THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM A.D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, ...CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH .....ASSOCIATE JUSTICE
BEFORE HER HONOR:JAMESETTA HOWARD-WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE

Joseph S. Cornomia of the City of Monrovia, Liberia.....Appellant

Versus

The Estate of the late Henry B. Duncan represented by and thru its Administrator Cum Testanmento Annexo (C.T.A), Henry B. Duncan, Jr., of the city of Monorvia, Liberia.....Appellee

Growing out of the case:

Joseph S. Cornomia of the City of Monrovia, Liberia..... Objector

Versus

The Estate of the late Henry B. Duncan represented by and thru its Administrator Cum Testanmento Annexo (C.T.A), Henry B. Duncan, Jr., of the city of Monrovia, Liberia.....Respondent

Growing out of the case:

The Estate of the late Henry B. Duncan represented by and thru its Administrator Cum Testanmento Annexo (C.T.A), Henry B. Duncan, Jr., of the city of Monrovia, Liberia.....Movant

Versus

Joseph S. Cornomia of the City of Monrovia, Liberia..... Respondent

Growing out of the case:

Joseph S. Cornomia of the City of Monrovia, Liberia.....Plaintiff

Versus

The Estate of the late Henry B. Duncan represented by and thru its Administrator *Cum Testanmento Annexo* (C.T.A), Henry B. Duncan, Jr., of the city of Monrovia, Liberia.....Defendant

Appeal

Objection to Investigative Survey

Motion for Investigative Survey

Ejectment

Heard:December 17, 2018 Decided: January 31, 2019

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The right to own property is held so sacrosanct in this jurisdiction, and has been from the inception of this Republic, that said right is not only inalienable, but is also protected and guaranteed first under the Constitution of 1847, and now under the Constitution of 1986 wherein it is stated that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law" *Lib. Const. Art. 20(a),* 1986.

In consonance with its power of judicial review, the Supreme Court has held that the constitutional guarantee prohibiting the deprivation of an individual of his/her property but by a judgment of his peers was never equally intended to protect unlawful ownership of property; that a person seeking property protection must show that his acquisition and possession are legitimate, and that the genuineness of his title is beyond dispute. *Davies v. Republic,* 14 LLR, 249 (1960); *Garnett et al. v. Allison*, 37 LLR 611 (1994); *Nyumah et al. v. Kontoe et al.*, 40 LLR 14 (2000).

The present appeal is the outgrowth of an ejectment action instituted in the Sixth Judicial Circuit Court, Montserrado County by Henry B. Duncan, Jr. representing the Testate Estate of Henry B. Duncan, the appellee herein, for property situated in Mamba Point, Monrovia, against Joseph S. Cornomia, the appellant herein.

We take judicial notice, that this is the third time that the appellant Cornormia, is before this Court on appeal for property located in Mamba Point, Monrovia. The first appeal emanated from a Chambers Ruling on certiorari proceedings wherein the Justice then presiding in Chambers reversed the ruling of the trial judge granting preliminary injunction and permanently restraining the defendant/appellee, Cornomia in an action of ejectment and evicting him from the disputed property. On appeal from the Chambers Justice's Ruling, this Court sitting *en banc* affirmed the Ruling and ordered that the defendant/appellee be placed in possession of the subject property pending the outcome of the ejectment action. The trial court was also mandated to resume jurisdiction over the ejectment suit and proceed with a hearing of the case on its merits. *Andrews, Duncan et al. v. Cornomia,* 39 LLR 761 (1999)

The second appeal grew from an ejectment action instituted by Mrs. Elouise C. Duncan, mother of the current *administrator cum testamento annexo,* (Mr. Henry B. Duncan, Jr), as appellant, and against Joseph S. Cornomia as appellee, and same is reported in the case *Elouise C. Duncan v Joseph N. Cornomia*, 42 LLR 309-320, (2004). The crux of that ejectment action was to evict and eject the present appellant, Cornomia, from a parcel of land situated at Mamba Point, to which Mrs. Duncan was claiming ownership. In his answer, filed along with a motion to dismiss, appellant Cornomia contended that he purchased the property from the Intestate Estate of Jarboe Sartee, the latter whom he claimed acquired same through a public land sale deed issued by the Republic of Liberia and signed by President Daniel B. Warner on April 15, 1865, and that the said intestate estate issued him an administrator's deed dated January 15, 1998. In his motion to dismiss the Duncan's action of ejectment, the appellant contended that as Madam Duncan had withdrawn her original action with reservation to re-file, upon subsequently refilling, she should have obtained a writ of summons to be served upon him to bring him under the jurisdiction of the trial court, but which she failed to do; thus the trial court lacked jurisdiction over his person. The

trial court agreed with his contention and dismissed the complaint, from which dismissal Mrs. Elouise Duncan appealed to the Supreme Court.

While the Duncan appeal was pending before the Supreme Court, on February 10, 2001, the Ministry of Foreign Affairs, through the Ministry of Justice instituted cancellation proceedings of three separate certified copies of a deed against the Jarboe Sartee Intestate Estate, the grantor of the appellant, Mr. Cornomia. In that action, it was alleged that the certified copies of the deed of the Sartee Estate was fraudulently obtained as at no time did President Warner ever sign a deed on January 15, 1865. The jury returned a verdict in favor of appellant Cornomia's grantor, that is the Intestate Estate of Jarboe Sartee, and same was confirmed by the trial court, and from which ruling the Ministry of Foreign Affairs appealed to the Supreme Court. The Supreme Court reversed the trial court's final ruling and ordered the certified copies of the deed of the Jerboe Sartee's Estate canceled. *The Ministry of Foreign Affairs v. The Intestate Estate of Jarbo Sartee*, 41 LLR, 285, 318 (2002).

As to the *Duncan* appeal which remained pending before the Supreme Court, the Court in 2004 affirmed the trial court's final ruling on procedural grounds, dismissing Madam Duncan's appeal on the basis that she having withdrawn her original action, same constituted withdrawal of the writ of summons attached thereto; that when she subsequently refiled a new action of ejectment, she should have attached thereto written directions praying for the issuance of a writ of summons to be served on appellant Cornomia in order to have him brought under the trial court's jurisdiction. But notwithstanding this decision, the Supreme Court, apparently taking judicial cognizance of its decision rendered two (2) years earlier in the *Sartee Case*, further opined in the *Duncan Case*, that the present appellant, Cornomia could not contest the Duncan ownership of the property in question in view of the cancellation of his grantor's deed on the legal principle that, "where the title deed relied upon by the defendant (Cornomia) is nullified by the court, ejectment will not lie and cannot be entertained by the courts, the suit having become moot by the nullification." Thus, the net effect of the Supreme Court's ruling in the *Duncan* appeal of 2004 growing out of the ejectment action became moot since the appellant grantor's deed relied on by him was found to be invalid and of no legal effect. This is how the Supreme Court worded its decision on the issue in the *Duncan* appeal:

> "...As stated in the summary of facts, while the action of ejectment was still pending on appeal before this Court, the Ministry of Foreign Affairs, by and through the Ministry of Justice filed a petition for the cancellation of the three certified copies of title deeds issued to the late Jarboe Sartee. Those were the title deeds on which the defendant in the action of ejectment derived his title to the disputed property. This Court says that ejectment involves contest over title to real property, where the plaintiff claims right to a real property and the defendant also asserts ownership to the very same property. In ejectment, the court examines the respective titles of parties and the party with superior title wins. The chain in a claim of title must be firmly linked and anchored to the grantor's title to make the grantee's title superior. It follows, therefore, that where an important link in the chain of title is broken as in the instant case, where the title of the defendant/appellee's grantor is cancelled by Court, the defendant/appellee is in effect rendered without title. And where only one party has presented title, and the title presented by the other party has been nullified by Court, ejectment will not lie....We hold therefore that the title deed from the grantor of the

defendant/appellee in the ejectment action relied on having been cancelled, the question of title between the parties cannot be entertained further in our courts." *Elouise C. Duncan v Joseph N. Cornomia*, 42 LLR 309-320, (2004).

We take judicial notice of the Court's records, that following the decision by the Supreme Court in 2002 *Sartee Case* ordering the cancellation of the appellant grantor's deed, and while the Duncan appeal was still pending before the Supreme Court, that the appellant Cornomia proceeded to and did acquire the self-same contested property through a Public Land Sale and the deed signed by President Moses Z. Blah on September 29, 2003. This prompted the filing of another ejectment action in the court below against the appellant Cornomia, but this time the plaintiff being the Testate Estate of Henry B. Duncan represented by Henry B. Duncan, Jr., *administrator cum testament annexo,* as plaintiff.

In its eight-count ejectment complaint, the Testate Estate of Henry B. Duncan challenged appellant Cornomia's Public Land Sale Deed, its basic contention being that Henry Duncan, Sr. had acquired the disputed property from the Republic of Liberia through a Public Land Sale and a deed therefor signed on June 15, 1955, by President William V.S. Tubman; that the said deed was probated and registered according to law in volume 67B, pages 364-365; that since the purchase of said property by Henry B. Duncan, Sr., his widow, Elouise C. Duncan and son Henry B. Duncan, Jr., have enjoyed opened and uninterrupted occupancy and possession over same until it was encroached upon by the appellant in September, 2003; that the Republic of Liberia cannot grant a public land sale deed for private property already deeded to another citizen, and even if the Republic inadvertently granted appellant Cornomia the same property as claimed by the appellant, the appellee's title would be superior to that of the appellant.

We hereunder quote the entire text of the appellee/plaintiff's complaint:

PLAINTIFF'S COMPLAINT

Plaintiff's in the above entitled cause of Action, complains of the above named Defendant and showeth the following legal and factual reasons therefore to wit:-

1. Plaintiff is the Estate of the late Henry B. Duncan, represented by and thru its Administrator Cum Testamento Annexo (CTA), Henry B. Duncan, Jr., Copy of the Letters of Administration Cum Testamento Annexo is hereto attached and marked as Exhibit HBD-1.

2. That the late Henry B. Duncan acquired, during his lifetime, a certain parcel of land on the 7th day of March, A.D. 1955, by virtue of a Public land Sale Deed bearing Lot No. 140D, from the Republic of Liberia, which was duly probated on the 15th day of June, A.D. 1955, and registered according to law in Volume 67B Pages 364-365, which can be more fully bounded and described as follows:-

"Commencing at the Easterly boundary of Lot No. 104 which is distant 46.0 feet Southerly from station 18 34.94 of 1 to Cante Line of Mamba-Point Camp Johnson Road Drive or the United Nation's Drive measure Rt. Angles; thence running §20 -13' (34" or time) 97 degrees – 0 feet

along said Easterly boundary to a Point thence running N. 55 degree – (25" time) W. 345-0 feet to a point in the Westerly boundary of the said lot; thence turning an angle of 345 degree – 30 and running §69 degree – 46"6 (Time) 330'0" feet to the point of commencement and containing 150.15 sq. feet 0.34 acres of land and no more."

Certified Copy of said Public Land Sale Deed referred to herein is hereto attached and marked Exhibit HBD-2

3.Plaintiff says on duly diligence, the said Public Land Sale Deed from the Republic of Liberia to Henry B. Duncan for Lot. No. 140D, hereto attached in this complaint as Exhibit HBD-2 was found and discovered in the original records at the Archives of the Republic of Liberia and through which the said certified copy hereto attached was issued. Plaintiff gives notice that if need be, it will request for Subpoena to be served on the Bureau of Archives to physically produce the original record book in which the Plaintiff's Deed was recorded.

4.Plaintiff says that since the purchase of Lot. No. 140D by the late Henry B. Duncan the said Henry B. Duncan, his widow, Elouise C. Duncan, and the only child of their union, Henry B. Duncan, Jr. have enjoyed open, notorious and uninterrupted occupancy and possession over the said parcel of land, until it was unceremoniously encroached upon by the Defendant.

5.Plaintiff further complains and says that it has received credible information that the Defendant is claiming title to the Plaintiff's Property which was acquired from the Republic of Liberia, by the Late Henry B. Duncan since 1955, by virtue of an alleged Public Land Sale deed issued on his behalf from the Republic of Liberia during the short lived Government of former President Moses Blah, Plaintiff says that it is a long established rule in this jurisdiction and confirmed in an Opinion handed down by the Honourable Supreme Court of Liberia in the case: Frances C. Wilson Vs. John L. Dennis, found in Volume 23, Liberian Law Report, that The Republic of State cannot grant land, the title of which has already been transferred; for contractual obligations must be respected under the Constitution.

6.Plaintiff says that based on the facts and circumstances, coupled with the law controlling, it has superior title to the land described in its Public land Sale deed for a lot No. 140D, in the City of Monrovia, Liberia and that it has a right to the peaceful, quiet and uninterrupted enjoyment of the said property; and that accordingly, Defendant should be ousted, evicted and ejected from the property.

7.Plaintiff says that it has made several demands upon the Defendant to vacate the said property, together with those thereon, upon his authority, acquiescence and authorization but they have refused to do so thereby depriving Plaintiff of its property.

8. Plaintiff says that as a result of the Defendant's wrongful, illegal and unauthorized entry on the Plaintiff property, both directly and/or indirectly, Plaintiff has suffered great damages, losses and inconveniences and is therefore entitled to compensatory damages for the wrongful use and enjoyment of the property and equally for the wrongful deprivation of the said property by plaintiff. And for such action, Plaintiff prays for General Damages in an amount to be determined by the Jury, which will compensate Plaintiff for the wrong.

WHEREFORE, and in view of the foregoing, Plaintiff demands judgment against the Defendant, which conforms that Plaintiff has superior title to the aforesaid property covered by Exhibit HBD-1, that Plaintiff is entitled to the immediate use enjoyment of said property; that Defendant should be ousted and evicted from said property without delay, and that Defendant compensates Plaintiff in an amount to be determined by the Jury, but in no case less than US$100,000.00 (One Hundred Thousand United States Dollars) for the number of years that Defendant has stubbornly and arrogantly deprived Plaintiff of its property.

Attached to the above complaint were extended letters of administration *cum testamento annexo* and an attestation from Cllr. Boakai M. Kanneh, then Deputy Minister for Legal Affairs at the Ministry of Foreign Affairs, authenticating the genuineness of the appellee's public land sale deed dated June 15, 1955.

Consistent with the rules on pleadings, the appellant/defendant on December 9, 2014, filed a thirty (30) count answer essentially contending that he acquired title and possession to the disputed property through a public land sale deed issued by the Republic of Liberia, signed by President Moses Z. Blah in 2003; that the parcel of land he had acquired from the Republic does not fall within the measurement of the land described on the deed presented by the appellee/plaintiff; that the public land sale deed of appellee/plaintiff carries no monetary value and therefore defective and invalid. The appellant also filed a motion to dismiss the appellee's complaint asserting that the appellee/plaintiff is precluded from acquiring real property in Liberia since he is a holder of an American passport; that Evelyn Witherspoon Dunbar is the legitimate *administratrix cum testamento annexo* of the property having obtained letters of administration to the said property since 1999; and, that the appellee's public land sale deed was never probated contrary to law. Defendant Cornomia also contended that the deed proffered by appellee/plaintiff was defective on grounds that there were conflicts in the acreage and feet.

As we did with the appellee's/plaintiff's complaint, We similarly quote counts 2, 3, 5, 8, 11, 12, 13, 16, 17 and 23 of the appellant's/defendant's answer which we believe presents the totality of the contentions raised by him:

DEFENDANT'S ANSWER

1. That, also to the entire Plaintiff's complaint, defendant says that he is the legitimate owner and bonafide purchaser of the parcel of land, lying and situated at Mamba Point, Monrovia, Liberia, which was sold to him by the Government of the Republic of Liberia in 2003, as

evidenced by a Public Land Sale Deed signed by the then President Moses Z. Blah, as well as other relevant and mandatory requirements, including Official Flag Receipt and Public Land Sale Certificate which are hereto attached and marked as Exhibit "D/1" in bulk to form a cogent part of Defendant's answer.

2. That further to Count two (2) hereinabove, Defendant says and maintains that the said parcel of land which he acquired from the Government of the Republic of Liberia does not belong to and/or form any portion of the subject property comprising the alleged Lot No. 140D belonging to the Estate of the Late Henry B. Duncan; for which the Plaintiff has filed this Complaint as a mere fishing expedition to find. **Hence, Defendant requests Court to take a very, very keen, judicial notice of the discrepancies in the aforesaid Lot's Number; which is Lot No.. 140D written within the body of the said Deed and Lot No. 140 written within the forged and self-serving endorsement placed there upon.**

3. That, as to the entire Plaintiff's Complaint, Defendant says same should be denied and dismissed by this Honorable Court, because the Public Land Sale Deed upon which Plaintiff relies, carried no monetary value as consideration contrary to the law and same is therefore defective and invalid, as a matter of law. **See in 35LLR 202, 206-209 (1979), Syllables 4 and 5, respectively.**

4. That, Defendant further submits and says that the entire cause of Action is a mere product of a stirring litigation, unwarranted, unmeritorious and fabulous, because the Public Land Sale Deed upon which Plaintiff relies, is grossly defective and invalid as follows:

a) It contains two (2) separate and distinct quantities of land with only on description;
b) No monetary value on it;
c) No official flag receipt for the land;
d) No Public Land Sale Certificate for the land; and ;
e) It has no endorsement on the Archives' record; but yet, and endorsement was cunningly forged on the Certified Copy, and the illegal endorsement is calling for Lot No. 140 instead of Lot No. 140D, which is specified within the body of the said deed.

5. That, further to Count ten (10) hereinabove, Defendant also avers and says that the Plaintiff's complaint must be denied and dismissed, in that Mr. Henry B. Duncan, Jr. is a holder of an American Passport No. 511597066, who arrived in Liberia on October 6, 2013 and was given a 30-day stay as a non-domiciliary alien. Therefore, he is not legally eligible to receive any kind or form of letters as a fiduciary to administer the Estate of the Late Henry B. Duncan in Liberia, which is the same reason why his Late Mother Elouise C. Duncan was disqualified to continue serving as an Executrix for the Estate of the Late Henry B. Duncan when she has taken up residency in the United States of America since 1980, which fact Mr. Henry B. Duncan, Jr. has alluded to base on his Petition dated October 15, 2013.

6.That, also as to Count eleven (11) hereinabove and still traversing Count one (1) of the Plaintiff's Complaint, Defendant says that Henry B. Duncan, Jr. lacks the legal capacity to serve as an Administratrix Cum Testamento Annexo (CTA) and to file this Action of Ejectment, because he is legally incapacitated by Section 107.5(1) of the New Decedent Estate Law General Rule and Exceptions, which state that Letters may be issued to a natural person or to a person authorized by law to be a fiduciary except that the following are ineligible:

a) An infant; b) An incompetent; c) A non-domiciliary alien; and so on. Please, find Copies of Mr. Henry B. Duncan, Jr.' Petition filed before the Probate Court on October 15, 2013 and Certificate of Authentication from the Bureau of Immigration in Liberia hereto attached and marked as Exhibit "D/6" in bulk to form cogent part of Defendant's answer.

7.That, further to Count twelve (12) hereinabove, Defendant submits and says that Mrs. Evelyn Witherspoon-Dunbar is the legitimate Administratrix Cum Testamento Annexo (CTA), who obtained her Letters of Administratrix Cum Testamento Annexo (CTA) since August 11, 1999, to administer the Estate of her Later Grandfather, Henry B. Duncan and subsequently thereafter, she had acquired two (2) extended letters of Administratrix Cum Testamento Annexo (CTA) on June 20, 2013 and December 2, 2014, respectively. On November 5, 2013, Mrs. Evelyn Witherspoon-Dunbar received a Clerk's Certificate from the Probate Court for Montserrado County, indicating that her Letters of Administratrix Cum Testamento Annexo (CTA) is not revoked. In 2LLR550; Syllabus 2, the Case John Pelham; et al, the Honorable Supreme Court held that. "When for any cause it become important to supersede a former Administrator duly and formally granted Letters by the Probate Court having lawful jurisdiction in the case, it cannot be affected simply by the appointment of a new Administrator. The former appointment should be first vacated, and this can only be done by citing the incumbent in office before the Probate Court making the appointment, and then entering a formal decree of revocation." **Please find copies of the said self-explanatory Clerk's Certificate, Mrs. Dunbar's Letters of Administratrix Cum Testamento Annexo (CTA) and Two (2) Extended Letters of Administratrix Cum Testamento Annexo (CTA) dated June 20, 2013 and December 2, 2014, respectively, hereto attached and marked as Exhibit "D/7" in bulk to form cogent part of Defendant's Answer.**

8.That, further to Count fifteen (15) hereinabove, Defendant says that the alleged Henry B. Duncan's Public Land Sale Deed registered in Volume 67B, Pages 364-365, was never probated before registration at the Foreign Ministry's Archives, but an endorsement was forged upon the Certified Copy of the said Public Land Sale Deed, which illegal act was intended to mislead the Court to believe that the deed was probated before registration.

9.That, further to Count sixteen (16) hereinabove, Defendant says that the illegal endorsement is calling for Lot No. 140 and 140D, which is specified in the Deed itself. **In 5LLR152; Syllabus 4, the Case Salifu**

V. Lassannah, the Honorable Supreme Court held that "probation is a legal prerequisite to registration of title to real estate and a deed which is registered without having been probated is voidable." **Please find a Copy of Certificate of Authentication from the Foreign Ministry indicating in Number two (2) thereof, that the deed mentioned above is recorded in Volume 67-B, pages 364-365, "but does not have an endorsement;" and which is hereto attached and marked as Exhibit "D/8" in bulk to form cogent part of Defendant's Answer.**

10. That, further to Count fifteen (15), sixteen (16) and seventeen (17) hereinabove, Defendant submits and says that Henry B. Duncan's Public Land Sale Deed contains two (20 separate and distinct quantities of land with only one description. They are 150.15 square feet and 0.34 acre. To convert 150.15sqft. to an acre, it will be 150.15sqft ÷ 43,560 = 0.003447 acre. The first quantity in Henry B. Duncan's alleged Public Land Sale Deed is 0.003447 acre or (150.15 square feet) and the second is 0.34 acre. Defendant requests this Honorable Court to take Judicial Notice of this extraordinary defect in Henry B. Duncan's Public Land Sale Deed and deny and dismiss Plaintiff's Complaint.

11. That, further to Counts twenty-one (21) and twenty-two (22) hereinabove, Defendant says Mrs. Evelyn Witherspoon-Dunbar, being the legitimate Administratrix Cum Testamento Annexo (CTA) makes her the proper and necessary party to defend and protect the Late Henry B. Duncan's property; based upon which she has written a couple of letters to Mr. Chawki Bsaibes, LESSEE of the 0.34 acre and expressing her anger and frustration over his constant habit of financing unwarranted, unmeritorious and fabulous lawsuits against Defendant Joseph N. Cornomia since 1988 for the land which is not and has never been any part and parcel of the Duncan's Estate in Mamba Point, but Mr. Chawki Bsaibes, who is a Lebanese National has failed to yield to her advice of not stirring litigation as is now in the case of this Complaint..."

We also quote the seven counts motion to dismiss the appellee/plaintiff's complaint in its entirety as follows:

"AND NOW COMES MOVANT in the above entitled Cause of Action moving this Honorable Court to set aside, deny and dismiss the Plaintiff's Complaint for the following legal and factual reasons; to wit:

1. That, Movant says the Respondent lacks the legal capacity to file this Action, because he is a holder of an American Passport No. 511597066, who arrived in Liberia on October 6, 2013 and he was given a thirty (30) day stay within Liberia as a non-domiciliary alien, when by his misrepresentations made to the Probate Court, for Montserrado County Republic of Liberia, he was illegally conferred upon and Extended Letters of Administration Cum Testamento Annexo (CTA); in glaring violation of Section 107.5.1c of the New Decedents Estates Law's General Rule and Exceptions, which states that letters

may be issued to a natural person or to person authorized by law to be a fiduciary except that the following are ineligible:

(a) An infant; (b) An incompetent; (c) A non-domiciliary alien; and so on. Please find respective copies of the relevant documents, including the clerk's certificate from the Probate Court, Petitioner's Petition to the Probate Court and Certificate of Authentication of Respondent's citizenship status issued by the Bureau of Immigration and Naturalization (BIN) of the Republic of Liberia; all hereto attached and marked as Exhibit "M/1" in bulk to substantiate count one (1) of the Motion to Dismiss.

2. That, further to count one (1) hereinabove, Movant says that assuming without admitting, that even if the Respondent were issued Letters of Administration Cum Testamento Annexo (CTA) to administer the Estate of his late father, Henry B. Duncan, he is legally incapacitated by the said provision of the controlling law; that is, Section 107.5.1c of the New Decedents Estates Law of Liberia. Hence, the Plaintiff's Complaint should be denied and dismissed entirely, on the ground that what is not done legally, has never being done at all within the contemplation of the law and practice in vogue in this jurisdiction.

3. That, Movant also says that the Respondent further lacks the legal capacity to file this Action of Ejectment with reliance upon the purportedly him by the Probate Court for Montserrado County, based upon misrepresentations made to the said Letters of Administration Cum Testamento Annexo (CTA) since August 11, 1999 from the Probate Court for Montserrado County, to administer the Estate of her late grandfather, Henry B. Duncan and subsequently thereafter, she acquired Extended Letters of Administration Cum Testamento Annexo (CTA) on June 20, 2013 and December 2, 2014, respectively; and that Mrs. Evelyn Witherspoon-Dunbar received a Clerk's Certificate from the Probate Court for Montserrado County on November 5, 2013, that her Letters of Administration Cum Testamento Annexo (CTA) is not revoked. Please find the relevant and self-explanatory copies of Letters of Administration Cum Testamento Annexo (CTA), the Clerk's Certificate from the Probate Court, two (2) Extended Letters of Administration Cum Testamento Annexo (CTA), dated June 20, 2013 and December 2, 2014, respectively, hereto attached and mark as Exhibit "M/2" in bulk to form cogent part of this Motion.

4. That, further to count three (3) hereinabove, Movant says and maintains that Mrs. Evelyn Witherspoon-Dunbar is still serving as the legitimate Administratrix Cum Testamento Annexo (CTA) of the Estate of the late Henry B. Duncan, because her said letters has never been revoked by the Probate Court for Montserrado County. In 2LLR550, Syllabus (2); the Case John v. Pelham; et at, the Supreme Court held that "when for any cause it becomes important to supersede a former Administrator duly and formally granted letters by the Probate Court having lawful jurisdiction in the case, it cannot be affected simply by the appointment of a new Administrator. The former appointment should be first vacated, and this can only be done by citing the incumbent in office before the Probate Court making the appointment

and entering of formal decree." Hence, failure on the part of the Respondent to avail himself by complying with the law controlling; coupled with other illegalities associated with the attainment of his purportedly Extended Letters of Administrator Cum Testamento Annexo (CTA), the said legal instrument is null and void ab initio, which disqualifies him to serve as an Administrator with Extended Letters of Administration Cum Testamento Annexo (CTA) of the Estate of the late Henry B. Duncan and to file this Action of Ejectment in the said capacity, which he does not legally have. Movant says in a nutshell, that the Plaintiff's Complaint in its entirety must be denied and dismisses as a matter of law.

5. That, Movant also says that the Plaintiff's Complaint is fit subject of denial and dismissal and same should be denied and dismissed, because Mrs. Evelyn Witherspoon-Dunbar currently being the legitimate Administratrix Cum Testamento Annexo (CTA) of the aforesaid Estate, makes her the proper and necessary party to defend and protect the Estate of the late Henry B. Duncan; based upon which she had written series of letters to Mr. Chawki Bsaibes, LESSEE of the 0.34 acres; expressing her anger and frustration over his constant habit of financing unwarranted, unmeritorious and fabulous lawsuits against the Movant/Defendant, Joseph N. Cornomia since 1988 for the land which is not and has never been any part and parcel of the Duncan's Estate in Mamba Point, but Mr. Chawki Bsaibes, who is a Lebanese National, has failed to yield to her advice of not stirring litigation, as is now in the case of the Plaintiff's Complaint in the main Action of Ejectment, which has again been filed before this court.

6. That, further to count five (5) hereinabove, Movant says that in one of the letters to Mr. Chawki Bsaibes, dated July 27, 2013, Mrs. Evelyn Witherspoon-Dunbar made it emphatically clear that Movant/Defendant Joseph N. Cornomia is not occupying any of the properties of the Estate of the late Henry B. Duncan in Mamba Point. **In 40LLR38, Syllabus (2); the case Gray et al v. Yussif D. Kaba, Assigned Judge; et at**, the Honorable Supreme Court held that "The Executor or Administrator of an Estate is a necessary and proper party to any action affecting the property rights of the Estate." Since, indeed and in fact, Mrs. Evelyn Witherspoon-Dunbar who is a necessary and proper party legally authorized by the law controlling to defend and protect the property rights of the Estate of the late Henry B. Duncan has repeatedly and unequivocally said the Movant/Defendant, Joseph N. Cornomia is not encroaching upon and/or occupying any of the properties of the Estate of the late Henry B. Duncan in Mamba Point, then, it goes without saying that the main Action of Ejectment filed by the Respondent, Henry B. Duncan, Jr., is without any legal basis, because assuming without admitting that the Respondent is either a Co-Administrator and/or an Administrator Cum Testamento Annexo (CTA) who has been appointed to replace Mrs. Evelyn WitherspoonDunbar, he cannot undo any lawful action taken by his predecessor, as he is illegally attempting to do in the case at bar. Hence, the purported Plaintiff's Complaint should be denied and dismissed by this court for Respondent's lack of legal capacity to file this Action. **Please, find copies of the self-explanatory letters hereto**

attached and marked` as Exhibit "M/3" in bulk to form a cogent part of Movant's Motion.

7. That, furthermore, Movant says that the Respondent lacks the legal capacity to sue in the main Action of Ejectment, because assuming without admitting that Henry B. Duncan, Jr., is an Administrator Cum Testamento Annexo (CTA) appointed to administer the Estate of his late father, Henry B. Duncan, he has power to administer ONLY the proper mentioned in the LAST WILL AND TESTAMENT of Henry B. Duncan, but there is absolutely NOT Lot. No. 140D for 150.15 square feet and 0.34 acre in the said Henry B. Duncan's LAST WILL AND TESTAMENT. Therefore, the Administrator/trix Cum Testamento Annexo (CTA) has no legal authority over the alleged 150.15 square feet and 0.34 acre. In 9LLR88, the case *Richard L. Striker v. Henry D. Massary, et al*, the Honorable Supreme Court held that "an Administrator Cum Testamento Annexo (CTA) has to administer ONLY the property mentioned in the Deceased's WILL" Please find a copy of the LAST WILL AND TESTAMENT of the late Henry B. Duncan hereto attached and marked as Exhibit "M/4" in bulk to form a cogent part of Movant's Motion to Dismisss.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCESS, Movant prays this Honorable Court to deny and dismiss the entire Plaintiff's Complaint for a total lack of legal capacity to file the Action of Ejectment; rule the costs of the proceeding against the Respondent; and grant unto the Movant any and/or all further relief which this court may deem just, legal and equitable..."

On December 10, 2014, the appellee filed its reply containing twenty-seven (27) counts basically affirming and confirming the allegations in its complaint; that it was impossible for a vacant land to be available in Mamba Point up to 2003 to allow the Government issue out a Public land sale deed; that Henry B. Duncan, Sr., willed the said property to his wife Mrs. Elouise C. Duncan and that upon the death of Mrs. Duncan, Henry B. Duncan, Jr., being the only surviving issue from the union, the property devolved upon him following the death of his mother; that the Monthly and Probate Court had revoked the letters of administration granted Evelyn Witherspoon Dunbar on grounds that same was inadvertently granted; that Mr. Duncan is a resident of Liberia and has all times maintained residence herein and that he is a citizen of Liberia with a Liberian passport no. L105235. The appellee also asserted that although the land commissioner had previously issued a certificate in favor of the appellant in 2003 validating the public sale of the land, said certificate was subsequently revoked in 2007 on the basis that the issuance of the said certificate was inadvertently prepared by the land commissioner.

We also quote counts 2, 3, 4, 5, 7, 9, 10, 16, 23 and 24 of the appellee's reply as follows:

PLAINTIFF'S REPLY

PLAINTIFF in the above entitled cause of action, most respectfully request Your Honor and this Honorable Court to set aside, deny and dismiss Defendant's Answer in its entirety for the following legal and factual reasons showeth, to wit:

1. That as to count one (1) of the Answer, Plaintiff maintains, confirms and affirms all of the allegations contained in the Plaintiff's Complaint.

2. That as to count two (2) of the Answer, Plaintiff says that it is impossible, giving the location, marketability, commercial value and for the mere fact that all other lands in the subject area, prior to the time Defendant allegedly purchased his purported property, had all been acquired from the Republic of Liberia, more than fifty (50) years previously, that the Defendant will be so lucky in 2003 to discover property still vested in the Republic of Liberia, at the time.

3. And also because further to count two (2) of the Answer, Plaintiff says that the same should be denied and dismissed because the Republic of Liberia had no title to the subject property in 2003, to pass same to the Defendant, as the said Republic had already alienated said property to the Plaintiff since 1955, and therefore could not pass what it did not have.

4. That as the count three (3) of the Answer, Plaintiff says that the same should be denied and dismissed for reason that the late Henry B. Duncan purchased Lot No. 140D from the Republic of Liberia in 1955 and following his death, growing out of the encroachment on the said property by the Defendant the Plaintiff proceeded to conduct due diligence on the title of its property, to establish and confirm its long term ownership to the said property and in the process discovered that its deed for Lot # 140D was recorded and remain part of the record in the archives of the Republic of Liberia. Plaintiff give notice that at trial it will request for a *Writ of Subpoena Duces Tecum* to produce the copy of its original records containing evidence of the existence of Plaintiff's recorded deed, which was recorded by the said Bureau and held in its custody, up to the institution of this action.

5. That as to count four (4) of the Answer, Plaintiff says that the same should be denied and dismissed for reason that, recourse to the Defendant's Exhibit D/2 attached to the Answer, same being the Last Will and Testament of Henry B. Duncan, it unequivocally states in Clause Ten (10) thereof that, "I will and bequeath any and all of my residue, real, personal, or cash, including my personal effects as well as any and all property, real, personal, or cash that I may hereafter become possessed of, be it of what sort or kind, or from whatever source, to my wife, Elouise Collier Duncan, hereinafter named my Sole Executrix, said properties to be used or disposed of by her at her will and pleasure". It goes without saying that the Testator having died seized of Lot # 140D, the said property constituted a portion of the residue of real property, belonging to him, now willed to his widow and Sole Executrix, to descent to the only heir of their bodies, Henry B. Duncan, Jr., and Lot # 140D being part of the residual, is recognized by law as mentioned in the Deceased's Will and to be administered by his Executor and Administrator Cum Testamento Annexo.

6. That as to count six (6), seven (7), eight (8) and nine (9) of the Answer, Plaintiff says that all of the issue raised therein are mute because the

Probate Court for Montserrado County has ordered issued, a revocation of the Letters Testamentary granted to Evelyn Witherspoon-Dunbar, assigning therefor the reason being that it was issued inadvertently and reconfirmed and affirmed the genuineness and validity of Letters Testamentary issued to Henry B. Duncan, Jr. By said nullification of Testamentary instrument by the Probate Court, the same nullified all acts of Evelyn Witherspoon Dunbar, pursuant to the authority granted by said Letters Testamentary. Copies of the said Revocation Order and Certificate of Confirmation referred to herein are hereto attached in bulk and marked Exhibit PR – 1.

7. That as to count ten (10) of the Answer, same should be denied and dismissed for reason that, Respondent says that Henry B. Duncan, Jr., being in the Republic of Liberia and appearing before the Probate Judge, establishing his right of succession to administer his father's Estate, with only the residual properties belonging and being therein, which had all been willed and bequeathed to his mother, Elouise Collier Duncan, in keeping Clause ten (10) of the Last Will and Testament of the late Henry B. Duncan, and Evelyn Witherspoon-Dunbar, having contested the competency of Arthur T, Summerville, Jr., to administer the Estate of the late Henry B. Duncan, but upon failing to show her right over and above Henry B. Duncan, Jr., he being the only child of the union of Henry B. Duncan and Elouise Collier Duncan, the said Henry B. Duncan, Jr., was granted Extended Letters of Administration Cum Testamento Annexo, replacing Arthur T. Summerville, Jr., on October 17, 2013. Respondent requests court to take Judicial Notice of its records in this case.

8. And also because further to count ten (10) of the Answer, Respondent says that the same should be denied and dismissed for reason that is was Movant and Evelyn Witherspoon-Dunbar who challenged the competency of Arthur T. Summerville, Jr., to administer the Estate of the late Henry B. Duncan and during which time, at the appearance of Henry B. Duncan, Jr., in the Probate Court for Montserrado County, she was denied the right to administer properties now belonging only to Elouise Collier Duncan, in keeping with the residuary clause in the Last Will and Testament of the late Henry B. Duncan, and therefore, Henry B. Duncan, Jr., was granted Extended Letters of Administration Cum Testamento Annexo, thereby lawfully and legally superseding both Arthur T. Summerville, Jr. and Evelyn Witherspoon-Dunbar.

9. And also because further to the above, Plaintiff says that Defendant is alleging that Plaintiff's deed is a product of fraud and made mention of several laws citations dealing with element of fraud. However, all such citations clearly state that an alleged fraud in a deed must be shown to the court and upon proof thereof, the court will order the cancellation of the deed. In this instant case, there had been no action to establish fraud in the Plaintiff's deed and there is no proceeding for the cancellation of the Plaintiff's deed. Where no such action is taken, the said deed remains valid.

10. That to count twenty-two (22) of the Answer, Plaintiff says the same should be denied and dismissed for reason that the Government of

> Liberia cannot pass title to that which it does not own and as such, the President has directed the cancellation of Defendant's deed. Copy of the said directive from the President of Liberia, referred to herein, is hereto attached and marked Exhibit PR – 4.

Pertinent amongst the documents attached by the appellee was a certificate of revocation of the public land certificate previously issued the appellant, by the Land Commissioner.

In response to the motion to dismiss for lack of capacity to sue, the appellee filed a twelve (12) count returns essentially restating the contentions in its reply.

Pleadings rested and at the disposition of law issues, the trial court rendered a combined ruling on both the law issues and the motion to dismiss, the pertinent portions which we quote as follows:

> "...having listened to the arguments by the movants and respondent, this court is of the opinion that the issues raised by the movant are as follows:
>
> That the respondent Attorney-In-Fact is not a citizen of the Republic; by assuming the respondent is not a citizen of this Country, he is also not a domiciliary of this Republic and that therefore the complaint filed thru the administrator/respondent should be stricken or dismissed. In countering the movant's argument, the respondent asserts that the respondent is a citizen of this Republic who was born in 1952, in this Republic of Liberia and the property at issue is the respondent's property. Respondent also argued that he is domiciled in the Republic and that the motion should be denied.
>
> Given the arguments, those relative to citizenship and the domicile of respondent's representative are issues of law and fact, and cannot be decided by issues of law,but should be decided by facts thru the taking of evidence to substantiate each argument advanced. Therefore, the motion is denied."

As to the challenge posed to the letters of administration issued to the appellee's *administrator cum testemento annexo*, the trial court ruled as follows:

> "...with regards issue number three, if the defendant has objection to the letter of administration, such challenge should have been raised in the Monthly and Probate Court which had jurisdiction over the issuance of letters of administration if the defendant was not satisfied with the ruling of the Monthly and Probate Court under our law [he should have gone] to the Supreme Court. This court being of equal statutory right with the Monthly and Probate Court cannot question the legitimacy or legal validity of any document [issued] by the Monthly and Probate Court for Montserrado County."

We are in full agreement with the trial judge's conclusion that those issues raised in the appellant's motion to dismiss are more of facts than law. Firstly, the defendant exhibited a document titled: "Certificate of Authentication" written on a paper bearing the seal of Republic of Liberia and the logo of the Liberia Immigration Service (LIS) which purported to establish that Mr. Duncan entered the country with an American

passport #511597066 and was given thirty (30) days resident permit. As correctly determined by the trial judge, this document is a mere exhibit annexed to the defendant's pleading and could only be accepted as evidence after being testified to, examined, confirmed and admitted into evidence according to law. It is the law that documents attached to pleadings are mere exhibits, and unless testified to, marked by the court, and confirmed by the witness can same be admitted into evidence. *Liberia Electricity Corporation v. Tamba,* 36 LLR 225 (1989); *Momolu v. Cumming,* 38 LLR 307 (1996); *Universal Printing Press, v. Blue Cross Insurance Company,* Supreme Court Opinion, March Term, 2015; for our laws provide that mere allegation does not constitute proof but must be supported by the requisite evidential document. *Kamara et al. v. The Heirs of Essel,* Supreme Court Opinion, March Term, A. D. 2012. The trial judge was therefore right to have ruled the issues raised in the documents to trial.

The trial judge was equally within the pale of the law when he ruled that the challenge to the letters of administration proffered by the appellee could not be entertained by him as judge of the Sixth Judicial Circuit Court, Montserrado County since said authority was granted by the Monthly and Probate Court Judge, his colleague of concurrent jurisdiction. It is astonishing that a lawyer of the Supreme Court bar would endeavor to persuade a judge to review acts committed by his colleague of equal judicial hierarchy amidst the copious opinions of the Supreme Court that a circuit judge is without the authority to review acts done by his colleague of concurrent jurisdiction. *The international Trust Company of Liberia v. Cooper and Cooper-Hayes*, 39 LLR 202 (1998); *The United Methodist Church and Consolidated African Trading Corporation v. Cooper et al.*, 40 LLR 449 (2001); *Emirates Trading Agency Company v. Global Import and Export Company,* 42 LLR 204 (2004).

The records show that the appellant excepted to the above ruling of the trial judge, but there is no showing that he pursued any remedial process thereto.

Subsequently, the case was ruled to trial, but before the commencement thereof, the appellee's counsel filed a formal motion requesting for the conduct of an investigative survey. The crux of the appellee's request is captured in count four of the motion for an investigative survey as follows:

> "Movant/plaintiff says that defendant/respondent in his answer to movant/plaintiff's complaint denied that the land which he occupies is part and parcel of the land owned by the Estate of the late Henry B. Duncan arguing that the metes and bounds of the plaintiff's deed are different from the metes and bounds of the defendant's purported title deed. This Court is respectfully requested to take judicial notice of the records in the proceedings."

The appellant, who had argued that the metes and bounds of his deed are distinct and separate from that of the appellee's deed, and who, one would have expected to embrace any survey intended to establish the ground location of the two deeds presented to authenticate his claims that the two properties were separate and distinct for an investigative survey.

Following arguments on the motion and the resistance thereto, Judge Zlahn then presiding over the March 2014 Term of the Sixth Judicial Circuit Court, Montserrado County ruled granting the motion for an investigative survey. The judge reasoned that neither the court nor a jury had expertise to determine the metes and bounds of the properties described on the deeds presented by the parties. Again and as noted in

earlier instance, the appellant excepted to this ruling of the trial judge but did not avail himself of any remedial action. We quote Judge Zlan's Ruling as follows:

> "Having listened to both sides of the argument and given the fact that neither this court nor the Jury has expertise to determine the metes and bounds of properties and therefore to demarcate those properties and consistent with several opinions of the honorable Supreme Court of the Republic of Liberia, the motion for investigative survey is hereby granted and the resistance thereto is hereby denied.
>
> The Clerk of this court is hereby ordered to communicate with the Ministry of Lands, Mines and Energy requesting that Ministry to nominate within 10 days from today's date the name of a registered, licensed and qualified surveyor to conduct an investigative survey of the disputed property in this matter and each party shall be requested to defray the expenses and the fees for the conduct of the investigative survey specifically as it relates to the services to be performed by the government surveyor and his or her fee for performing such survey. Furthermore, all parties are required to submit within 10 days from today's date the name of their respective technical representatives who shall observe the survey to be conducted by the government surveyor. AND IT IS HEREBY SO ORDERED".

This Court agrees with Judge Zlahn that in such instances where the controversies present issues of technical nature, a court is bound to submit those issues to a referee or such investigation in the nature of a survey as in the instant case. In a long line of cases, the Court has stated "whenever there are discrepancies as to the ownership of a piece of property being claimed by the parties as to an ejectment action, the court should order that an accurate and impartial survey be conducted by an investigative board." *Freeman v. Webster, 14LLR, 493 (1961); Iadoo v. Jackson, 24 LLR 306 (1975); Cole v. Philip, 29 LLR 125(edit); Surmie et al., v. Calvary Baptist Church, Supreme Court Opinion, March Term, 2007. [edit citations]*

In the *Calvary Baptist Church Case*, Madam Justice Johnson speaking for a unanimous Court cautioned as follows:

> "...what ought to be enough and conclusive is that the land in dispute is the same parcel or portion of land. The method or process to arrive at such a finding is to conduct a survey using the title deeds relied upon."

Judge Zlahn therefore acted properly when he granted the appellee's motion for an investigative survey.

Accordingly, and in accordance with law, the parties submitted the names of qualified surveyors as their representatives to the survey. Mr. E.C.B. Jones of a private survey firm, the Land and Housing Development Company was nominated by the appellee; Mr. Reubon Johnson, was first nominated by the appellant, but withdrew his name and replaced him with Cyril Banyan a licensed surveyor; upon request of the trial court, Mr. Moses T. Tehswen of the Department of lands, survey and cartography was *seconded* by the Ministry of Lands, Mines and Energy, but his name was withdrawn and replaced David M. Beyan, Chairman of the Investigative Survey Team.

We note from the records that prior to the commencement of the investigative survey, the appellant movant filed a bill of information challenging the appellee's appointment

of E.C.B. Jones as its representative. The appellant premised his challenge on grounds that Mr. Jones connived with the appellee to manufacture a fake endorsement of its deed and that for the sake of transparency Mr. Jones' appointment should be revoked. Having entertained the resistance and argument from both parties, the trial judge ruled and denied the bill of information on grounds that the contentions raised therein do not fall within the office of the bill of information.

Again, we applaud the judge's knowledge of the law and extol the manner in which he conducted the present proceedings. A bill of information, as correctly mentioned by the judge, is intended to penalize the disobedience of the mandate of a judicial tribunal. A bill of information will lie where a party proceeds contrary to the mandate and order of a court. The orders given by Judge Zlahn were very concise and precise when he stated therein, 'in keeping with the ruling granting the investigative survey, each party was required to nominate a licensed surveyor to the board of investigation.' This order was carried out by all the parties; there is no dispute that Mr. Jones is a licensed surveyor. The issue of Mr. Jones' connivance with the appellee to procure a fake endorsement of the appellee's deed does not only speak to the merit of the survey but also imputes fraud, a question of fact requiring proof completely outside of the office of a bill of information.

Subsequently and following the issuance of the requisite notices, a reconnaissance survey was conducted intended to identify the various cornerstones and commencement points of the deeds presented by the parties.

Following the reconnaissance field data collection, an actual survey was conducted, and upon conclusion thereof, on September 22, 2015, a report was read in open court and submitted to the trial court. We note that the appellant and his lawyer were absent on said date, and that the trial judge appointed Attorney Jura Lynch to receive for onward submission the minutes and report to the appellant's lawyer.

Because of the importance of the survey report to this Opinion, we hereunder reproduce the pertinent portions as follows:

"...DEFINITION OF THE PROBLEM

In the case:- The Intestate Estate of the Late Henry B. Duncan versus Joseph S. Cornomia the two parties are claiming the same parcel of land on the ground. According to the deeds submitted to the court by the two parties, it appeared that both parties are claiming the same parcel of land at the Mamba Point, along the Unite Nations Drive, Monrovia. The two parties identified the same parcel of land on the ground, during the reconnaissance exercise held at the site on Friday, May 8, 2015 at 2:30 p.m.

The problem to be solved therefore, for the Surveyor to determine, based on technical surveying and mapping methods, the actual locations on the ground of the parcel defined by each of the respective Deed filed by each of the two parties. This determination could show either (a) that the two Deeds define the same location or (b) that the two deeds define separate and distinct locations.

TECHNICAL OBSERVATIONS & FINDINGS

...the following technical observations were made after plotting the field data collected and analyzing the diagrams in the disputed area:

i. The parcel of land being claimed by [the estate of] Henry B. Duncan is actually located in the southern direction from Lot# 104 as stated in his deed; and the parcel of land is located or situated across the United Nations Drive road opposite parcel lot # 104.

After the survey exercises, the Investigation needed information to confirm the parcel across the road from the disputed property is actually lot 104 which is reflected on the adjudication map of Mamba Point and appeared on the map in the vicinity of the Mamba Point Hotel area. The government appointed surveyor then searched the adjudication records of the Department of Lands, Surveys and cartography and a file of the parcel of land of lot # 104 was found. The deed of Lot #104 commences from Lot # 99 owned by H. B. Duncan. The Deed of Lot # 104 also mentioned Lot # 100 owned by J. P. Harmon. These parcels of land are interconnected as indicated on the adjudication map of Mamba Point. The information in the records of the adjudication division therefore confirm that Lot #104 is situated in the vicinity of the Mamba Point Hotel.

ii. The parcel of land claimed by Mr. Joseph N. Cornomia is decribed by deed as commencing from an adjoining parcel [of land] owned by Mr. Weh Dorlea. A representative of Mr. Dorlea showed the parcel on the ground, and displayed a deed presumably for the said parcel. However he did not provide a copy and did not allow the government appointed surveyor to extract a photograph or photocopy of said deed. A follow up by the government appointment survey proved fruitless. As such, this investigation cannot confirm that the deed which was displayed defines the parcel of land on the ground shown to be Mr. Dorlea's property.

iii. Both parcels of the disputed parties according to their respective deeds are found in the same geographical location. Each parcel of land overlaps portion of the other as shown on the map of the Investigative survey included in this report.

iv. As shown on the said map, the parcel of land claimed by Henry B. Duncan, Jr. is a triangular shape piece of land that partially overlaps the parcel of land claimed by Mr. Joseph N. Cornomia. It extends further and also partly overlaps the parcel of land claimed by Mr. Weh Dorlea.

v. The parcel of land claimed by Joseph N. Cornomia is a rectangular shape piece or land that partly overlaps the parcel of land claimed by Henry B. Duncan, Jr. It also extends to the beach as indicated on the map.

vi. The traverse computation of Joseph N. Cornomia property indicates that the quantity of land he is claiming is 0.84 acrs.

vii. The traverse computation of Henry B. Duncan, Jr. property also indicates the quantity of land he is claiming 0.34 acres.

SUMMARY OF FINDINGS

> The findings of this investigative survey are that the two parcels of land defined by the respective Deeds of the disputing parties are located and situated in the same place.
>
> The two parcels have different shapes and sizes and as such they partially overlap one another.
>
> The investigation employed conventional survey methods including (a) analysis of the documents presented (b) research of official Adjudication Records, since the parcels are situated in Adjudication Area II of Monrovia, which is well documented, (c) detailed field measurements of ground features, and (d) computation and analysis of field data.
>
> The field investigation was witnessed by technical representatives of the two parties and by Mr. Joseph N. Cornomia himself."

On August 19, 2015, Surveyor Cyril Banyan, who represented the interest of the appellant, *sua sponte* addressed a letter to the trial judge objecting to the findings of the Investigative Report essentially contending that the method employed by the Chairman of the Board of Investigation was erroneous; that the government appointed surveyor failed to identify the quantity of land in the deeds submitted by the two parties; that Lot #104 as presented on the appellee's deed was not identified in his presence and that he discovered that the appellee's deed was fake; that he was not allowed to verify the fake deeds; that there were technical defects in the appellee's deed; and that Mr. Henry Duncan's deed had no geometric figure.

In response to the above letter, the government appointed surveyor on September 23, 2017, also addressed a letter to the trial judge countered arguing that there was no objection by the appellant's representative to the methodology adopted for the survey at its commencement and as such, his subsequent objection to same is only mischievous and intended to baffle justice; that he wonders how Mr. Banyan, the appellant's representative at the survey determined that the acreage of the land was not calculated since this is a desk function performed in the office of the government appointed surveyor and that he was not representing the appellant at the pre-field measurement activities; that there is no relevance of identifying the appellant's deed in his presence; that the argument of Mr. Banyan is not representative of a professional surveyor since same did not take into account the technical realities of the survey findings and that his statements in the objection paper either shows his ignorance of the surveying technicalities or that he is insincere and unethical in his dealings.

On September 29, 2015, the appellant filed a formal twenty-one (21) count objection to the investigative report praying the trial court to set aside the said report on similar grounds stated in his surveyor's statement of objection. In its resistance filed on October 7, 2015, the appellee requested the trial court to ignore the appellant's objection on grounds that same was simply a replacement of the surveyor statement and that since the issues in said statement were adequately addressed by the government appointed surveyor, there was no reason for same to be entertained by the trial court.

At the call of the case by Judge Yussif D. Kaba, presiding over the September Term of the Sixth Judicial Circuit Court, Montserrado County for hearing on the objection to

the investigative survey report and the resistance thereto, the appellant/objector paraded one witness in person of his surveyor, Mr. Cyril Banya who basically testified to the issues raised in his objection statement. The appellee produced two witnesses in persons of Mr. David Beyan, the Government appointed surveyor and Mr. E.C.B. Jones, the representative of the appellee who also testified to accounts in the findings of the investigative survey report.

Both parties having rested with the production of oral and documentary evidence, on November 19, 2015, the trial judge ruled and confirmed the investigative report on the grounds that the findings established that the two deeds were granted in respect of the same property and as such the oldest deed takes precedence.

Judge Yussif D. Kaba's final ruling being the subject of this appeal, we quote same verbatim to wit:

> COURT'S RULING ON THE OBJECTION TO THE SURVEY REPORT
>
> This Objection is the outcome of the report of an Investigative Survey that was commissioned by this Court. The court observed that the Report which was filed by the designated surveyor by the Ministry of Lands, Mines and Energy as per the order of this court was followed by two observatory reports by the surveyors for the two parties.
>
> Before the court dwell into the substance of this matter, it is necessary if not very important that the court give meaning to what constitute an Investigative Survey and the role of such a survey in the determination of matters before the court. An Investigative Survey to the mind of this court is a technical consideration of the title instruments of disputing parties before a court vis-à-vis the real property which is the subject of the controversy by and between the parties. The purpose and intend of an Investigative Survey is to fill up that vacuum of knowledge that exist in a dispute involving conflict of location and title to real property which can only be done by technicians verse and schooled in the act of survey. An Investigative Survey is part and parcel of the facts finding mechanism adopted for the resolution of dispute involving title to real property. Where the issue before the court is to determine the technical location of property, courts of law in our jurisdiction and in jurisdictions similarly situated like ours, adopted the fact the finding methodology of investigative survey so as to gather evidence which will aid the court in entering a determination. The finding of an Investigative Survey is not and cannot be said to be ip so facto conclusive of the dispute and or controversy which is before the court. Such as finding however, serve as a tool that may be used by the court in its determination of the matter.
>
> The Court observed that the objection filed to the report is of a technical nature. It is clear that lawyers are not trained in the act of survey in order to determine those technical issues. It is the expert in that area, that is the surveyor who must explain the nature and scope of the survey so as to aid the lawyer in understanding the nature of the controversy and proceeding from a position of information. It is based

upon this position that during the conduct of an Investigative Survey, the court ensures that an independent neutral technician is appointed to conduct the survey. The check and balance to this neutral surveyor are the technical representative of the parties who must be present during the conduct of the survey, observe the conduct of the survey, and if need be, file their technical observation to the survey. These observations are the source of much information not only to the lawyer for the parties, but also to the court in its appreciation of the report of the Investigative Survey. In the matter at bar as stated earlier in this our ruling the technical representative of the parties file their observations to the final report of the Investigative Survey. The court observes that both the objection and the resistance to the objection relied heavily on the technical observation of the technical representative of the parties. Therefore, when the objection was called for hearing and in view of the divergent technical observation, this Court ordered an investigation as the means of clarifying, explaining and reviewing the report. The court notes that during the technical investigation by this Court, the technical representative of the objector disclaim all of the grounds which he raised in his observations, the contrary of his observation claim that the survey was conducted consistent with the procedure of survey and the finding thereof was in line with standard survey procedure. The Investigative Survey continues to maintain his support for his report and the technical representative of the respondent also maintains his support for the report. In order words, despite the objection by the technical representative of the objector, all three surveyors, during the hearing affirmed and confirmed the report that was submitted as the official findings from the Investigative Survey. The Court notes also that inspite of the disclaimer by the technical representative of the objector, the objector did not bring another technician schooled in the art of survey in support of their contention as contained in their objection as cured from the technical observation of their technical representative to the Investigative Survey.

The issues which the objector continues to highlight during these investigations and during the arguments of the parties before this Court is, on whose authority may a deed be corrected given that there is error in the deed? According to the objector there exist several discrepancies in the deed of the Respondent which the investigative surveyor took upon himself to correct. For example, there exist two lot numbers on the title instrument of the respondent herein that is to say lot number 140 and lot number 140D; however, the Investigative Survey interpreted these two lot numbers to be the product of error firstly committed by the archive and later committed by the surveyor who in the first place was responsible for the production of the deed. The Objector also made reference to the location of the property being in the deed as West Point while the disputed property is located in Mamba Point. The objection also raised the issue that while lot number 140D is located on Gorden Street, somewhere around the Graystone area rather than the investigative surveyor taking that information into consideration, the surveyor proceeded to locate the property in Mamba

Point. The objection further raised the issue that the area of the property as contained in the deed of the respondent herein called for two different areas. One of the areas calls for 0.34 acre while in the same deed the area is referred to as 150.50 square feet. The objector therefore is of the opinion that in the face of these discrepancies it was error on the part of the investigative surveyor to proceed to give meaning to the information in the deed that were not consistent with those information, the objector consider that act by the surveyor as a correction of the deed, the authority for which the surveyor lacks.

The Respondent appears and argued that there are possibility for error to be committed by survey of the property or during the transcription of the information the archive. The respondent is of the opinion that a surveyor face with an instrument with discrepancies must follow what in the opinion of the Respondent is known as the reconstruction of the deed. The Respondent, on the issue of the location of the property being in West Point argued that it is preposterous to believe that the West Point referred to in the deed is the area currently known as West Point since during the time of the execution of the deed the current area known as West Point did not exist and therefore could not have been the area referred to by the deed taking into consideration other information that are included in the deed. The Respondent further argued that the area today known as Mamba Point is the most western point of Monrovia and therefore it will be logical to conclude that the West Point referred to in the deed is not the West Point as we know it today, but rather the most western point especially considering other features that are referred to in the deed of the Respondent. On the issue of lot number 140D, the Respondent was in agreement with the objector that indeed 140D is located on Gorden Street around the Graystone area. However, the Respondent argued that considering other information in the deed it is clear that the reference to 140D was evidentially an error which is clear from that information. The Respondent tend to impress on the mind of this Court that lot number 140 is the lot that is subject of the deed of the Respondent. On the issue of the two areas listed in the deed, the Respondent is of the opinion that again it is evidence that what was meant is the same area since a single deed cannot have two different areas referring to the same areas of land and description. The Respondent is of the opinion that the 150.15 square feet ought to have been 1,500.15 square feet which when converted to acre will be equal exactly 0.34 acres.

Again as indicated herein earlier a survey is a technical vocation in which courts relied upon those school in this technique for information. All of the technicians that appeared before us were in agreement as to the report. The technicians made reference to the reconstruction of the information in a deed. This reconstruction is interpreted by the objector herein as correction of the deed. This Court certainly disagrees with the objector. To the mind of this court and after carefully listening to the technicians, reconstructions, reconstruction is a technical tool adopted by surveyors in their interpretation of information contained in a title

instrument when attempting to locate the property which is a subject of an investigation. The surveyors were in agreement that where there exist discrepancies in the information contained in the deed, a surveyor charged with the responsibility of locating that property will considered the overall information contained in the deed in determining the exact location of the property. By correction, in the mind of this Court is meant to change the information in the deed and to insert new information in that deed which ought to have been placed therein. For this to be obtained, the grantor of the property must acquiesce to the change in the deed to generate this correction and the same must be process as provided for by law. While construction of the deed constitutes technical took available to surveyor in the conduct of a survey, correction is a legal tool available to the parties in correcting errors in a deed. A reconstructed deed information may be a proper subject for an application for correction of deed, but does not by itself constitute the correction of the deed. Like an investigative survey the construction of the information in a deed may serve as evidence for the correction of a deed but cannot by itself be construed as a correction of a deed. In the instance case, the issue before this court is not whether or not the construction should be incorporated into the deed as a correction. The issue is whether or not the construction portrayed the situation as is obtained with respect to the disputed property. In the opinion of the technician the construction was certainly within the scope of the investigative survey. No evidence was produced to the contrary. It is the principle of law that the burden of proof lie with he who alleges a fact. It ought to have been the responsibility of the objector herein to have produce at least an expert who testimony would have establish either that the technician lack the competent to construct the deed as alleged in their report or that such construction was not done within the scope and competent of the surveyor.

The Court notice that this matter involve title to real property and that according to the report the title instrument of both parties are interlocking and intertwine thereby establishing that the parties claim in the areas is one and the same. The court says that the Respondent herein being with the oldest title, our law certainly favors such a title.

Wherefore and in view of the foregoing, this court hereby confirms and affirms the report of the Investigative Survey it and having been established that the two deeds in this matter called for one and the same property and having been established that the title instrument of the Respondent herein is older than that of the objector title instrument, the respondent title must prevail. This Court therefore hereby enters judgment of liable against the Objector/the defendant in the main suit. Cost of these proceedings rule against the defendant...."

The appellant excepted to the above final ruling and filed a lengthy bill of exceptions containing 46 counts basically contending that the judge erred when he confirmed the investigative survey report and ruled that the appellee's estate represented by its administrator, Henry Duncan, Jr. possessed the oldest title deed and was therefore

entitled to the property as a matter of law. Due to the lengthy and repetitive nature of the bill of exceptions, we have withheld quoting same.

When the case was called for argument before this Court, the counsel representing the appellant argued that the judge erred when he confirmed the investigative report; that the determination by the trial judge of the Duncan estate's deed as the oldest was erroneous since both properties were separate; that the appellee's deed was fake and that the investigative report should have been set aside and dismissed. On the other hand, counsel for the appellee prayed this Court to affirm the ruling of the trial judge contending that same was within the pale of the law; that the investigative report findings should be upheld as same presents the fair determination of the dispute presented.

Having reviewed the facts and circumstances of this case, the sole issue we have determined therefrom is: whether or not the trial judge's ruling conforms to the evidence adduced at trial. In other words, did the plaintiff/appellee prove, with preponderance of evidence, that its title was superior to that of the defendant/appellant to warrant the judge awarding it the disputed property?

The law provides:

> "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..." *Civil Procedure Law, Rev. Code 1:62.1* **(Emphasis added)**

The phrase ***'rightfully entitled to the possession of real property'*** entails that the complainant/plaintiff in an ejectment action must be convinced of his/her ownership to the property being claimed and that such ownership must be supported by law. This is why in an action of ejectment, the court does not look to the defects in the defendant's deed but requires the plaintiff to prevail on the strength of his deed. In a typical ejectment action, the defendant does not necessarily have to present a deed; once he can show that the plaintiff's deed is defective, the law shall protect his ownership or possession of the property being claimed by the plaintiff.

That is why every court is forbidden from entering a judgment in favor of a plaintiff in an ejectment action due to, on account of and based upon imperfections, defects and deficiencies discovered in the title of the party defendant. *White v. Steel, 2 LLR 22 (1909); Miller v. McClain, 12 LLR 356 (1956); Neal v. Kandakai, 17 LLR 590, 596 (1966); Tay v. Tay 18 LLR 310, 315 (1968); Jackson et al. v.Mason,24 LLR 97, 110 (1975); Cooper v. Gissie et al., 28 LLR 202, 210 (1979); The United Methodist Church and Consolidated African Trading Corporation v Cooper et al., 40 LLR 449, 458 (2001).* Indeed, the law makes it mandatory, as stated in Opinions of the Supreme Court, literally without dissent, that a plaintiff in every action of ejectment must recover on the strength of his own title and cannot and should not prevail as a consequence of a weakness in the defendant's title. This principle has been unswervingly applied in the disposition of ejectment suits from the establishment of Liberia's court system. *Bingham v. Oliver,* 1 LLR 47, 49 (1870)*; Couwenhoven v. Beck,* 2 LLR 364 (1920)*; William et al. v. Karnga, et al.,* 3 LLR 234 (1931).

For almost sixty (60) years, this Court pronounced this very principle in the case, *Duncan v. Perry*, 13 LLR 510, 515 (1960), when it held:

> "The primary objective in suits of ejectment is to test the strength of the titles of the parties, and to award possession of the property in dispute to that party whose chain of title is so strong as to effectively negate his adversary's right of recovery. In all such cases the plaintiffs right of possession must not depend upon the insufficiency or inadequacy of his adversary's claim; he must be entitled to possession of the property upon legal foundations so firm as to admit of no doubt of his ownership of the particular tract of land in dispute."

In our minds, it was exactly this principle of law quoted *supra* which prompted the appellee to request, and the trial judge to decline making a decision on the case by simply looking at the deeds presented by the parties but submitted the matter to an investigative survey, to make an informed determination in favour of the party with superior chain of title, which could only be done with the aid of qualified technicians; he was guided by this long standing principle when he required the Department of Survey & Cartography of the Ministry of Lands, Mines, and Energy, a department with specialty in such matters to investigate the deeds presented by the parties and make determination as to their respective legitimacy relative to the land being claimed.

The trial Judge was aware that not only was the appellee required to show that it possessed the older deed since the both parties were claiming title to the same property but also that its deed is not tainted with doubts and legal defects. It is an elementary principle of law that "Where parties contesting title to real property derive their respective rights from the same source, the party showing the prior deed is entitled to the property"; or as put another way by the Court: where two conflicting deeds of conveyances exists and there is a dispute over their legal validity, the one issued subsequent to the first is inferior. *Lartey et al. v. Corhel et al. 36 LLR 255, 258(1989).*

The trial judge could have simply reviewed the deeds presented and determined that the appellee possessed the older one and as such declare that the appellant's deed is inferior but we believe he was knowledgeable of this Court's holding in numerous cases that: "While it is true that in an ejectment action where the parties' titles are derived from the same grantor, the party with the older title is preferred, an older title whose procurement is shrouded in doubt and uncertainty, as in the instant case, cannot prevail." *Kiazolu v. Cooper Hayes, Supreme Court Opinion, March Term, A.D. 2011; Suah-Belleh v Oniyama, Supreme Court Opinion, October Term, A. D. 2015.*

The Judge was therefore within the pale of the law, as earlier mentioned, when he submitted the case to an investigative survey.

This court has said that an investigative suvey is "one that is requested or directed by the court as a means of helping the court in settling certain technical aspects of a case which will aid the court in determining an issue in a matter before it....the report of an investigative survey ordered by the court is to be used as evidentiary tool and is not in the nature of an award. It is used by the court to determine a particular technical nature or controversy of a matter before it. An investigative survey is usually ordered in cases of boundary disputes or land being contiguous where each party has uncontested title

deeds." *Pratt v. Phillips*, 9 LLR 446, 451 (1947); *Jallaba v. Street*, 12 LLR 356, 358 (1956); *Gardner v. Pyne James*, Supreme Court Opinion, March Term 2015.

We note that the entire disagreement of the appellant's representative goes to the procedural aspect of the survey rather than addressing the substantive findings. He alleges that the method adopted was erroneous; but the record reflects that he participated in the survey strategy and raised no objection to the proposed methodology at the time. He argues that the government appointed surveyor did not identify the two lots of land presented on the deeds of the parties, but it is certified from the records that he participated in the reconnaissance survey wherein the parcels of land claimed by the parties were identified. In fact, it was in his presence that the appellant himself identified the land he was claiming. It is his contention that the Duncan's deed was fake but contrary to his allegation, he contends that he was not given the opportunity to verify the deed. One would wonder without the verification of the deed as alluded to by him, how he got to discover the fakeness of the deed. Interestingly, although the survey impresses us that he was not allowed to see the appellee's deed, he amazingly contends that the deed which he did not see had technical defects and no geometric figure.

There were even greater contradictions in the appellant's contentions throughout the hearing and the pleadings filed before the trial court. Although he impressed upon us that he acquired his title from the Republic through a Public land sale deed, he argues that Mr. Duncan's extended letters of administration is fraudulent and that it is Evelyn Duncan who has a valid letters of administration, which letters, he said, she acquired since 1998. If the defendant claims to have a legitimate public land sale deed, why will he be inferring that Evelyn Witherspoon Dunbar has a valid letters of administration? Could the President issue a Public land sale deed in the face of Evelyn's letter of administration? Can it be said that Evelyn relinquished title to the property to the Republic to validate the President's action of issuing a public land sale deed to the defendant? Assuming that she did relinquish to the Republic, could she legally do that noting that she was only administering the property? How could she even do that while the estate remains opened?

Moreover, we take judicial notice of the fact that with the cancellation of the deeds of the appellant's first grantor, the intestate estate of Sartee, he would, within the exact same period of time, obtain a public land sale deed from the Republic of Liberia for the exact same property. We ask therefore, when did the parcel of land again become public land when the very Republic itself had said that the title instrument the Sartee Estate was relying upon was never issued by the Republic? Legally therefore, the appellant was and still is without title to the property being claimed by him.
That the Report from the investigative survey in the present case, having found in favour of the appellee, based upon which the trial judge entered a judgment thereon; and it having been established that the appellee possessed the older public land sale deed since 1955, the appellee therefore has the superior title;

Also, the Report from the investigative survey conducted by the Board of investigation, a team comprising of technicians from both parties and the Government of Liberia, having found that the appellee's deed conforms to the property being contested, based upon which the trial judge entered a judgment thereon and held that the appellee possessed the older and legitimate chain of title, we are not inclined to disturb the trial court's ruling confirming the findings of the investigative survey.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final judgment of the Sixth Judicial Circuit Court, Montserrado County is hereby confirmed and affirmed. The Clerk of this Court is ordered to send a mandate to the trial court ordering the judge presiding therein to resume jurisdiction over this case and evict, oust and eject the appellant from the property subject of the ejectment action, and place the appellee in possession thereof. Costs are ruled against the appellant. IT IS SO ORDERED.

Judgment affirmed

When this case was called for hearing Counselors Milton D. Taylor and Frederick L. M. Gbemie of the Law Offices of Taylor and Associates, Inc. appeared for the appellant. Counselor Cyril Jones of Jones and Jones Law Firm appeared for the appellee.