instigated the loan, whereupon Ethel then proceeded to have a deed made out in both their names and transferred to the NHSB as collateral. Subsection 3.3 of our Domestic Relations provides that:

"Spouses may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entirety provided that in the case of tenants by the entirety partition may only be maintained when both parties consent thereto".

The entire loan documents with the NHSB, the promissory note, the construction agreement, and the deed presented as collateral were all substantial evidence of the intent of Ethel K. Gayflorzee that she and John jointly own the property and obtained a loan from the NHSB to develop said property. There is absolutely no dispute that the Bank granted the loan to both husband and wife and that the husband did not act as surety, as the appellee alleged, but as principal applicant for the loan. Where Ethel K. Gayflorzee died before her husband, under the principle of survivorship in property law, John K. Gayflorzee was the only and proper person to name in the summons for foreclosure of the mortgage. The contention of the appellees that the bank should have named Ethel K. Gayflozee in the summons and by not doing so committed fraud is not tenable under the law.

Both John and Ethel Gayflorzee having taken a loan from the NHSB and having presented a deed in both their names as collateral, evidencing joint ownership of the property, the NHSB being aware that Mrs. Ethel Gayflorzee was dead and unaware of Mr. Gayflorzee's death, it rightly proceeded to name Mr. Gayflorzee, the co-mortgagor, as the respondent in the mortgage foreclosure proceedings. We fail to see how the administrators of the Ethel K.

Gayflorzee estate could contend that fraud was committed in the foreclosure proceedings when the NHSB had the summons published and carried in one of the most popular local dailies, the Inquirer Newspaper, and anyone claiming interest in the property could have made application to the court to intervene.

The appellee contention that the transaction was fraudulent since the deed should have been transfer directly from the NHSB and not from the sheriff is irrelevant since the Bank which won the bid did admit that it approached the sheriff to have the deed issued to the appellants who was interested in purchasing the property for the bid amount. Title 29, Chapter 5, Section 63 allows for the mortgagee (NHSB), its assigns or legal representatives to purchase the foreclosed property.

This court has said that in order to constitute fraud, the occurrence of some artifice, deception, or cheating must be proved. *Nassre and Saleby Elias Bros.*, 5 LLR 108 (1936); *Monrovia Construction Corp. v. Wazimi*, 23 LLR 58, 65 (1974). This Court is not convinced that fraud was committed by the NHSB when it proceeded to foreclose on the mortgage and named only John K. Gayflorzee in its petition and court summons as respondent and having won the bid on the mortgage property and was approached by the appellants for purchase of the property instructed that the Sheriff issue the deed to the appellants.

This raises the issue of the appellees standing to contest the foreclosure proceedings; whether the mortgaged property under the facts and circumstances formed part of the appellee's estate so as to give the administrators of the intestate estate the standing to contest the foreclosure proceedings.

The reissuance of the deed by Ethel K. Gayflorzee in the name of she and her husband created a joint tenancy in the property. *The Court in the Hill and Hill v. Parker*, 13 LLR 556, 560 (1960) held that to create a joint tenancy, there must co-exist four unities: (1) unity of interest; (2) unity of title; (3) unity of time; (4) unity of possession; that is, each of the owners must have one and the same interest, conveyed by the same act or instrument, to vest at one and same time, except in cases of uses and executor devises; and each must have the entire possession of every parcel of the property held in joint tenancy as well of the whole. Where a joint tenancy exists, the survivors, on the death of one of the joint tenants, take the whole estate free from any charges on the property made by the deceased tenant; and on the death of the last survivor, the whole goes to his heirs or personal representatives *Sarnor v. Sherman*; March Term, A.D. 2012

This means then that after Ethel K. Gayflorzee died, John K. Gayflorzee, the co-grantor of the deed to the NHSB was obligated to pay off the loan amount as co-mortgagor and upon completion of the loan payment, the Bank was under an obligation to conveyed the property

back to him as the surviving spouse; in which case, upon his death, the property would have gone to his heirs or personal representatives.

This court has held that a foreclosure proceedings is void where the mortgaged property is sold under color of sham and without due notice to the mortgagor, (*Monrovia Auto Service v Richards*, 17 LLR 289 (1966)). We reviewed the records in this matter to ascertain whether the foreclosure under which the appellants claim title to the property was done in conformity with law, equity and justice and we are satisfied from a review of the records that the foreclosure proceedings was carried out in conformity with our Property Law, Title 29, Chapter 5: Sections 60-66, which provides steps for a legally effective foreclosure of mortgage of real property.

As to the issue of Justice Jangaba's mandate to the court below, the judge presiding over the ejectment action, His Honour Peter W. Gbeneweleh, stated that the mandate of the Justice in Chambers, Justice Jangaba undid what Judge Metzger had done and therefore it set aside the entire foreclosure proceedings including the foreclosure sale in 2001.

This Court has held that all judges of inferior courts must obey the mandate of the Supreme Court, as to disobey the Court's mandate is contumacious. In this regard, Judge Gbeneweleh could not have proceeded to hear the ejectment action in face of the pending mandate of the Supreme Court in the foreclosure proceedings having been brought to his attention. However, this Court has the authority en banc to review an act or ruling of a Justice in Chambers brought up to it on appeal (*Tropical Produce Limited and Johnson Kaba and Kollie*, 40LLR 618, 622 (2001); *Sipo Logging International v. Justice Kpomakpor and Timber Investment and Management*, 34LLR 809, 815(1988)).

This Court must therefore settle the issue raised, whether Justice Jangaba's mandate sent to the trial court was proper and enforceable under the circumstances where he failed to issue the alternative writ, hear and decide the matter, and thereby gave the appellant an opportunity to appeal his decision.

There is no evidence in the file of this case that a peremptory writ was issued by the Chambers Justice Jangaba granting the petition for a writ of prohibition to afford the appellants the opportunity to except to and announce an appeal from his ruling thereon to the full bench. The Supreme Court has held that it is the issuance of the alternative writ that formally brings the respondents under the jurisdiction of the Court and enables the Court to exercise jurisdiction and to issue orders. Jurisdiction, this Court has said is acquired not by the filing of the petition but rather by the issuance and service of

the writ. *Liberia-American Insurance Corporation v. Wright and A. Hejazl Corporation*, 37 LLR 404 (1994).

This issue of a Chamber Justice sending a mandate down without first issuing the writ was addressed in the case *Bassam H. Jawhary vs. His Honor, Kabineh M. Ja'neh et al.*, Supreme Court Opinion, October Term 2012. Also in the case *In re Ibrahim et al. v. Paye and Hejazi*, Supreme Court Opinion, March Term 2006, this Court opined that the judge in allowing the intervenors/appellants to proceed with the appeal without citing the parties and conducting a hearing, thereby affording an opportunity to appeal from his ruling, meant that his mandate was erroneously issued and void ab initio and therefore with no effect.

The reading of the Chambers Justice's mandate which was irregularly issued was therefore an exercise in futility as the Justice's order was improper and contrary to the holdings of this Court, and therefore unenforceable.

The Court therefore reverses said mandate ordered issued to the court below, upholding the foreclosure proceedings and the sale of the property to the appellants.

This begs the question whether under the facts and circumstances prohibition would lie? We have said that Judge Metzger did not proceed by the wrong rule in the handling of the foreclosure proceedings, and that the appellee had no standing to contest the foreclosure proceeding since the property was not part of the appellee's intestate estate but more importantly, the final judgment of the foreclosure proceedings was rendered and the property disposed of, so there was no matter before the court below to be prohibited. While it is true that the Chambers Justice did mandate the trial court to resume jurisdiction and allow the appellee to file their returns in the foreclosure proceedings, technically and legally, there was nothing before the court to be done or undone and therefore prohibition could not have lie to undo that which was legally done free of any semblance of fraud or wrongdoing by the judge of the Civil Law Court since this Court has held, that prohibition will riot be granted where the act complained of has already been done, completed or performed. *Doe v. Ash-Thompson*, 33 LLR 251 (1985). Syl. 24 (1985) *Brown-Bull v. Reconciliation Commission*, Supreme Court Opinion, October Term, 2008.

In light of all that we have said, the Court holds that appellants are entitled to the possession of the mortgage property where the mortgagors, John and Ethel K. Gayflorzee, owners of the property, failed to liquidate their loan, and the NHSB in a proper foreclosure proceeding foreclosed on the mortgaged property. The NHSB instruction to the sheriff to convey the mortgage deed to the appellants in consideration of the payment of the mortgage amount did not make the transaction fraudulent.

This Court has held that any person(s) rightfully entitled to possession of real property may bring an action of ejectment against any person wrongfully withholding possession thereof. *Hne v. Republic*, 33LLR 235, 240-241. (1985); *Testate Estate of Charles D. Sherman v. Nimely*, 41 LLR 215, 219 (2002); *Gbartoe et al. v. Doe*, 41 LLR, 117 (2002).

The appellants having proven to this Court that they are the rightful owners of the property, their action to eject the appellees from the property will lie.

This brings us to the issue of the appellants' prayer for damages for the wrongful withholding of the property by the appellees. The appellants pray that the Court award them general damages in an amount of United States Dollars Two Hundred Thousand (US\$200,000.00) as a consequence of the appellees wrongful withholding of the property for eleven (11) years, as well as counsellor fees.

In this case, the appellants having the right of possession to the property as stipulated herein, the law provides that they may demand damages for wrongful detention of the real property, as well as delivery of possession. 1LCLR 1973, 62.3; *Gbartoe et al. v. Doe*, 41 LLR 117 (2002). However, the holdings extant under our jurisdiction is that an party in an ejectment action appellants who claims a certain amount as general damages, said amount falls within the category of special damages, and the proof thereof is controlled by the rule of evidence governing special damages, *Sinkor Supermarket v. Ville*, 31 LLR 286, 290 (1983); *Firestone Liberia, Inc. v. Kollie*, Supreme Court's Opinion, March Term, 2012; *Lone Star Cell Corp. v. Wright*, Supreme Court's Opinion, March Term, 2014. Where the appellants' claim for damages is specifically made for United States Dollars, Two Hundred Thousand (VS\$200,000.00), appellee must present evidence at trial warranting the granting of such an award.

In view of all that has been said, and the Court's holding that the appellants are entitled to the mortgaged property, ejectment would lie. That our law providing for damages for wrongful withholding of a property, the appellants are at liberty to pursue the requisite action for damages if they so desire.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the court below is reversed; the appellees are ordered ousted, evicted and ejected and the appellants placed in possession of the disputed property.

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 this judgment. AND IT IS HEREBY SO ORDERED. Costs are ruled against the appellees.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR MILTON D.TAYLOR OF THE LAW OFFICES OF THE TAYLOR & ASSOCIATES, INC., APPEARED FOR THE APPELLANTS. COUNSELLORS DEXTER TIAH AND IDRIS S. SHERIFF OF THE HENRIES LAW FIRM APPEARED FOR THE APPELLEES.