

NYAN LAY, ALFRED KEHYEE, et al., Appellants, v. MARTHA SANDOLO-BELLEH and DAVID L. BLEGAY, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT,
NIMBA COUNTY

Heard: May 23, 1984. Decided: June 28, 1984.

1. All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties, or it must relate to the extent of the damages.
2. Issues not raised in a pleading may not properly be raised at the trial of a case.
3. Where a party excepts to the judge's charge to the jury, he must specifically except to that part of the charge with which he disagrees to enable the judge to rule on the issue.
4. Exceptions to the charge of the court should specifically point out the particular portion, or portions of the charge objected to so as to appraise the court of the particular matters complained of. Such objections to the charge cannot be waived but, it has been held that, objections to the charge will be deemed waived unless each ground of objections is specified.
5. Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict and, in any case, shall except to the judgment.
6. In an action of ejectment, the parties must necessarily rely upon title, and the best title is one given by the Republic of Liberia, with preference according to the date of issuance, the older being preferred.
7. In an ejectment action, the mere allegation that money was collected to purchase real property, without any showing of title, will not defeat a better title from the Republic of Liberia.
8. The Court will reverse and remand a case for a new trial where the irregularities complained of are attributed to the trial court, and not to the inability of a retained counsel to adequately defend or prosecute a civil action.

Appellants/defendants, who were unsuccessful in an action of ejectment in the lower court, appealed to this Court on a two-count bill of exceptions essentially alleging that: (1) the

lower court judge erred when he denied the admissibility into evidence a receipt tendered by the appellants to support their claim, and (2) the judge failed to instruct the jury on the question of fraud as requested by the appellants. During the trial, the appellant argued that they had occupied the real property in question with the late father of the appellees, Mr. Sandolo, with whom they had also collected money to purchase the said property. They learned later that Mr. Sandolo bought the same property and obtained a title deed in his own name. The heirs of Mr. Sandolo introduced into evidence the warranty deed for the property issued by the Republic of Liberia, while all the appellants had to show was a receipt from Mr. Sandolo for money, which the court eventually rejected since it had not been specially pleaded in their answer. The court noted that if the facts given by the appellants are true, they should have sought remedy at law against Mr. Sandolo to recover their money, or to have the deed cancelled. The court also noted that during the trial neither party submitted a written charge to be considered by the judge in his charge to the jury, and when he did give his instructions to the jury, the appellants excepted generally, but did not except to any specific portion of the charge. Specifically, not only did the judge fail in his oral charge to the jury to include fraud, but the appellants also did not object to the judge's failure to expound on fraud in his charge. In view of the foregoing, this court was constrained to affirm the decision of the lower court in favor of the appellees.

E. Winfred Smallwood of the Cooper & Togbah Law Firm for appellants; *John T. Teewia* of the Carlor, Gordon, Hne & Teewia Law Offices for appellees.

MR. JUSTICE SMITH delivered the opinion of the Court:

The appellants, who were defendants in the court below, have brought this appeal on a two-count bill of exceptions. They have charged the trial judge with denying admissibility into evidence a receipt tendered by them in support of their defense, which receipt they claim was identified, marked and confirmed by the court. In count 2 of the bill of exceptions, appellants contend that the trial judge failed to expound to the jury, in his charge, the request made by them on the question of fraud. For the benefit of this opinion, we quote the two-count bill of exceptions verbatim, as follows:

"1. That Your Honour erred when the receipt tendered by them for the collection of money for the purchase of said land was rejected by court. Said receipt, dated 1958, was marked by court D/1 and confirmed by the court. To this error on the part of the court, defendants excepted.

"2. And also because defendants submit that Your Honour erred when their request to expound to the jury fraud was ignored. Defendants submit that this error on part of the

court caused them to except to the verdict and charge of jury as given them by court".

As we have gathered from the record, when court's mark D/1 was offered into evidence, plaintiffs objected on the ground that the instrument was not relevant to the case, and the trial judge sustained the objection, observing that the said D/1 was not even pleaded.

Under our statute, all evidence must be relevant to the issue, that is to say, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties. Civil Procedure Law, Rev. Code 1: 25.4. If the receipt referred to was pleaded and made profert to the defendants' answer, the court would have been in a better position to determine its relevance to the case, but the document was not pleaded, and the appellants did not insist upon its inclusion in the transcribed record in order for this Court to review its relevancy.

It is elementary to state here that the fundamental principle of all pleadings is that of giving notice of what a party intends to prove at the trial. If the defendants relied on the receipt as constituting their title to the land, they should have pleaded and annexed it to their answer under the principle of notice, for "issues not raised in the pleadings may not properly be raised at the trial of a case." *Shaheen v. Compagnie Francaise de l'Afrique Occidentale*, 13 LLR 278 (1958). The receipt not having been pleaded and its relevance to the case properly shown by the appellants, we hold that the trial court correctly denied the application to admit same into evidence and appellants' contention cannot therefore be sustained.

In count 2 of the bill of exceptions, appellants contend that the trial judge erred when he failed to expound their request to the jury. However, the records show that at the close of argument (not at the close of evidence as provided by the Civil Procedure Law, Rev. Code 1: 22.9.(1), counsel for appellants asked the court, in his own words, "to charge the jury on the following principles of law: (1) The criteria and principle of law governing ejectment; (2) the principle governing the rule of best evidence; (3) the principle governing unanimous verdict, and (4) damages in ejectment suit". Nowhere in the record is it shown that a request for written charge was made by any of the parties, neither is it shown by the record in support of the bill of exceptions that a request was made to the court by the appellants to charge the jury on fraud, nor did appellants except to the court's oral charge specifically on any issue. Instead, according to the record, appellants noted exceptions as follows: "To which oral charge, counsel for defendants excepts."

By this exception, as noted by counsel for defendants, it is not specifically shown as to what part of the judge's charge defendants excepted, and which principle of law was not expounded to the jury, if any. This Court has often held that where a party excepts to the court's charge, he must specifically except to that part of the charge with particularity to

enable the court to pass on the issue. "A bill of exceptions must state distinctly the grounds upon which the exception is taken." It is improper to place upon the court the burden of searching the record in order to discover the exception taken and the grounds therefor. *Sampson and Johnson v. Republic*, 11 LLR,135 (1952). Exceptions to the charge of the court should specifically point out the particular portion, or portions of the charge objected to so as to appraise the court of the particular matters complained of. It has been held that the requirement cannot be waived, but that objections to the charge will be regarded waived unless each ground for objection is specified. 23 C. J. S., *Courts*, § 1345– *Objection to Instruction*, at 1005. Since the appellants have not specifically pointed out the request made, which the court allegedly failed to expound to the jury in its charge, this Court will not take cognizance of count two of the bill of exceptions.

The issue advanced by appellees in their brief is that appellants excepted to the verdict but failed to file a motion for a new trial as a prerequisite to taking an appeal. The record does not show that any motion was filed for a new trial. Our civil statute provides the following regarding appeals:

"Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict and, in any case, shall except to the judgment". Civil Procedure Law, Rev. Code 1:51.5.

Our law provides remedy if the verdict of the jury is contrary to the weight of the evidence, or if the interest of justice requires such action to be taken. Here is the law:

"After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice . . ." Civil Procedure Law, Rev. Code 1:26(4).

However, appellants are not contending that the verdict is contrary to the weight of the evidence adduced at the trial, nor have they sought to set it aside in the interest of justice. Their contention is about the denial of their application to admit their receipt into evidence, and the trial judge's failure to expound their request to the jury.

We have already discussed these issues and, in our opinion, the appellants have not availed themselves of the safeguard of the law in order to benefit therefrom. In an action of ejectment, the parties must necessarily rely upon title, and the best title is that given by the Republic of Liberia, with preference according to the date of issuance, the older being preferred. *Walker v. Morris*, 15 LLR 424 (1963).

Plaintiffs/appellees have supported their claim by a public land sale deed from the Republic of Liberia to their late father for twenty-five (25) acres, signed by the late President William V. S. Tubman on October 30, 1966. They have also shown letters of administration as heirs of their late parents to administer their intestate estate, none of which instruments was denied by the defendants/appellants. The defendants/appellants on their part have not shown title of any kind except that they are contending, from their testimonies, that the land in question was occupied by them together with the plaintiffs' late father, Sandolo, who thereafter purchased the land for himself after they had collected money to purchase said land together. It would seem to us, from this contention, that if the late Sandolo had obtained title to the twenty-five acres of land in his own name for which they all collected money to purchase, defendants had remedy at law to either demand the return of their money, or seek the cancellation of his (Sandolo's) title deed during his lifetime, or resort to some peaceful means by which they could benefit. In our opinion, in ejectment action, the mere allegation that money was collected to purchase the subject property, without any showing of title, will not defeat a better title from the Republic of Liberia.

Appellants have filed what they termed "submission" in which they substantially alleged that, although a motion for new trial was not filed as a prerequisite to taking an appeal, they pray that the case be remanded for a new trial because their lawyer, Attorney Akosah, did not give them proper and adequate legal representation. This Court will not do for party litigants what they ought to do for themselves. Attorney Akosah was the choice of the defendants with whom they established an attorney-client relationship. If this Court were to remand cases for new trial on such ground, there would definitely be endless litigations in this country. This Court can only remand a cause for a new trial where the irregularities complained of can be attributed to the trial court, and not the inability of a retained counsel to adequately defend or prosecute a civil action. The submission of the defendants/appellants does not therefore warrant the attention of this Court.

In view of the proof of title by the appellees to the land in question, and in the absence of any showing of right to possession and title of the subject real property on part of the appellants, it is our opinion that the judgment of the court below should not be disturbed. The judgment below is therefore confirmed and affirmed with costs against the appellants. And it is hereby so ordered.

Judgment affirmed.