Kamara et al v Heirs of Essel [2012] LRSC 6 (5 July 2012)

Foday Kamara,Luseni Keita and Bamba, of the City of Monrovia, Liberia, APPELLANTS Versus **The Intestate Estate of the Late Isaac K. Essel,** represented by its Administrators, **Messrs. George Mends, Joshua Odoi,** as well as Attorney-In-Fact for **Mrs. Esther Smith** of the United States of America and **Mr. Ulysses A. Nelson, Mrs. Lawinda McGee and Kennie K.Saye,** Attorney-In-Fact for **Marilyn M. Burphy**, of the City of Monrovia, Liberia , APPELLEES

EJECTMENT

Heard: March 13, 2012 Decided: July 5, 2012

MR. JUSTICE BANKS delivered the Opinion of the Court.

The knowledge, understanding and correct, appropriate and proper application of the law are crucial to the building and sustaining of democracy and the democratic order. Thus, where there is a serious display of the lack or comprehension of such knowledge of the law, the application of the law runs the risk of a serious misplacement, and a party litigant is thereby exposed to the real prospect of suffering an injustice at the hands of persons charged with the responsibility of administering and enforcing the law. It is on this premise and to ensure that the risk of injustice is minimized that the laws of this Land, both constitutional and statutory, have set minimum qualification standards which persons seeking membership to the Liberian National Bar Association (LNBA) and to the practice of law in Liberia must meet in order to be allowed to practice law in this jurisdiction and to be eligible for nomination to judgeship of our courts. LIB. CONST. ARTS. 68 & 69 (1986); Judiciary Law, Rev. Code 17:17.1-17.5. This is why also the Legislature, on advice of the Judiciary, saw it fit to include in the Judiciary Law a provision that made it a mandatory prerequisite for membership to the LNBA and admission to the practice of law in Liberia that the candidate or applicant be a graduate of the Louis Arthur Grimes School of Law or another recognized law school. *Id.* The aim was to protect the judicial system and those who sought the protection of their rights by that system.

With the same basic aim, the Liberian Constitution provides that as a condition to a person being nominated for appointment as a circuit court judge or a judge of other courts of records, he or she must have been engaged in the practice of law for not less than three years; and, that in the case of the Supreme Court, the nominee must have been engaged in the practice of law for a period of not less than five years. LIB.CONST. ARTS. 68 & 69.

Given the mentioned minimum qualification criteria and preconditions for admission to the practice of law and service as a judge, the nation assumed that when a graduate of the Louis Arthur Grimes School of Law or another recognized law school is admitted to membership of the Liberian National Bar Association (LNBA) and to the practice of law in Liberia, the same as when a lawyer is appointed as a judge to one of the courts in Liberia, especially the courts of record, he or she is fully acquainted with the law; and that even if not fully acquainted with the law, he or she will perserve in researching and analyzing the law so that in representing a client or

in dispensing justice, the spirit and intent of the law and of the framers of the law are manifested in the advocacy advanced by the lawyer and the decision rendered in the matter. The framers of those laws clearly recognized that in seeking to ensure the proper administration of justice there was a need for the continued quest for knowledge of the law, deemed necessary to guide and enable us to hold high the flames of democracy and proudly the torch of enlightenment, for the good of our people and our nation. We run the risk of jeopardizing their vision, our judicial and justice system, and the legal profession if we lose that focus on and of the law, as expected of us. This is more the reason why we must show concern when we see in the conduct of any legal proceedings an apparent loss of that focus by any of our lawyers and our judges. This case demonstrates one of such instances of a loss of focus on and of the law.

Our perusal of the records in this case leaves us deeply saddened that we still have yet to attain the goals of the framers of our laws, and prompts us to appeal to the Liberian National Bar Association and the Louis Arthur Grimes School of Law to set higher standards for students of law and lawyers respectively, the same as we are insisting on higher standards for lawyers and judges, such that they are able and capable of achieving the noble and sacred task of ensuring that the law, the rule of law, and justice in our country are not just known to the people but are felt by the people and the Liberian nation state. How we deal with matters brought before us and the decisions we make in those matters depend heavily on how the lawyers who bring such matters demonstrate that they have a good and acceptable knowledge and understanding of the law, are able to grasp and comprehend the facts of the case, and can thereby analyze and articulate the issues involved, and hence, not sacrifice the rights of party litigants. This background perspective is necessary and provides the basis for our analysis of the facts in the case, which we now turn to.

This case is before us on an appeal taken by the appellant from the judgment of the trial court confirming the award made by a board of arbitration set up by the trial court to do an investigative survey of a disputed parcel of land, located in Gardnersville, to which both the appellant and the appellees asserted claims of title and ownership. It represents one of the numerous unfolding disputes involving claims of title to a parcel of land based on seriously questionable title instruments. Like many other cases brought before this Court for resolution, it embodies a newly preferred course in which the contesting parties to real property law suits agree to arbitration as the best and most expeditious means of resolving the disputes between them regarding their claims to ownership of the parcels of land in dispute. This case differs, however, from the other arbitration cases involving land disputes because of the rather peculiar facts, as revealed from the records, and the manner in which the lawyers and the trial court treated and even ignored the facts presented.

The case began on November 15, 2005, with the filing by the plaintiffs, the Intestate Estate of the late Isaac K. Essel, Esther Smith, and Marilyn M. Burphy, represented by their administrators and attorneys-in-fact respectively, the appellees herein, of an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado, sitting in the December Term, A. D. 2005. In the complaint, the plaintiffs, claiming ownership to the disputed parcel of land, prayed the

trial court to oust, evict and eject the defendants, the appellants herein, from the said parcel of land.

The plaintiffs/appellees alleged in the complaint that the defendants/ appellants had encroached on a five lot parcel of land which the late Isaac K. Essel and the other plaintiffs had purchased in three separate transactions from Susan A. M. Pearson and J. E. Marshall, J. E. Marshall and S. M. Pearson, and Susan A. DeShield and J. E. Marshall. In support of the allegations, the plaintiffs attached two original deeds and one certified copy of a warranty deed. They asserted that they were constrained to commence the action of ejectment because they had on several occasions requested the defendants to cease encroaching on the property and to vacate the said property, but that the defendants had refused to comply with the plaintiffs' request.

The defendants responded to the allegations made in the complaint in a four-count answer, only one count of which, being count 3, addressed the question of the ownership to the parcel of land claimed by the plaintiffs. The count stated:

3. Defendants deny count three of the complaint. Defendants say that co- defendant Foday A. Kamara is the owner of the land in dispute. Herewith attached is a copy of defendant Foday A. Kamara's deed, marked Exhibit d/1, to form a cogent part of this answer. That defendants' grantor, James S. Marshall, purchased this land from the Republic, evidenced by copy of James S. Marshall's deed, marked Exhibit d/2, to form a cogent part of this answer. Defendants say that co-defendant Foday A. Kamara has a better title to the land in dispute, having traced their title to the Republic.

The documents to which the defendants referred, and which they exhibited in support of co-defendant Kamara's claim to ownership of the property in question, were (1) a copy of the original deed executed by the Republic of Liberia in favor of James S. Marshall, and (2) a document issued by the Center for National Documents and Records/National Archives, said to be a True and Correct Copy of a warranty deed executed by James S. Marshall in favor of co-defendant Foday A. Kamara.

The plaintiffs' reply added nothing new to the issues already raised in the complaint and traversed by the defendants. It merely reiterated the plaintiffs' claim to the property and pointed out that the tracing by the defendants of co- defendant Foday Kamara's title to the Republic was irrelevant and immaterial, in that both parties had acquired title to the property in question from the same grantor, J. E. Marshall, who had obtained title to the land from the Republic of Liberia.

The pleadings having rested and other ancillary proceedings (such as a motion for preliminary injunction) having been entertained and disposed of by the trial court, the case was assigned for the disposition of the law issues. However, upon the appearance of the parties and their counsel for the hearing of the law issues, as per the assignment, the counsel for plaintiffs informed the court that he desired to spread a submission on the records of the court. Permission having been granted by the court, counsel for plaintiffs proceeded to make an application wherein he prayed the court to have the dispute submitted to a board of arbitration. The counsel for the defendants, not having interposed any objections to the application made by counsel for plaintiffs, the court ruled granting the

application and ordering that a board of arbitration be set up comprising one nominee from the plaintiffs, one from the defendants and a third, who was to serve as chairman, designated by the Ministry of Lands, Mines and Energy. [See Minutes of Court, 36th Day's Jury Sitting, Saturday, April 29, 2006, sheet three.]

This Court deems it important, before proceeding further with the factual analysis of the case, to comment on the procedure adopted by the lower court and the parties in the course of the proceedings in that court. We note, firstly, that although the case was assigned for the disposition of the law issues, yet when it was called for that purpose, and immediately following the announcement of representations by the counsel for the parties, counsel for the plaintiffs was allowed, with the agreement of counsel for the defendants, to make a submission for the case to be submitted to a board of arbitration to conduct an investigative survey that would effectively determine ownership to the disputed property. The minutes of the court do not reflect that the law issues were ever argued or disposed of. There was no reference at all to the law issues or any acknowledgment, either by the parties or the court that the case contained no law issues and therefore that it should be ruled to trial of the facts. [See Minutes of Court, 36TH Day's Jury Sitting, March term 2006, April 29, 2006, sheet 3]. This Court wonders how the lower court could have proceeded to appoint a board of arbitration to conduct a survey of the disputed property in order to resolve the issue of ownership without first disposing of the issues of law raised in the case. We must state unequivocally that it should only have been after the disposition of the law issues that the court could then have entertained and granted the submission made by counsel for the plaintiffs and thereafter proceed to constitute a board of arbitration whose findings and recommendations would then have aided the court in determining, as a factual matter, which of the parties held title to or owned the property in dispute. We state further that even if the case was without any law issues to be disposed of, the court was still legally obligated to make such a pronouncement on the records of the court before proceeding to entertain matters on the factual issues in the case. Garteh v. Paimore, 22 LLR 51 (1973); Computer Services Bureau v. Ehn, 29 LLR 206 (1981), text at 211; Firestone Plantations Company v. Fortune and the Board of General Appeals, 30 LLR 547 (1983); International Automobile Corporation v. Nah, 31 LLR576 (1983); Middle East Trading Corporations v. The Chase Manhattan Bank, N.A., 31 LLR 707 (1984); Wilson v. Firestone Plantations Company, 34 LLR 134 (1986); Doe v. Mitchell, 34 LLR 210 (1986); Swissair v. Kalaban, 35 LLR 49 (1988); Lamco J. V. Operating Company v. Kojo and The Board of General Appeals, 35 LLR 290 (1988); Lamco J. V. Operating Company v. Gailor, 36 LLR 351 (1989); Cavalla Rubber Corporation v. The Liberian trading and Development Bank, 38 LLR 153 (1995); Inter-Con Security Systems v. Miah and Yarkpawolo, 38 LLR 633 (1998); Baaklini and Metropolitan Bank, s.a.l. v. Henries, Younis et al., 39 LLR 303 (1999); Trokon International v. Reeves et al., 39 LLR 626 (1999); The Heirs of the Late Jesse R. Cooper and Cooper v. The Augustus W. Cooper Estate and The Heirs of the Late James F. Cooper, 39 LLR 750 (1999); Ketter v. Jones et al., 41LLR 81(2002). This is even more critical where, as in the instant case, a notice of assignment had been issued and served on the parties for the disposition of the law issues and the parties and their counsel had appeared in court for that purpose.

We reiterate, the same as we have done in many cases in the past, that the factual issues raised in a case can only be entertained, dealt with or passed upon by the court after the court has first disposed of the law issues raised in the pleadings; and that even where no issues of law are raised, the court must still go through the formality of first assigning the case for hearing of the law issues and ruling thereon that the case contained no law issues, and hence that the matter was being forwarded for trial of the facts. Not to follow such a procedure laid down in our statute and pronounced upon in the many opinions by this Court was clear error by the trial court. See Tuckle v. Wright and the United Methodist Church of Liberia, 37 LLR 829 (1995).

Adherence to the process and procedure provided for by law is important since indeed there may be instances when solely on the basis of the law presented in the case and raised in the pleadings, the court, in disposing of the law issues, may dismiss a case. J. J. Roberts Foundation v. Meridien Properties Incorporated, Inc., 40 LLR 309 (2000); Jawhary v. Hassoun, 40 LLR 418 (2000). Where, for example, the a defendant raises the issue of the lack of standing by the plaintiff to bring the suit, the court, finding as a matter of law that in the circumstances the plaintiff lacks standing to bring the action, the court may dismiss the case when disposing of the law issues and not await the factual disposition before dismissing the case. Thus, while the process and the procedure required of the court to first dispose of the law issues before proceeding to delve into the factual components of the case may seem trivial to some, including even some of our judges, the process and the procedure are provided for by our law and must therefore be adhered to by our courts---not just some of the courts but all of the courts. The only exception provided for, and articulated by this Court in a number of cases, but which does not obtain in the instance case, is in matters of declaratory judgments. See Jawhary v. The Intestate Estates and Heirs of the late Rosetta Watts Johnson, Rebecca Watts Pierre, and J. N. Lewis, et al., 42 LLR 474 (2005) wherein this Court said: "Ordinarily, law issues are to be disposed of first, to be followed by the facts, and thereafter, a court is authorized to enter final judgment; however, in the case of declaratory judgment proceedings, which usually considers issues of law, unless there is disputed fact, the necessity for trial of the facts does not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts. See also Liberia Trading and Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency, 39 LLR 272 (1999).

We therefore reemphasize that in cases of land disputes where applications or submissions are made for the setting up of a board of arbitration, designed to aid the court in the disposition of the factual issues regarding boundaries, metes and bounds and ownership, the applications or submissions can and should only be acted upon and/or granted after the issues of law have been heard and disposed of by the trial court; for it is only in adhering to that process that the court is then vested with the legal authority to proceed to entertain the application or submission to have the case submitted to a survey arbitration board. We hold the view accordingly that the constitution of the board of arbitrators, which consisted only of surveyors who had no knowledge of or competence in the law, and whose sole role was to determine whether, from the deeds provided by the parties, one party was encroaching upon the property of the other party or whether the deeds related to or coincided with the property in dispute or any part thereof, was an error, even if not of the

nature as would warrant a reversal of the decision or judgment made in the case, given the acquiescence of both parties to the process and procedure suggested to and followed by the court.

We must note also that notwithstanding what we have said above regarding the acquiescence of the parties to the procedure adopted by the court, the court must forever be mindful, especially in land dispute cases, that the surveyors to whom the matters are usually referred for investigative surveys and determination of boundaries or the metes and bounds of the disputed properties, do not possess the legal competence to make determinations on law issues, and that it is the duty of the court, not the surveyors who constitute the arbitration board, to make determinations as to the existence or non-existence of law issues and how they are disposed of. The trial judge therefore had an obligation to ensure that the issues of law were disposed of before submitting the case to a survey board of arbitration for an investigative survey.

This Court cannot and will not accept or condone legal lapses which infringe upon critical procedural elements of the law and our legal system, and which affect the dispensation of justice. We therefore must caution our trial judges not to allow themselves to subscribe to or adopt any course advanced, whether by lawyers or other persons, which could affect the integrity of or cause our legal and justice system to suffer ridicule and disrepute. Our concern grows out of the further fact that the legal lapses pointed out did not stop there. They continued as the proceedings progressed.

Following the court's ruling authorizing the setting up of a board of arbitration, but while the administration of the oath to the members of the board was still pending, the plaintiffs filed with the court a bill of information bringing to the attention of the court that the Center for National Documents and Records had, on June 19, 2006, issued out to co-defendant Foday A. Kamara, an instrument titled "Revocation of a True and Correct Copy of a Warranty Deed from James G. Marshall to Foday A. Kamara, Dated May 26th 2005". The bill of information requested the court to take the necessary action in light of the revocation document. The relevant counts of the information, being counts 2,3, 4 and 5, read:

2. That in answering the complaint filed by the plaintiffs/informants, defendants/respondents exhibited a certified copy of a deed purporting to be his title to the subject premises. Again, Your Honour is respectfully requested to take judicial notice of the records in these proceedings.

3. That the Center for National Documents and Records/National Archives, the institution that issued the certified copy relied on by the respondents had since discovered that the said certified copy was issued erroneously and had communicated to co-respondent Kamara the revocation of the said certified copy. Your Honour is respectfully requested to take judicial notice of a copy of said letter hereto attached and marked exhibit "1/1" to form a cogent part of informant's information. Informants give notice that during the hearing they will apply for a writ of subpoena duces tecum to be served on the co-respondent, Foday Kamara, to produce the original.

4.That as a result of count (3) above, Informant says your Honour should ignore defendant/respondents exhibit D/1, attached to the answer and enter a judgment sustaining plaintiff's complaint.

5. Thatinformant says that the courts within their respective jurisdictions have the right to declare rights, status and other legal relations in a matter. Informant says that Your Honour is respectfully requested to take the appropriate action in the premises."

The document of revocation, to which the plaintiffs made mention in the bill of information, signed by Mr. Julius M. Flomo, said to be the Registrar for Deed Titles ,informed Mr. Foday Kamara,as follows:

We would like to inform you that on May 26, 2005, the Center for National Archives inadvertently issued what was said to be a true and certified copy of a warranty deed from James G. Marshall to Foday Kamara as registered according to law in volume 66, page 315, and re-registered in vol. 319-82,page 346-348,due to mutilation of the original volume.

Please note that the Ministry of Foreign Affairs and the Center for National Documents and Records have not found in its Archives the re- registered volume mentioned. We believe it was an oversight.

In view of the above, we hereby revoke the purported true and certified copy of a warranty deed from James G. Marshall to Foday Kamara, dated May 26,2005.

Given under our Hands and Seal of the Center for
National Documents & Records/National Archives,
June 19th, A.D. 2006.
Julius H. Flomo
Registrar for Deed Titles
CNDRA

We note that in the bill of information, which was filed with the trial court on July 6, 2006, 68 days after the court's ruling that a board of arbitration be constituted, the plaintiffs notified the court that upon assignment for hearing on the information, they would pray for the issuance of a subpoena duces tecum to be served on co-defendant Foday Kamara to produce the original of the document issued by the Center for National Documents & Records/National Archives revoking the instrument issued to him purporting to be a copy of a warranty deed executed by James G. Marshall in favour of co-defendant Kamara. The plaintiffs also prayed that, as a result of the revocation of the instrument purporting to be a certified, true and correct copy of a warranty deed from James G. Marshall to Foday A. Kamara, the trial court should ignore the defendants' Exhibit d/1 and, under authority vested in the court to declare rights, status and other legal relations in a matter, the court should take the appropriate action in the premises.

The court, presided over by His Honour J. Boima Kontoe, in responding to the submission, said: The submission of the counsel for plaintiffs/informants is noted. The clerk of this

court is hereby authorized to qualify the following surveyors: (1) Morris Kaneh as chairman [and] Kempson Murray who are now present in court. Also upon the arrival of Sopoi Z. Kollie,Sr., he shall be qualified. Following the report of the clerk that the two surveyors had been qualified, the court further stated: The [report] of the clerk is noted, and the surveyors are given two weeks within which to submit their report. They [are] also directed to take due note of the certificate of revocation filed in this case. We are taken aback and surprised that the trial judge seemed not to have fully comprehended that the premise upon which the case was being submitted to the board of arbitration had been seriously challenged by the bill of information filed by the plaintiffs, and that if the allegations made therein were shown to be true, the basis for the investigative survey would be completely obviated, and hence, that there would have been no need for an arbitration board to be set up. The trial judge noted the information but still ordered the qualification of the surveyors and gave them two weeks within which to submit a report, using both deeds as the basis for the survey. Yet he directed that they take note of the instrument of revocation, whatever that meant in legal parlance. Our concern is what would the survey have revealed as regards the defendants' claim to the property in the face of the revocation document issued by the Center for National Documents and Records? Indeed, in light of this most critical fact, how could the judge's response be only to note the plaintiffs counsel's submission? Wasn't the disposition of the information warranted? How was the trial judge not able to fully comprehend the issues which the case presented and the basis upon which the case was being submitted to an arbitration board? We find the court's response to be very disturbing, to say the least, for it has the propensity to cast aspersions on the competence of those who are charged with the administration of justice. There was clearly a legal lapse that should not have occurred and which brings into question the theory that our judges are presumed to be learned in the law.

We also take note that the records do not reveal that any returns or resistance was filed by the defendants to the bill of information. This, of course, did not obviate the need for the trial judge to determine that the bill of information needed to be disposed of before any qualification of the surveyors was undertaken. Such a decision would have been proper in spite of the fact that the records reveal that up to the date for the qualification of the surveyors, i.e. August 10, 2006, (thirty-five days following the filing of the bill of information and thirty-four days following the service of the bill of information on counsel for the defendants on July 7, 2006), the defendants still had not responded to the allegations set out in the bill of information.

The records further reveal that following the judge's decision on the matter and the qualification of the surveyors who were present in court, counsel for the defendants, who was not present in court at the time the submission was made by counsel for the plaintiffs, appeared in court and prayed the court to allow him the opportunity to resist the submission. No objections were interposed by counsel for the plaintiffs. The court, ignoring the fact that it had already passed on the submission made by plaintiffs' counsel, granted the defendants' counsel request and allowed counsel to spread his resistance on the minutes of the court. What is of equal concern to us is that counsel for the defendants, rather than addressing the cardinal issues raised in the bill of information or in the submission regarding the bill of information, chose instead, on the theory that the

assignment was for the qualification of the surveyors and not for hearing of the bill of information, to try to convince the court to undo what the court had already done. We believe an appreciation of the defendants counsel's resistance to the submission, made on the records of the court, warrants our quoting same. It reads:

At this stage counsel for respondents beg to inform this Honourable Court that the assignment for today calls for the qualification of the surveyors for the purpose of having them to carry on the arbitration as has been prayed for and granted by this court. Quite contrary to the assignment the informants now bring to the attention of this Honourable Court that a bill of information was filed before this court bringing to the attention of the court the fact [that] a so-called revocation of respondent's deed was filed before this court and therefore is asking [a] would-be qualified surveyor to therefore not consider respondent's deed in the conduct of the said survey. Counsel says that the said arbitration is not only wrong and baseless but is totally intended to mislead this Honourable Court into doing something quite contrary to our law and practice procedure hoary with age. That a bill of information must be heard upon assignment which in the instance case is not being done as today's assignment calls for the qualification of the board of arbitration and not for the hearing of the bill of information. Hence counsel prays that Your Honour ignores and disallows said information in its entirety. Furthermore, counsel for respondents say that the assignment for today, calling for the qualification of the board of arbitration was received late yesterday, same being August 9, 2006, calling for this hearing on today, August 10, 2006, less than 24 hours as required by law for a hearing of an assignment.

That as a result of the late service and receipt of said assignment, counsel for respondents was not able to have contacted his client and surveyor for the task of qualification as requested by the assignment.

Wherefore and in view of the foregoing, counsel for respondents prays Your Honour and this Honourable Court to ignore, deny and dismiss the application of informants' counsel and request for reassignment of the assignment for qualification of the board of arbitration for its service as indicated supra and accordingly, request court to make an assignment for the hearing of the bill of information if need be. And respectfully submit. [See Court Minutes, 45TH Day's Jury Session,June Term, A. D. 2006, August 10, 2006, sheet 13]

We have difficulty comprehending, and perhaps even disappointed, that counsel for defendants did not deem it important to address the core issues raised by the plaintiffs that a bill of information had been filed with the court more than a month prior to the convening of the court for the purpose of qualifying the surveyors. The issues included the following: (a) that since the resting of pleadings, the Center for National Documents and Records had, in a communication to co-defendant Foday A. Kamara, informed him that it was revoking its issuance of a copy of a certified deed to him from Mr. James Marshall, which revoked instrument it had issued to him in error;(b) that in the face of this revocation, the defendants were without any legal and legitimate instruments upon which to rely to assert ownership or title to the property in dispute; (c) that copy of the bill of information was served on counsel for defendants more than a month prior to August 9, 2002, the date of the

hearing on the law issues; and (d) that up to the date of the hearing no response or resistance had been filed to the bill of information. None of those issues were alluded to in the belated resistance to the submission made by plaintiffs' counsel.

We are equally perplexed that counsel for the defendants not only did not file resistance to the information, but even at this late stage did not request permission of the court to put on the minutes of the court the response or resistance of the defendants to the substantive issue raised in the bill of information. Was counsel not aware that the substance of the information needed and warranted a response to the allegations contained in the bill of information since that was a key factor in determining whether or not the case would or should be submitted to arbitration? If counsel for the defendants felt that the allegations contained in the bill of information were untrue and therefore there was no merit to the bill of information; or that procedurally the bill of information was the wrong document to be filed before the court, as opposed to a motion to introduce new evidence; or for any other reasons, they felt that the bill of information was inappropriate, they had an obligations to file resistance to the bill of information. They should have known that the trial court, in light of the information filed before it, could not proceed further with the case until it had first disposed of the bill of information, since, if the allegations contained in the bill of information were true, the net effect would be that co-defendant Foday A. Kamara was without a deed and therefore without any legal title to contest the plaintiffs' title or claim to the disputed property. That conclusion would have obviated the need to set up any board of arbitration to conduct an investigative survey, or if a board had been set up, to dissolve the board and proceed otherwise into the case upon any new information brought before the court, as prescribed by the Civil Procedure law, Rev. Code 1: 9.11. The arbitration board would have had to rely on the title deeds of the parties in carrying out its functions, in preparing a map of the ground based on the deeds, and in reaching conclusions as to who owned the parcel of land or whether there was encroachment by the one party on the property of the other party.

We have no hesitation in stating that the quoted response by counsel for the defendants fell far short of legal expectations. In the first place, the judge had already ruled on the submission made by counsel for plaintiffs, noting its contents and choosing not to address the issue of the information, and he had ordered that the surveyors be qualified, which also had already been done by the clerk of court.

Secondly, although the judge had clearly erred in his earlier ruling, the net effect of which favoured the defendants, no motion or application had been made to the court to rescind or modify its earlier decision. What was the essence then of the resistance to the submission at that particular juncture? What did counsel for the defendants hope to achieve by the belated resistance since he neither specifically refuted the averments in the bill of information nor provided reasons as to why the defendants had not responded to the bill of information, as required by law. Further, no request was made to the court to allow the defendants additional time to traverse or respond to the allegations in the bill of information, especially regarding the legitimacy or legality of the instrument issued by the Center for National Documents and Records revoking the purported copy of the warranty deed

upon which the defendants were relying to assert their claim of title or ownership to the land. Such failure by counsel for defendants was not only tantamount to an admission to the legality of the revocation and to the truthfulness of the allegations in the bill of information, but clearly put in jeopardy any claim of title by the defendants to the land in dispute.

We wonder how, under the circumstances, counsel for the defendants could have requested the court to ignore the information and proceed with the qualification of the surveyors when the instrument of revocation effectively removed any dispute as to title to the property. Indeed, even if the resistance was for the purpose of prodding the court into qualifying the surveyors, was counsel unaware of the decision made by the court, the lack of challenge by counsel for the plaintiffs to the decision of the court, and the qualification of the surveyors by the clerk of court on the instructions of the judge?

In any event, the court responded to the defendants' purported resistance as follows:

The resistance of the counsel for defendants/respondents is noted. The exercise for the arbitration is for the arbitrators to bring a report to the court reflecting the facts as it relates to the various title instruments relied upon by the parties. In view of the above, the earlier ruling is modified to the effect that the parties are to submit their title documents relied upon to the arbitrators and they will facilitate their work.

Surveyor Sopoi Kollie, Sr., surveyor for the defendants, is absent. Accordingly, the counsel for the defendants are hereby ordered to cause the appearance of the herein named surveyor before the clerk of this Honourable Court to be qualified by latest Monday, same being the 14th day of August, A. D. 2006. Meanwhile, the directive that the arbitrators should report to this Court within two weeks of today's date remains in full force and effect.

The clerk of this court is to ensure that the chairman of the board of arbitration is given a copy of these minutes to constitute his sufficient legal authority. And it is hereby so ordered.

As with our reaction to the resistance of counsel for the defendants, we are equally concerned with the response of the trial judge, both as regards the procedure by which the purported resistance was allowed and the court's ruling on the said resistance. We note that just as the trial judge had done in the ruling on the submission, he chose similarly to ignore addressing the issues raised relative to the bill of information in his ruling on the purported resistance. In fact, in his ruling on the submission, all that the trial court judge did was to take note of the submission and the information, and to order that the members of the arbitration board be qualified, implying that the deeds of the parties be submitted to the surveyors for their use and that in the process the revocation of co- defendant Kamara's deed be taken note of by the surveyors. He seemingly did not believe that the information needed to be disposed of before the arbitration board commenced the survey of the disputed property. In his ruling to the purported resistance to the submission made after his ruling on the submission and in which he purported to modify the ruling on the submission, the trial judge noted that he was modifying his earlier ruling by the seeming deliberate omission of any reference to the surveyors noting the revocation of the co-

defendant Kamara's deed and more expressly stating that the deeds of all the disputing parties be used by the surveyors. No mention was made of the pending bill of information.

We are troubled and bothered by the fact even in the face of the failure of counsel for defendants to address the issue raised in the bill of information, and the revocation of the co-defendants purported copy of a certified deed having been brought to the attention of the court, the trial judge chose to ignore these facts and the legal duty and obligation attached thereto order that the survey be proceeded with. We state in no uncertain terms that the trial court was under a legal duty to determine what the net effect of the revocation was on the case and whether in the face of the revocation, an arbitration board was needed or could be legally constituted to conduct a survey of the disputed property as requested by counsel for the defendants, with the acquiescence of counsel for the plaintiffs, prior to the information being disposed of.

Equally noteworthy is that the trial judge made two rulings--the first on the submission and the second on the resistance, rather than a single ruling as is mandated by the Civil Procedure Law of this nation. The latter ruling, the trial judge said, is supposed to have modified the earlier ruling made on the submission. This is a novelty in this jurisdiction, for the resistance should have been made timely in order that one ruling, rather than two rulings should have been made. In no part of our legal jurisprudence has a trial court been allowed to make one ruling on a submission and a separate ruling on the resistance to the submission, especially as in the instant case where there was no motion or application made to the court to modify the first ruling.

We therefore feel compelled, again, to admonish our judges to demonstrate greater knowledge of the law, both substantive and procedural, pay greater attention to trial procedures and the issues presented by the parties, and to take special care in how they respond to and make determination of matters brought before them or to their attention, as not to expose the courts to ridicule. What would the trial court have done, for example, had the board of arbitration determined that co-defendant Kamara's warranty deed showed greater alignment with the plotting on the ground than did the plaintiffs' warranty deeds and that therefore he was entitled to the property? Would the judge then have reversed the decision of the arbitration board on the theory that the instrument upon which the defendants relied had effectively been declared revoked by the issuing agency, or determined that an investigation was needed for that purpose? Or would he have declared the revoking instrument of no legal validity or effect and therefore approve the recommendation of the board of arbitration and enter judgment thereon? Shouldn't those issues, which were primarily of a legal nature, have been addressed before the board was qualified and directed to carry out a survey based on the deeds of the parties?

Why, we are prompted to enquire further, was it necessary to subject the parties to the delays experienced by the parties and to unjustified expenses? Why was it necessary to waste the presumed valuable time of the surveyors when the results of their work would be rendered meaningless in the face of the allegations made in the bill of information, which was not denied or challenged by the defendants? How could the trial judge not believe that in view

of the revocation of the instrument upon which the defendants relied to assert title to the property in dispute, the instrument of reliance of title was no longer a legal document upon which title could be asserted, and hence, there was nothing left for which the court or the surveyors' board of arbitration could make a comparison between the plaintiffs and defendants deeds? Given the clear implication from the revocation document that a wrongdoing had been committed, why did the court not believe, at the very least, that an investigation was not warranted?

We are even more perplexed that counsel for plaintiffs did not grasp the implications of what the trial judge had done, note exceptions thereto, and seek the aid of this Court to correct the errors. What if the surveyors had made findings adverse to the plaintiffs, how would the plaintiffs' counsel defend against a claim made by the defendants that plaintiffs had waived their right in not excepting to what the trial judge had done? What is even more unfortunate about what transpired in the course of the proceedings on August 10, 2006, is that counsel for the plaintiffs, rather than requesting the trial court to hear and dispose of the information, and thereby determine whether a survey was warranted under the circumstances, and obtain a ruling of the court on the issue, and in the event of an adverse ruling by the court, to except thereto for review by this Court, chose instead to request that the trial court, in qualifying the surveyors and/or thereafter, instruct the surveyors to the effect that a certificate of revocation had been filed against the defendants/respondents, and that the purported deed of the defendants should therefore not be given any legal effect. [See Minutes of 45TH day Jury session,June term, A. D. 2006, August 10, 2006, sheet twelve].

We have difficulty understanding what counsel for plaintiffs sought to achieve by making a request that the survey could be carried using the plaintiffs and co-defendant Kamara's deeds, but that at the same time surveyors should be made aware that the co-defendant's deed had been revoked and therefore "should not be given an effect." Was it within the purview or province of the surveyors to determine whether to give legal effect to a deed, or was the responsibility of the court being shifted to the surveyors? It was clearly the prerogative of the court, not the surveyors, to make the determination on the legality of the co-defendant's deed, and if the court determined that the deed was not valid in the face of the instrument of revocation, how could the deed be allowed to be used by the surveyors in demarcating?

It was in the face of the legal lapses indicated above that the trial court, with the acquiescence of counsel for both plaintiffs and the defendants, proceeded to swear in the board of arbitration and to mandate them to conduct a survey to determine who owned the property. It was as a result of these lapses that a survey was conducted and a report, dated October 13, 2006, submitted to the court. The report stated:

We the members of the Board of Arbitration in the above case do hereby submit this investigative survey report. It contains information of documents (Deeds) received during the survey exercise, survey Methodology, Technical Analysis, Findings/Observation, Recommendation and Conclusion.

The survey was conducted on Tuesday, August 29, 2006, beginning at the hour of 10:00 A.M. in the presence of the contending parties. All parties were asked to identify their property corners on the ground which they did without hesitation. Following the identification of the property corners, the survey commenced.

SURVEY METHODOLOGY

Considering the nature of the dispute, the board decided to run a loop traverse around the main area of the dispute. Additionally, we decided to extend another open traverse to compass other surrounding properties so as to show the clear picture of the terrain. Our focus was on the properties believed to belong to Abu Kamara and Tata Kamara and Foday Kamara on one hand and versus Martha M. Burphy, S. K. Essel and Esther M. Essel on the other hand; All points shown by each of the contending parties were located as well as other features like road, concrete fence, buildings etc.

Having gone through the aforementioned exercise, we were in position to come out with the below Technical Analysis.

TECHNICAL ANALYSIS

1. The first point in our Technical Analysis has to do with the scrutinization of the deeds. In this connection, five deeds were received from the contending parties two of which came from Abu Kamara and Tata Kamara and Mr. Foday A. Kamara. While the others came from Martha M. Burphy, I. K. Essel and Esther M. Essel.

2. While scrutinizing the deeds, the Board recognized the various dates on which the deeds presented were probated and registered.

In this regard, the following are the names of property owners and date of probation in descending order.

a. Abu Kamara &Tata three lots Warrenty Deed probated June 10, 1959 Registered in volume 66-59 page 125-126

b. Foday A. Kamara two lots Warranty Deed probated December 10, 1959 Registered in volume 66 page 346-348

c. Martha M. Burphy two lots Warranty Deed probated on March of June 1963 Registered in volume 87 page 983

d. I. K. Essel two lots Warranty Deed probated on the 6th of June 1963 Registered in volume 87-1 page 66-68

e. Esther M. Essel one lot Warranty Deed probated on the 18th of August Registered in Volume 90-H page 109-110

In view of the foregoing technical analysis, the below constitutes our observation:

OBSERVATION

As stated earlier, at the beginning of the survey, all contending parties were requested to identify their property corners. Two old stones along Somalia Drive were identified by the administrators for Martha Burphy and I.K. EsseI as permanent point which Mark the commencement of their property corners. From the points, the deeds for Martha Burphy and I.K. Essel were plotted. See map for reference.

On the other hand, Mr. Foday Kamara showed one cornerstone near the building occupied by the Liberia Federation of Labor Union. The second point shown by Mr. Foday Kamara was a Banana orchard. The administrator for Esther M. Essel showed two grown trees as being the corner for Esther M. Essel.

FINDINGS

Having taken the technical analysis and the observation in consideration, the following constitutes our finding:

1. From the two old cornerstones along Somalia drive shown by the administrators of Martha Burphy and I.K. Essel the deeds were plotted with a magnetic declination of 8 degrees 30 minutes. See map also Martha Burphy, I.K. Essel, and Esther Essel, are on the same bearing as indicated indeed.

2. From the cornerstone and the Banana orchard shown by Foday Kamara, the board is unable to plot the deeds of Abu Kamara and Tata Kamara and Foday Kamara due to the disparities between the ground information and that of the deeds.

3. The deed for Esther Easel was also plotted due to its point of commencement. It stated that it commences 30 feet from the Northwest corner of I. K. Essel parcel of land.

CONCLUSION

The board will like to conclude the entire exercise with the following:

1. That based upon the deeds presented and the points shown by the contending parties, the board was able to put the deeds belonging to Martha Burphy,I.K. Essel and Esther M. Essel on the map. See Map also.

2. That based upon the deeds presented and points shown by Foday Kamara, the board found it difficult if not impossible to put the two deeds on the Map.

RECOMMENDATION

The board will like to cease this time to recommend that surveyors are concerned with the metes and bounds as it relate to points shown on the ground. Hence, the points shown by the heirs of Martha Burphy, I. E. Essel and Esther M. Essel came very close to their deed information in terms of metes and bound on their respective deeds.

We note two points in the report, contained in the conclusions drawn by the board of arbitration, important to this case. The first is that based upon the deeds presented and the points shown by the contending parties, the board was able to put the deeds belonging to Martha Burphy, I.K. Essel and Esther M. Essel on the map. The second, the board said, was that based upon the deeds presented and points shown by Foday Kamara, the board found it difficult if not impossible to put the two deeds on the map. It therefore recommended that while the surveyors were concerned with the metes and bounds as it relate to points shown on the ground, it was of the opinion that points shown by the heirs of Martha Burphy, I. E. Essel and Esther M. Essel came very close to their deed information in terms of metes and bound on their respective deeds. By this last assertion, the board seemed to have implied that the plaintiffs were entitled to the land.

The defendants, not being satisfied with the report of the board of arbitration, filed on the 21st day of December, A. D. 2006, a four count objections to the report wherein they prayed that the court would dismiss, set aside and disregard the report and allow the parties to freely contest in a legal and impartial trial before a jury as, they said, was required by law. We herewith quote verbatim the counts contained in the objections,which set out the reasons for the prayer:

1. Defendants say that the report is highly unprofessional, inconclusive and fraudulent, in that while the report acknowledges in essence that the defendants are owners of older deeds/title granted unto them for their land by the late James E. Marshall, who was also the grantor of the plaintiffs' land later, yet in the report the three surveyors stated that they were unable to spot out defendants' land on the ground thereby giving the false impression that the Defendants do not have adjoining land in the area. For this lack of professional skill and work on part of the board members,the report shall be set aside and the case be proceeded with.

2. Defendants say that count two (2) of the conclusion of the report on page 3 states "that based upon the deeds presented and points shown by Foday Kamara, the board found it difficult if not impossible to put the two deeds on the map". This part of the conclusion does not give any concrete or substantial reason why the board found it difficult if not impossible to put the defendants' deeds on the map. There are more questions needing answers. Is it that defendants are not land owners in the area or is it that the defendants do not have deed for land in the area? It is very impossible to be unable to plot out defendants' deed on the map which deed was executed in June, 1959, yet the board was able to plot out plaintiffs' deed on the map which was issued in 1963 when the deeds of the parties, that is the plaintiffs and defendants, came from the same source, James E. Marshall.

3. Defendants say that they have evidence to prove that the report was made the way it is due to financial influence brought upon the board by the plaintiffs.

4. Defendants say that ejectment action involves the trial of two or more titles; hence, defendants say that a jury should be constituted and a regular trial conducted so that all parties can have their day in Court.

The court, at its June term, A. D. 2007, called the case for reading of the arbitrator's report and thereafter entertained a hearing on the objections filed by the defendants. At the hearing, no

evidence was introduced by the defendants on the allegations set forth in the objections. Thus, on August 22, 2007, the court entered final judgment in the case. We herewith quote the said judgment:

After the Arbitrators appointed pursuant to Chapter 64 of our Civil Procedure Law submitted their report in this matter to this Court, the defendant filed this four count Exceptions/Objection to the said report praying this court that this report be dismissed, set aside and disregarded and by that have this matter proceeded to trial. The defendant, in support of the prayer challenged the professional competence of the surveyors and the content of the report and the partiality of the said survey.

This application by the defendant is provided for by section 64.11 of the Civil Procedure Law. Four (4) grounds are spelt out in the said Section based upon which this court may set aside an award granted by Arbitration. The grounds are: corruption or fraud, partiality or the part of the chairman, excess of authority and denial of time.

From the exception/objection only two of those grounds are alleged: The ground of corruption and partiality. In count three (3) of the exception/ objection the defendant alleged that financial influence necessitated the report. The court observes that no evidence of such influence was annexed to the report nor was evidence produced at the hearing to substantiate this allegation. The court says an allegation is not, and does not, constitute proof. The defendant was under a duty to provide the evidence based upon which the allegation stands. Failure to so do, the said allegation must crumble.

On the competency of the surveyors, the court is at a loss to see how the defendant can come to this conclusion. There was no expert opinion provided with the Objection indicating that the report was not in keeping with the standard required by the survey profession. To merely allege the same is not sufficient.

The court says that all of the issues raised by the informant not being supported by evidence, are not sufficient to warrant the setting aside of the report of the Board of Arbitration.

Wherefore and in view of the foregoing, the Court hereby denies the prayer contained in the objection/exception. The arbitrators' report is hereby upheld. The clerk of this court is hereby ordered issue the necessary writ of possession placing same in the hands of the sheriff to proceed to the area of dispute along with members of the board of arbitration to give effect to the arbitrators' report, thereby placing all of the parties in possession of their respective properties as indicated in the arbitrators' report. Costs disallowed. AND SO ORDERED." [See Minutes of Court, 10th Day's Special Jury Sitting, June Term, A. D. 2007, August 22, 2007, sheets eight and nine.]

The defendants, not being satisfied with the final judgment of the court, noted exceptions to the same and announced an appeal therefrom. In furtherance of the appeal announced and granted by the trial court, and as required by law, the defendants, on September 1, 2007, filed a three count bill of exceptions. We also quote verbatim the bill of exceptions as it presents the issues which the defendants have called upon this Court to decide. The bill of exceptions states:

1. That despite the fact that the defendants pointed out that the arbitration report failed to lay to rest the contention of the parties as to who owns the disputed property, that is, the report says that surveyors were unable to plot the defendants deeds due to disparities between the ground information and that of the deed, yet failed to point out the disparities and further they failed to say who actually owns the land from the survey conducted. Your Honour erred in awarding the disputed property to the plaintiffs.

2. That despite the fact that the report indicates that both parties deeds did not conform to count 2 of the conclusion of the arbitration report states that based upon the deeds presented and points shown by Foday Kamara, the Board found it difficult if not impossible to put the two deeds on the map which does not give any substantial reason, Your Honour erred in granting said award to the plaintiffs.

3. That Your Honour grossly erred when on the day of the hearing of the defendants Exceptions/Objections to the Board of Arbitration Report, contrary to law, you said that you were only entertaining arguments when in fact factual issues were raised in said objections that required the production of witnesses who had firsthand account of what obtained on the ground before and during the conduct of the survey who were in open court to testify.

In their three page brief, filed with this Court, the appellant informed the Court that from the foregoing bill of exceptions, three issues were presented for our resolution. They stated the three issues to be the following:

1. Whether or not the motion filed to vacate the arbitration award would lie against the respondent?

2. Whether or not the Judge erred in awarding the disputed property to the plaintiffs/appellees, based on Arbitration Report which was objected to in open court for its inconclusiveness as to who actually owns the disputed property?

3. Whether or not a party in an ejectment action with the older deed may prevail against his adversary when both parties derived titles from the same grantor?

With regards to the first issues, the appellants argued that under the laws and practice obtaining in this jurisdiction, when in an arbitration proceeding either of the parties thereto discovers that there exists gross irregularities, such as misconduct, fraud, corruption or other undue means, on the part of the board of arbitrators, the presiding Judge is under legal obligation to sua sponte proceed "to set aside the award and adopt such a course as will ensure fair play to the parties concerned." They stated further that in the instant case, the appellants, in objecting or excepting to the arbitrators report stated as part of their grounds fraud was involved, that the arbitrators were unprofessional and that the report was inconclusive, and that the court, rather than allowing witnesses who had firsthand account of what had obtained during the survey exercise, had proceeded to award the disputed property to the appellees.

The appellees, for their part, asserted that when the case was called for hearing of the objections filed by the appellants, the appellants neither requested the court to allow them to introduce

witnesses to substantiate the allegations made in the objections nor submitted any documents to substantiate the said allegations; instead, they said, the appellants chose only to spread their citations on the records and to argue the position taken by them.

The Court does not dispute that the Civil Procedure Law provides the grounds upon which the report of a board of arbitration may be challenged by the parties to arbitration proceedings, and that the grounds stated by the appellants fall within the allowable ambits for challenge to and vacating of an arbitration report or award. Section 64.11of the Civil Procedure Law states:

1. Grounds for vacating. Upon written motion of a party the court shall vacate an award where:

(a) The award was procured by corruption, fraud, or other undue means; or

(b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession;or there was corruption or misconduct in any of the arbitrators; or

(c) An arbitrator or the agency or person making the award exceeded his powers or rendered an award contrary to public policy;or

(d) The arbitrators refused to postpone the hearing upon sufficient cause being shown there for or refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6.

The fact that the relief granted in the award was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm an award.

In referencing the provisions of the law quoted above, this Court has held, consistent with the intent of the law, that in order for a trial judge to vacate an arbitration award, the allegations stated in the objections or exceptions must be proved by the party making the allegations. This is particularly applicable to the instant case where the appellants/objectors levied allegations of fraud, unprofessionalism, and corruption against the members of the board of arbitration. Because the allegations warranted proof, the production of evidence, written and/or oral, the appellants/objectors were under a legal obligation to produce such proof. Kiazolu v. Cooper-Hayes, Supreme Court Opinion, March Term 2011, decided July 22, 2011. Mere allegations, this Court has said, is not proof. Pentee v. Tulay, 40 LLR 207 (2000). The party making such allegations must ensure that satisfactory and cogent evidence is presented to substantiate same. Knuckles v. The Liberian Trading and Development Bank, Ltd., 40 LLR 511 (2001); Salala Rubber Corporation v. Garlawolu, 39 LLR 609 (1999); Morgan v. Barclay, 42 LLR 259 (2004).

The appellants assert that they sought to produce such evidence but that the trial judge denied them of the right. The allegations presupposes therefore that the appellants were aware that they were under a legal obligation to produce the required evidence in substantiation of the allegations made by them and that in the absence of such evidence the trial court was without the authority to vacate the findings, conclusions and recommendations of the board or the report submitted by the board. We are aware also that if the trial judge

denied the appellants of the right to introduce evidence to substantiate their claim of fraud, corruption and unprofessionalism on the part of the board of arbitration, that would be a sufficient ground for this Court to reverse the trial judge's decision affirming the award and to order that an investigation be had into the allegations made by the appellants. See Robertson et al. v. The Quiah Brothers, Supreme Court Opinion, October Term 2011, decided March 1, 2012. This requires that we make further resort to the records of the case and specifically to the proceedings had by the trial court on the date of the hearing of the objections or exceptions. In our review of the records, we have found no communications to the trial court requesting that it conducts an investigation into the allegations made by the appellants.

Moreover, the minutes of the trial court for August 2, 2007, the day on which the objections were held, are devoid of any request made by the appellants to introduce witnesses to substantiate the allegations of fraud, unprofessionalism and corruption made by them against the members of the board of arbitration or showing a denial of such request by the trial judge. [See Minutes of Court, 38TH Day's Jury Sitting, June Term, A. D. 2007, August 2, 2007, sheet two]. We disagree with the appellants that the trial judge should have sua sponte ordered an investigation and call for the production of witnesses once the objections were filed and allegations were made therein that unprofessionalism, fraud and corruption were involved or demonstrated by the arbitration board. To the contrary, the appellants had the legal obligation to produce witnesses or documents to substantiate the allegations. This Court has said on many occasions that the court has no obligation and will not do for parties that which the parties are obligated to do for themselves. Not to have produced such witnesses or documents was sheer negligence by counsel for the appellants and no blame can be apportioned to the trial court, whatever other mishaps it may have committed.

We must also state that the circuit court is a court of record. Any points counsel desires to make must be placed on the records of the court. It cannot be done orally by counsel. The circuit court, being a court of record, this Court cannot review any acts attributed to that court where the evidence of the commission of such act is lacking in the records of the court. [CITATIONS) This Court cannot therefore accept the claim of the appellants that they had requested the court to conduct an investigation and thereby allow the production of witnesses to substantiate the allegations made in the objections and that the trial court had denied the request and had taken the position that it would only entertain arguments in the matter. Did not counsel for appellants believe that it was important that such dialogue be recorded in the minutes of the lower court so that the Supreme Court would have the opportunity to review the acts and decision of the lower court? No judge of any court of record has the right or the authority to deny any party of the right to place on the minutes of the court objections, submissions, requests, or other requests necessary and appropriate to and which affect the party's case.

Indeed, even if a trial judge refuses for such record to be made on the minutes of the court, that refusal must be reflected in the minutes of the court. It is only by such process that this Court will be vested with the authority to review the act of the judge. This is not a new proposition for this Court. It has held on many occasions that it cannot and will not indulge in matters of a speculative nature or base its decision on mere speculation or in the face of evidence being

wanting. In the instant case, the minutes of August 2, 2007 show the contrary. The minutes show that immediately following representation by the parties, counsel for the appellants proceeded to make his law citations and to proceed to argue the appellants side of the case. No request was made of the trial judge for witnesses to be produced to testify to the allegations made by the appellants, and no documents were introduced. How then could the trial court have determined that the allegations made had truth to them? Indeed, in his ruling on the objections, the trial judge alluded to the fact that the appellants had failed to introduce any witnesses to substantiate their allegations against the members of the arbitration board or any documents in verification of the allegations.

Again, as we have held before, we must emphasize that the court will not do for any party that which the party must do for himself or herself. We hold accordingly that under the circumstances narrated herein, the contentions of the appellants on the first issue presented by them, not having any legal or factual basis, and no proof having been presented or introduced in that regard, the trial court did not err in not giving credence to the allegations. The contentions are therefore overruled.

With regard to the second issue presented in the bill of exceptions and the appellants brief, i.e. whether or not the trial judge erred in awarding the disputed property to the plaintiffs/appellees, based on the arbitration report which was objected to in open court for its inconclusiveness as to who actually owns the disputed property, we hold that there was no error made by the trial judge. Firstly, as we noted before in this Opinion, the matter should not even have been submitted to arbitration and most certainly, in the face of the submission of the dispute to arbitration, the copy of the certified deed upon which the appellants relied, having been revoked by the issuing authority, should not have been used by the board in its determination. How could the board make a determination of ownership to real property based on an instrument that had no legal validity since it had been revoked?

More disconcerting for us is how can the appellants now raise an issue on the determination of ownership to the property when it was counsel for the appellants that had prodded the court not to entertain the information filed by the appellees bringing to the attention of the court that the purported certified copy of the warranty deed by which Mr. James Marshall is said to have conveyed the disputed property to co-appellant Foday Kamara, had been revoked by the issuing authority. The information had been filed more than a month prior to the surveyors being qualified and a copy of the information had been served on counsel for the appellants a month before the qualification of the members of the board of arbitration; the court was notified of the filing of the information and of the fact that the Center for National Documents and Records had written to co- appellant Foday Kamara revoking the instrument which had earlier been issued to him by that institution and upon which he relied to assert title to the disputed property. How could the trial judge have allowed himself to be persuaded by counsel for appellants that notwithstanding the revocation of his instrument of title, the surveyors should still conduct a survey and that the said survey should be based on revoked instrument submitted by the appellants. The trial judge acted in accordance with that persuasion, and in the process displaying a lack of

knowledge of the law. No exceptions were taken to the judge's action by either party, particularly by the appellants since it was on their persuasion that the judge who ruled on the appellees' submission had acted in the manner he did.

Let us further specifically address the underlining basis set forth by the appellants for asserting that the trial judge erred in awarding the disputed property to the appellees. In their arguments, contained in the brief filed by Appellants counsel, they state that the trial judge should have sua sponte allowed the introduction of witnesses and that in any case, the appellants had requested that witnesses be introduced but that the trial judge had refused such introduction. They have therefore charged the trial judge with a failure to exercise due diligence. Indeed, they have relied on several decisions of this Court, wherein this Court stated that it is error for a trial judge to affirm an award made in arbitration without affording a hearing of a party to the arbitration proceedings who has challenged the authenticity of the award. They quote this Court further as saying that when it is discovered that gross irregularities existed in the proceedings of a board of arbitration, the trial court is not bound to wait for objections but may proceed sua sponte to set aside the award and adopt such a course as will ensure justice to the parties concerned. [ld.]

While we do not dispute the attribution of those wordings to this Court, we note that they are not applicable to the instant case, and have been cited out of context. Firstly, no discovery of irregularities was made by the trial court regarding the arbitration or the report of the arbitration board and, therefore, there was no need for the court to sua sponte start an investigation. Such a course would have meant that the court was on a fishing expedition, a course not authorized by law or under the circumstances of the instant case. The allegations of unprofessionalism, fraud and corruption were made by the appellants. Hence, the appellant was under a legal duty to request the court and to introduce evidence to move the allegations from the realm of speculation to the level of proof. The records show that the trial court did assign the case for hearing of the objections. The notice of assignment, issued by the court and signed by counsel for the parties, attest to this fact. As we indicated before in this Opinion, the records of the minutes on the date of the hearing on the objections show that all of the parties, including the appellants, were represented by their counsel. The appellants were therefore afforded ample opportunity to introduce witnesses and to have documents identified and presented to the court to substantiate the allegations made by them. In the absence of such evidence, the allegations remained within the realm of speculation and stayed at the level of allegations and not proof.

We comprehensively addressed those contentions earlier and therefore this Court need not belabored itself with a repetition of the recitals made before. It is sufficient to note that there is no reference in the minutes of the trial court to show that any request was made by counsel for the appellants' regarding the introduction of witnesses and that the said request was denied by the judge. To the contrary, the records reveal that immediately after representation, counsel for appellants proceeded to have his citations recorded and to commence arguments in the matter. We noted before that counsel for appellants should

have insisted on having his request recorded and have the trial judge place on the records of the court his denial of the request, even assuming the allegations to be reflective of what really transpired in the court below.

As to the third issue presented by the appellants, that is whether or not a party in an ejectment action with the older deed prevail against his adversary when both parties derived titles from the same grantor, we also hold that under the circumstances in the instant case, the contentions of the appellants in that regard cannot be upheld or sustained. It is true that this Court has held in a line of cases that where the contesting parties derived their titles from the same grantor, the party with the older deed holds a superior title and is therefore entitled to the property. These holdings, however, have been predicated on the assumption that both parties hold deeds that are issued legitimately. A person, for example, holding a deed purporting to be from the same grantor as his or her adversary cannot assert that the mere fact that he or she holds an older deed makes such deed superior to that of his or her adversary where there are questions of legality or legitimacy of the deed held by him or her. Kiazolu v. Cooper Hayes, Supreme Court Opinion, March Term 2011,decided July 22,2011.

In the Hayes case, the appellant had raised a similar contention. This Court, in addressing the contention, said: The defendant/appellant contended that his title which is derived from the republic of Liberia is older than the plaintiff/appellee's title which is also derived from the Republic of Liberia; that by operation of law, his title must prevail over the plaintiff/appellee's title. To this contention, we say 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. ld.

Reverting to the instant case, the only instrument purporting to be a deed held by the appellants was that issued by the Center for National Documents and Records. That Center had subsequently revoked the instrument issued by it to co- appellant Foday Kamara. The reason given for the revocation was that the instrument was issued in error as no such records existed at the Center indicating that the warranty deed to which the certified copy referred was registered with the Center or that the volume referred to existed.

Thus, the action by the Center, in revoking the copy of the certified deed, left co-appellant Kamara without a title instrument upon which to assert claim to the property in question. Counsel for the appellants did not deem it important to challenge the legality of the revocation or to refute the allegation that there existed no such book at the Center, from which the certified copy was said to have been issued. How, under any parity of law or reasoning, could the appellants claim that they have a superior titled because the revoked certified copy of the alleged warranty deed had a date on it that was earlier than the date of the appellees deed?

Moreover, whilst this Court has also held that a plaintiff must rely on the strength on his or her title rather than on the weakness of the defendant's title, that principle is not applicable to the instant case where the defendants/ appellants, because of the action

taken by the Center for National Documents and Records, were without any title. See Kiazolu v. Cooper-Hayes, Supreme Court Opinion, March Term 2011, decided July 22, 2011. The appellants also did not plead the statute of limitations and hence that defense was not available to them; they did not refute the instrument of revocation and hence, the contents must be assumed to be true. Indeed, they seemed not to want to have a hearing on the issue as their counsel insisted that rather than going into the information, the court should order that the surveyors be qualified and that the survey be conducted, a course which the court accepted and adopted.

But more than that, they did not raise as an issue, in the bill of exceptions, that the trial judge could not enter judgment on the arbitration report without first disposing of the bill of information, or that the trial court had erred in agreeing to the contentions in the resistance and thereby allowing the survey to be carried out prior to the disposition of the bill of information, for whatever such a contention could be worth. In any event, the issue was not raised and therefore, although we felt the need to comment on it because of the seriousness of the error made by the trial judge, it is not a subject that can be used to affect the outcome of this Court's holding.

On the question of the arbitration report itself, we do not see that it had failed to comply with the directives or expectation of the court or that it violated any laws. It clearly stated that with regards to the appellees' deeds and the points shown by the parties, the board was able to place the appellees' deeds on the map and that the points shown by the appellees came close to their deed information in terms of the metes and bound on the respective deed. With regard to the appellants' purported deed, revoked by the Center for National Documents and Records, the reports indicated that the surveyors were unable to plot the deeds due to the disparities between the ground information and that of the deeds, and further the board found it difficult, even impossible to put the two deeds on the map. This information, coupled with the revocation instrument, clearly, when added together, indicates that the appellees were owners of the property in dispute and that the trial judge therefore properly in awarding judgment to the appellees and ordering that they be put into possession of the said property. As the parties had agreed to the arbitration, and as they had not insisted on the matter going to a jury following the report of the board, there was no need to have the matter submitted to a jury, the parties having waived such right.

Wherefore, and in view of the foregoing, it is the considered Opinion of this Court that the trial court did not err in confirming the report of the arbitration board and entering judgment thereon. While the trial court made errors in the course of the proceedings, we hold that as the parties did not except to the errors and appealed therefrom or sought other remedial process, this Court must refrain from having those errors form a basis for the affirmance or reversal of the judgment of the lower court. Accordingly, on the strength of the grounds, legal and factual, stated in this opinion, the judgment of the lower court is therefore affirmed and confirmed. Costs are assessed against the appellants. And it is hereby so ordered.

Judgment affirmed.

Counsellors Lawrence Yeakula and Willie D. Barclay of the Liberty Law Firm appeared for the appellants. Counsellors Theophilus C. Gould and Sayma Syrenius Cephus of Kemp and Associates appeared for the appelles.

[See pdf file for tables]