

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT,  
CRIMINAL ASSIZES "B", MONTSERRADO COUNTY.

Heard: May 16, 1985. Decided: June 21, 1985.

1. Under the revised Penal Law, a person commits criminal trespass when he enters and surreptitiously remains in any building or occupied structure, or separately secures or occupies portion thereof with knowledge that he is not licensed or privileges to do so.
2. Knowledge of restriction, constituting an element of criminal trespass, may be communicated to the actor, or it may be given a postal as prescribed by law, or reasonably placed as to be seen by intruders, or it may simply be a fencing designed to exclude intruders.
3. Criminal trespass is not a felony; it is merely a misdemeanor.
4. The offense of criminal trespass is committed when a person, without effective consent, enters or remains on property or in the building of another, knowingly or intentionally or recklessly, when he had notice to depart but failed to do so.
5. Criminal trespass cannot be committed by one who claims title or ownership to the land.
6. The 1976 Penal Law was not intended to evict persons claiming rights adverse to the ownership of realty by other persons; nor was it intended to settle conflicting claims to ownership of realty.
7. A person cannot be charged and tried for an offense under a repealed statute when the offense was committed subsequent to the repealed statute.
8. Criminal trespass is not the proper cause of action opened to one whose land is encroached upon by another who claims title or ownership thereto.
9. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Hence, it may be brought where title and possession to real property are in dispute.
10. Prior notice is not necessary to commence an ejectment action against a person if (a) there is unlawful dispossession, ouster, trespass or tortuous entry by a tenant at suffrage or by a mere occupant without color or right or title after expiration of the term of a lease or of rightful or permissible possession; or (b) there is a wrongful entry or

possession of a mere trespasser or intruder.

11. While a charge of criminal trespass could have the miscreant fined and/or imprisoned, it cannot demarcate the rights of the rival claimants to real property; and a conviction of the offense leaves the disputed land ownership unresolved.

The appellant appealed from a conviction of criminal trespass by the Circuit Court for the First Judicial Circuit, Criminal Assizes "B", Montserrado County. The appellant, Joseph Hne, and the private prosecutor, John S. Tamba, were both occupiers of a parcel of land, the ownership of which was claimed by one Williette Coleman and to whom they paid rent. When appellant suspected that the land in question was public land, he ceased making payment to Ms. Coleman, and instead began to deposit the rent into the government revenues. The private prosecutor continued to pay rent to Ms. Coleman, who eventually deeded to the private prosecutor the property occupied by him. Thereafter, when a survey of the property showed that a part of appellant's structure was on the parcel sold to the private prosecutor, the latter requested the former to remove the part of the structure claimed to be on the private prosecutor's property. When the appellant refused to comply with the request, the matter was reported to the office of the County Attorney for Montserrado County. Thereafter, the appellant was charged, under the provisions of the 1969 Penal Law, with criminal trespass and convicted.

On appeal to the Supreme Court, two issues were presented: Whether the appellant could be convicted under the 1969 Penal Code which had been repealed at the time of the commission of the act complained of, and whether criminal trespass was the appropriate remedy for the resolution of disputed claims to real property. The Court answered in the negative to both questions. The Court held as to the first issue that a person could not be charged or convicted under a statute which had been repealed and replaced with a new statute prior to the commission of the act complained of by the private prosecutor. The Court opined that as the 1969 statute had already been repealed and replaced by the new 1976 Penal Law when the alleged act was committed, a conviction under the previous law was illegal and therefore null and void.

In addition, the Court observed that even if the appellant had been charged under the 1976 Penal Code, the action was the wrong remedy to settle or determine disputed claims to real property, the correct action being one for ejectment. Criminal trespass, the Court said, could not be committed by a person who claimed title, ownership or the right of possession to land. The Penal statute was not intended to evict or oust persons claiming rights in real

property adverse to the title or owner-ship claimed by other persons. It was error, the Court said, to charge and convict the appellant under the circumstances. The Court therefore reversed the judgment of the trial court and ordered the appellants discharged.

*George Tulay* appeared for the appellant. *S. Momolu Kiannu* of the Ministry of Justice appeared for the appellee.

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

Two citizens, Joseph Hne, now appellant, and John S. Tamba, now private prosecutor, lived on a parcel of land in Plumkor, Sinkor, since 1965. The land on which they so lived belonged to one Williette Coleman to whom they paid rent. Both parties developed the portion of the land occupied by them, built houses thereon and continued to regard said Williette Coleman as their landlady.

Subsequently, however, appellant discovered that the land occupied by him and John S. Tamba (the private prosecutor) was in fact public land. Having ascertained that fact, appellant began paying for it into government revenue as is required of public lands. The private prosecutor, John S. Tamba, on the other hand, still continued to recognize Williette Coleman as his landlady, and later purchased from her the portion of the land he occupied, obtaining from her a warranty deed therefor. Mr. Tamba then went ahead to have his portion of said land surveyed and demarcated, at which time it was allegedly discovered that appellant's kitchen and toilet had been built thereon. Mr. Tamba asked appellant to vacate his land but appellant refused to recognize the deed issued by Williette Coleman. Appellant also refused to demolish his structures and stopped the private prosecutor's workers from getting on what appellant considered his portion of the land which Mr. Tamba now claimed for himself.

At this juncture the private prosecutor, John S. Tamba, proceeded to the office of the county attorney for Montserrado County where, in 1983, he lodged a complaint against the appellant. Thus in 1983, an indictment was brought against appellant, charging him with the offense of criminal trespass. The indictment was based upon the 1969 criminal statute which had been repealed in 1976. The 1969 criminal statute, under which appellant was indicted reads:

"Criminal Trespass: Any person who shall enter upon, occupy and improve real property not having fee simple title thereto, or permission of the owner shall be guilty of a felony

and shall upon conviction in the circuit court be punishable by imprisonment for a period of not less than one, nor more than three years."

The 1976 statute which was in force when appellant was tried essentially stipulates that a person commits criminal trespass when he enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof with knowledge that he is not licensed or privileged to do so. Knowledge of such restrictions as constitute criminal trespass may personally be communicated to the actor, or it may be given a postal as prescribed by law, or reasonably placed as to be seen by intruders, or it may simply be a fencing designed to exclude intruders. Under this statute criminal trespass is not a felony, but merely a misdemeanor. Penal Laws, Rev. Code, 26: 15.21 (1) and (2).

Predicated upon the former statute of 1969, appellant was tried and convicted of the crime of criminal trespass and sentenced to three months imprisonment, whereupon he announced and perfected this appeal.

The issues presented by these facts are: (1) Whether or not criminal trespass can be committed under our statute by one who claims ownership to the land; (2) Whether or not criminal trespass is the proper remedy available to one whose land is encroached upon by another who claims it adversely; and (3) Whether or not a conviction can be had under a repealed criminal statute.

Black's Law Dictionary defines criminal trespass as the offense committed by one who, without license or privilege to do so enters or surreptitiously remains in any building or occupied structure. The offense is committed when a person, without effective consent, enters or remains on property or in building of another, knowingly or intentionally or recklessly, when he had notice to depart but failed to do so. BLACK'S LAW DICTIONARY 337 (5<sup>th</sup> ed.). This definition clearly sounds like our 1976 New Penal Law, referred to *supra*. Both the definition from Black's Law Dictionary and that of our Penal Law, Rev. Code, 26: 15.21 define criminal trespass not in terms of claims of ownership, but in terms of a mere entry into a building or other occupied structure, with knowledge that one is unwanted or uninvited. This was the law in vogue at the time Mr. Hne was charged with criminal trespass in 1983. On the other hand, the statute of 1969 stipulated that criminal trespass is committed by one who enters upon, occupies and improves real property without the consent of the owner. Under that statute the offense was a felony.

But the appellant, having been indicted in 1983 for criminal trespass, could not have been properly tried and convicted under the 1969 Penal Law since it was repealed in 1976.

Under the 1976 statute which is the current Penal Law in this jurisdiction, criminal trespass

cannot be committed by one who claims ownership to land, but applies only to one who enters the building and other occupied structures. This law was certainly intended to protect the peace and quiet of owners of dwelling houses and other occupied structures.

The law intended to prevent intrusions into their privacy and to protect their properties and persons from members of the public who might even turn out to be dangerous, both to life and property sometimes. The law guarantees that owners or occupiers of dwellings and other buildings will be able to restrict unwanted strangers or other visitors as they wish. However, one cannot reasonably infer that the 1976 Penal Law was also intended to evict persons claiming rights adverse to the ownership of realty by other persons; nor was it intended to settle any conflicting claims to ownership of realty as in the instant case. The criminal statute of 1969, on the other hand, was intended to protect land owners from unnecessary civil litigation where perfect strangers merely occupied and developed land without due considerations of ownership. It could properly be called the penal law designed to discourage squatters. Probably Mr. Hne would have been convicted under that old law at the time when it was in force, but he certainly could not be tried and convicted under the 1969 code when he was in fact charged in 1983, seven years after the former statute ceased to exist as law.

It is surprising, however, that neither the judge in the court below nor the prosecuting attorneys recognized the blunder in using the repealed law to convict appellant in 1983. They failed to realize that even under the old law, appellant's initial entry was not unlawful, he having entered by the permission of Williette Coleman, whom both he and the private prosecutor regarded as the owner of the disputed land, and paid rent to her until appellant realized that the land in question was public property. He continued to live on and develop the land, but failed to recognize Williette Coleman as landlady. Instead, he started making payments for the land into government revenue as was required of public land occupiers who desired to purchase such land. His adversary, on the other hand, continued to pay rent to Williette Coleman, and subsequently bought the property from her. It was at that time that his (Mr. Tamba's) surveyors found out that his land extended into the portion claimed by appellant. The question presented in the dispute therefore was one of ownership. Disputed ownership of realty in this jurisdiction is certainly not determinable by the action of criminal trespass, there being no question of criminal intent in such cases; instead, the original entry and subsequent stay were not unlawful, or tied up with intent, gathered from the circumstances, to commit a crime.

Having held that criminal trespass cannot lie against one claiming title to ownership of realty, we have no doubt that the action of criminal trespass is not the proper cause of action open to one whose land is encroached upon by another who claims ownership to it. Our

statute provides that any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed. In such cases, prior notice to vacate is not necessary when (a) there is unlawful dispossession, ouster, trespass, or tortuous entry by a tenant at sufferance or by a mere occupant without color or right or title after expiration of the term of a lease or of rightful or permissive possession; or (b) there is a wrongful entry or possession of a mere trespasser or intruder. Civil Procedure Law, Rev. Code 1: 62.1, 62.2.

Therefore, the proper cause of action to have been taken against appellant when private prosecutor discovered that his land was encroached upon by the former's toilet and kitchen, the latter also claiming ownership to it, was the civil action of ejectment as required by our law. Under our present Penal Law, cited *supra*, criminal trespass cannot lie against an adverse claimant to determine ownership.

In fact, while a charge of criminal trespass could have the miscreant fined and/or imprisoned, it cannot demarcate the rights of the rival claimants to property. More than that, a conviction of the offense leaves the disputed land ownership unresolved, as in the instant case. The lower court sentenced appellant to three months' imprisonment, but it did not evict him from the area claimed by the private prosecutor; nor did it award same to the latter. Rather, the problem of the disputed ownership in this case remained unresolved. Criminal trespass, as defined under our new Penal Law, punishes the offender and protects occupiers of premises from undue public interference. That is all it does, leaving the action of ejectment to decide property rights between rival claimants undecided. This Court has held and maintained that ejectment is the proper cause of action for evicting one who lays adverse claim to property purportedly belonging to another. *Duncan v. Perry*, 13 LLR 510 (1960); *Beavans v. Jurs*, 3 LLR 28 (1928).

Finally, is it proper for conviction to be had under a repealed statute? Black's Law Dictionary defines the word "repeal" as the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called "implied" repeal). BLACK'S LAW DICTIONARY 1167 (5th ed). Another authority maintains that where two acts are repugnant to or in conflict with each other, the last one enacted will go-vern, control or prevail and supersede and impliedly repeal the earlier Act, although it contains no repealing clause. 82 C. J. S. *Statutes*, § 291.

The 1969 Penal Law, under which appellant was tried and convicted, is clearly repugnant to the 1976 Penal Law on the law of criminal trespass. The 1976 statute therefore impliedly repealed the 1969 statute, and it therefore prevails over and supersedes the latter, even though it contains no such repealing clause. The two statutes are indeed at variance with each other. The 1969 statute outlaws and punishes as a felony the un-permitted use of another person's land for settlement and development. The 1976 statute merely outlaws and punishes as a misdemeanor any un-permitted entry into and or stay in a building or other occupied structures.

Under the 1976 statute, the unlawful entry and stay on another's premises is criminal trespass, but under the 1969 statute, it is not the unlawful entry and stay that is criminal trespass, but the occupation and development of another's land without his permission.

Therefore, the 1976 statute supersedes and repeals the 1969 statute. By repealing the latter statute, the 1976 statute revoked it and completely got rid of same as though it never existed in our jurisdiction, and it relegated it to the annals of our judicial history. The appellant could not therefore have been properly tried and convicted under a law that is no longer recognized as binding. The New Penal Law of 1976, being the law in force in 1983, the time appellant was indicted, was the law properly applicable to his case. Under that law, however, as pointed out earlier, appellant committed no act of criminal trespass simply because he built on land which he considered public land and which he had paid for; nor did he commit criminal trespass under our law because he refused to demolish his structures on said land, and refused to yield in to workers sent on that land by a rival claimant.

Considering what we said earlier, we are of the opinion that the positions of Messrs, Hne and Tamba before this action was commenced cannot be lawfully altered by an institution of criminal proceedings under the new Penal Law; nor can conviction be had under the 1969 statute since it ceased to exist in 1976.

THEREFORE, in view of all that we have said in this opinion, the judgment of the trial court is reversed, and the appellant discharged without day from further answering to the charge of criminal trespass.

*Judgment reversed.*

