Mananaai v Momo [2012] LRSC 3 (5 July 2012)

Sarah Jawee Mananaai of Gboata, Bong County, Liberia, MOVANT/APPELLEE
Versus **Willie E. Momo,** Sr., also of Gboata, Bong County, Liberia
RESPONDENT/APPELLEE

APPEAL

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

MR. JUSTICE BANKS delivered the Opinion of the Court.

Often, when this Court has seen a grave inadequate representation of a party litigant, it has labeled such representation as a travesty of justice, and as a consequence, on many occasions, it has reversed the decision of the lower court and ordered the remand of the case for a new trial. In the instant case, the records are so replete with errors made in the course of the proceedings in the trial court that this Court is inclined to term, the proceedings as a travesty of the Judiciary and our judicial and legal system. From the filing of the complaint in the Ninth Judicial Circuit Court for Bong County, to the final judgment of the trial judge, the proceedings are marred with such errors and the display of such lack of knowledge of and commitment to the law, to the research of the law, and to a comprehension of the facts that they bring disrepute to the Judiciary, to our legal system and to our legal profession.

As noted, the case has its genesis in a complaint filed before the Ninth Judicial Circuit Court, Bong County, on October 25, 2007, by Sarah J. Mananaai, of Behquellie, Jarquelleh District, Bong County, plaintiff/appellee, administratrix of the Intestate Estate of the Late Jawou Mananaai. In the three-count complaint, the plaintiff sought to have the defendant/appellant, Willie K. Momo, evicted, ejected and ousted from a certain 250 acres of land which the plaintiff claimed was owned by the Intestate Estate of the late Jawou Mananaai.

In the complaint also, the plaintiff alleged that she held Letters of Administration issued in her favour by the Probate Division of the Circuit Court for the Ninth Judicial Circuit, Bong County, to administer the Intestate Estate of her late biological father, Chief Jawou Mananaai. She alleged further that at the time of the death of her late father, Chief Mananaai, he was possessed of several pieces of property, amongst which was the 250 acres of land which her late father had purchased from the Republic and in regard to which purchase he had been issued a Public Land Sale Deed by the Republic of Liberia. She asserted that it was upon this parcel of land that the defendant/appellant was illegally encroaching; and that although she had made all efforts to have the defendant desist from encroachment on the referenced property, the defendant/appellant had, in defiance of her request, elected to employ a public land surveyor to conduct a survey of the property.

The plaintiff stated further that by virtue of the fact that she was issued letters of administration, she had become the legal owner of the 250 acres of land left by her late father. She therefore prayed the trial court have the defendant desist from further encroachment on the property, that he be ordered evicted, ejected and "oozed" from the property, and that the property be returned to her.

In his four-count answer countering the allegations in the complaint, the defendant/appellant set forth the following:

1. That the letters of administration exhibited by plaintiff as exhibit A was inadmissible since the plaintiff had claimed that her late father had died on December 15, 1992, but that she had only obtained her letters of administration on November 24, 1995, had refused to file an inventory, had failed to process an indemnity bond or apportion the intestate estate, all of which makes is mandatory that plaintiff file an action for interfering with intestate estate. The defendant further maintained that the plaintiff should have first apportion the estate before filing any independent action or that such person remains the agent under the authority of the court, and as such the plaintiff should have filed her action in the probate division of the court. As such, since the action was wrongfully venued, it should be dismissed.

2. That plaintiff's Exhibit B was also inadmissible under the best evidence rule since during the life time of the grantee, he apportioned, sold and disposed of his 250 acres of farmland to both Mr. Paye Kampeh and Lawrence Goakai, the former taking 50 acres and the latter taking 200 acres. To substantiate the claim, the defendant attached copy of the survey notice from a Mr. Paye Kampeh, together with a protest letter written by Mr. Kampeh to one Isaac Gbarbea. Hence, the defendant said, the deed exhibited by the plaintiff only served as the parent deed for the two transfer deeds and no more, and therefore was not the best evidence to show plaintiff's title to the land.

3. That defendant purchased the squatters rights of Chief Mananaai containing 250 acres of farmland with the full will and consent of the plaintiff who had witnessed the personal receipt issued to the defendant by the late Chief Mananaai prior to the defendant proceeding to purchase the said 250 acres from the Government of Liberia. To support the allegation, the defendant exhibited a certificate for the public land, the government official flag receipt, an executive order, and a further receipt issued by Chief Mananaai.

4. That he denied any and all allegations of the plaintiff contended that he entered and possesses the 250 acres of farm land which was lying and situated opposite the Mananaai's disposed 250 acres. Further, he said that he had possessed the said farmland since March 16, 1970 to June 10, and not in 2006 as was alleged by the plaintiff. Hence, he said, the plaintiff had suffered waiver and was estopped and barred by the statute of limitations, all of which he pleaded. He added to the several defenses that the plaintiff had brought the action in an improper venue. He therefor prayed for the dismissal of the complaint with prejudice.

November 8, 2007, the plaintiff/appellee filed a four-count reply, asserting basically: (1) that the defendant had failed to address the plaintiff's complaint but had instead elected to introduce untenable extraneous matters; (2) that the defendant had alleged ownership to 250 acres of land but had fail to exhibit any evidence such as a warranty deed or receipts to substantiate the claim; (3) that the defendant and the late Jawou Mananaai never transacted any land sale business and that had such been the case the decedent would have issued a warranty deed. A tribal certificate issued by the late Clan Chiefs Office, signed by tribal

authority, the plaintiff stated, did not constitute a warranty deed; and (4) that the defendant having admitted encroaching on the plaintiff's property and failed to produce evidence to substantiate his proof of ownership, he should be adjudged liable to the plaintiff.

Pleadings having rested and arguments on the law issues having been entertained, the court, on February 17, 2008, ruled the case to trial of the facts on the merits, noting that all of the issues were mixed issues of law and fact. No exceptions were taken by any of the parties to the ruling made by the judge. We are taken aback that none of the parties took exceptions to the judge's ruling, especially counsel for the defendant since the defendant, in count 1 of his answer, had raised the issues that because (a) the plaintiffs father had died December 15, 1992 but the plaintiff had not obtained letters of administration to administer the estate until November 24, 1995; (b) the plaintiff had failed to file an inventory, process an indemnity bond or apportion the intestate estate prior to filing the action as is mandatorily required; and (c) the action was wrongfully venued since the plaintiff had filed an action of ejectment in the law division of the circuit court rather than an action of interference with the intestate estate in the probate division of the court, the action should be dismissed.

The court should have determined whether the grounds stated by the defendant provided a sufficient legal basis for the dismissal of the action. These were clearly not issues of fact for the determination of a jury. Could the jury have determined that the wrong action was brought by the plaintiff? Should the jury have determined that the plaintiff should have brought an action of interference with the intestate estate rather than an action of ejectment? Should the jury have determined that because the plaintiff had obtained letters of administration to administer the estate three years after the death of the decedent that the action was subject to dismissal? Should the jury have determined that the failure of the plaintiff to file an inventory or process an indemnity bond or apportion the intestate estate, the action should be dismissed? Yet, the judge ruled that all of the issues presented by the parties were mixed issues of law and facts, and hence should be submitted for trial on the merits, presumably by a jury. And while the answer filed by the defendant showed a complete lack of knowledge of or appreciation for the law by counsel, that did not provide a legal

justification for the error made by the trial judge in not dealing with and disposing of them, but rather passing them onto the jury for determination.

In any event, when the case was called thereafter for trial on March 24, 2008, counsel for the defendant made a submission to the court requesting a bench trial rather than a jury trial. The plaintiff's counsel not having opposed the submission, the court ruled that the trial of the case would be conducted by the judge without the aid of a jury. [See Court Minutes, 32nd Day's Session, Monday, March 24, 2008, sheet 15]

Immediately following the ruling, the court ordered that the witnesses for the plaintiff be qualified. The plaintiff produced four witnesses to substantiate the allegations laid in the complaint. In obedience to the order of the court, the witnesses were qualified. However, at the close of testimony by and cross-examination of plaintiffs first witness, who incidentally happened to have been the administratrix of the plaintiffs intestate estate, with the right of re-direct and re-cross having been waived, counsel for the defendant made another submission to the court. In this new submission, counsel for defendant asked the court to dispense with further trial of the facts by the production of witnesses and to instead set up a Board of Arbitration to do an investigative survey of the disputed property to determine whether the defendant was actually operating within the perimeters of the plaintiffs land.

Although the plaintiff initially opposed the submission made by counsel for the defendant to have the matter submitted to a survey board of arbitration for an investigative survey, and the trial court had sustained the resistance and denied the submission, plaintiff's counsel did not subsequently oppose another submission made by counsel for defendant to have, as was previously requested, the dispute was submitted to a board of arbitration. Accordingly, the court ruled that a three member Board of Arbitration be set up, one member designated by the plaintiff, a second member designated by the defendant and a third member, who would serve as chairman, designated by the court.

Pursuant to the said ruling, the court subsequently appointed a third surveyor to join the other two surveyors designated by the parties and directed that he serve as the chairman of the board of arbitration. The mandate of the

Board, amongst other things, was to determine whether the defendant was within the 250 acres of land for which title deed was proferted to the complaint by the plaintiff. The court noted that the survey should first be conducted on the plaintiff's land and thereafter the board should proceed to the land claimed by the defendant. The plaintiff took exceptions to the judge's ruling since, as indicated by her counsel, a survey could not be conducted regarding property claimed by the defendant based on a tribal certificate rather than on a deed.

The court ignored the protest by plaintiff's counsel and counsel took no further action, opting instead to go along with the court's decision. For the record, we wonder how the court could submit to arbitration a case in which the substantial dispute, as clearly revealed by the pleadings, was that although the parties had reference to the same property, the contention was that the decedent had sold and disposed of the 250-acre property, subject of the ejectment action, prior to his death sold to two other persons, 50 acres to Paye Kampeh and 200 acres Lawrence Goakai. To substantiate the claim, the defendant had attached to his answer copy of a survey notice served on him by Mr. Paye Kampeh together with a protest letter written to the late Isaac Gbarbea. Therefore, the defendant said, the decedent having disposed of the property in question, the action of ejectment could not be maintained, and he accordingly prayed for the dismissal of the action with prejudice.

Rather intriguingly, the defendant set forth the further defense that the action could not be maintained because he had purchased from the decedent squatters right for 250 acres of farmland directly opposite the 250 acres which the decedent had disposed of. He alleged further that he had been on the farmland since March 16,1970 to June 10,1976 and not in 2006 as the plaintiff had claimed in the complaint. Therefore, he said, the plaintiff had suffered waiver, estoppel and the statute of limitations.

Firstly, the defendant was required, as a matter of law, to attached to his answer, as exhibits, the warranty deeds to support his allegation that the decedent had sold his (the decedent) property to Paye Kampeh and Lawrence Goakai. The mere exhibition of a survey notice and a letter of protest were insufficient to establish title as none of them were warranty deeds or evidenced that any sale had been made. Secondly, even if a sale had been made by the decedent, but

given that the defendant did not plead that he was on the land by permission of the purchasers, the assertion was irrelevant and unsustainable as a matter of law.

In addition, the question of whether the granting or purchasing of squatters right vests in the squatter ownership or title to property is a legal question, not one for the determination of a jury or for any arbitration board of surveyors. Moreover, the defendant's answer posed the further question as to whether a person who has been granted a squatters right can plead the statute of limitations against the grantor of the right and succeed as a matter of law. We wonder why the trial judge did not believe that this was a question that warranted a legal determination.

We therefore have difficulty understanding how the submission of the matter to a board of surveyors could have resolved the legal issues raised in the pleadings or, as the trial court had earlier determined, the submission of the matter to a trial of the merits on the mixed issues of law and facts. We have indicated in a number of cases that a survey board of arbitration lacks the competence to determine legal issues, and that legal issues are matters for the court. Thus, whenever legal issues are raised in the pleadings, the trial judge has the legal duty, obligation and responsibility to ensure that those issues are disposed of before submitting the case for trial of the facts, either by a jury or, as in the instant case, by a survey board of arbitration. Baklini and Metropolitan Bank, s.a.l. v. Henries, Younis et al., 39 LLR 303 (1999); The Heirs off the Intestate Estate of the late S. B. Nagbe, Jr. v. The Intestate Estate of the late S. B. Nagbe, Sr., 40 LLR 337 (2001). And even where a matter may have mixed issues of law and facts, and the resolution of the legal issues is dependent on a resolution of the factual issues, the court has the legal obligation to set out the perimeters of the mandate of the board of arbitration and inform the board in no uncertain terms of what it can and cannot do, given the fact that the board lacks the competence to determine upon legal issues. See Lamco J. V. Operating Company v. Azzam, 31 LLR 23 (1983). In the instant case, the trial judge indicated, when disposing of the law issues, that the matter contained mixed issues of law and facts, thus providing an excuse for not making a determination of whether issues of law were indeed presented and which would have had to be disposed of before submitting the case for trial of the facts.

Having determined that the case contained mixed issues of law and facts, and hence the reason for submitting the case to trial of the facts or the merits, did the judge not believe that he was therefore under a legal obligation to clearly explain to the survey board of arbitration what they could do and what they could not or should not do, and that even after they had completed their work, it was the prerogative of the court to deal with the legal issues growing out of their findings? Or did he expect that in the course of their survey, the members of the board would deal with the legal issues growing out of the mix issues of law and facts?

We are equally concerned that the trial judge determined upon selecting and appointing the third arbitrator, as shown from the records of the trial court, rather than requesting that the third arbitrator be designated by the Ministry of Lands Mines and Energy, the institution that has the competence and authority to license surveyors in this country, for appropriate appointment by the court. Such a course is not only prudent but also ordinarily removes any basis for suspicion of or accusation being made against the court of acts of impartiality by the court or the judge regarding a particular arbitrator appointed by the court to serve as an arbitrator or chairman of the board. A court is placed in a most difficult position if the arbitrators disagree and the court is accused of influencing the arbitrator appointed by the court if that arbitrator joins one or the other of the arbitrators in reaching a conclusion not shared by one of the parties to the litigation.

We implore our judges to demonstrate not only that they have a good working knowledge and understanding of the law and that they have the capacity to comprehend the facts and the issues presented to them, but also that they have a sense of justice, equality and judicial prudence. If they fail to demonstrate those virtues, our justice system could be in serious danger of collapse, public confidence and integrity could be seriously eroded, and the manifold criticisms of the strides the Judiciary is making to improve and reform the legal and judicial system, many of which are unfounded, could become a reality. Our judges must also act in manner that will not place them in a position that readily exposes them to accusations of compromising any matter pending before them or being adjudicated by them.

We therefore re-echo that the trial judge should have attended to those issues presented in the pleadings and which, as a matter of law, he could have and was legally obligated to dispose of. We also believe that it is high time to set the

standard for our judges, the compliance with which is mandatory. In no circumstance should the court, in the disposition of a land matter, take it upon itself to appoint a surveyor as one of the arbitrators to resolve the dispute. Instead, the trial judge must officially communicate with the Minister of Lands Mines and Energy to designate the third impartial arbitrator.lt is obligatory that given the nature of the role expected of the arbitrators, each arbitrator, whether designated by the plaintiff, defendant or the Ministry of Lands Mines and Energy, must display to the Court a current valid license duly signed by the Minister of Lands Mines and Energy verifying that the surveyor is a licensed and recognized surveyor, that he or she possess the competence to undertake the task upon which he or she is being called upon to perform for the court, and that he or she is on good standing.

We hold accordingly that no surveying arbitrator, whether designated by the plaintiff, the defendant or the Ministry of Lands Mines and Energy, should be allowed to serve as an arbitrator in the absence of such required certification and verification, a copy of which must be filed with the court. This will eliminate accusations, as made in the instant case by the party designating the surveyor arbitrator, and as have been in many other cases, that the surveyor designated by the party is not a recognized or licensed surveyor. This standard will also ensure that the work carried out by the board is of the highest standard and that complaints against surveyors who are called upon by the courts to perform such service are thereby minimized. We must also state that should the Ministry of Lands Mines and Energy submit the names of surveyors who are not qualified or certified to the court and who do not meet the standard for the task upon which they are being called by the court to perform, the court shall thus have the authority to cite the Minister in contempt.

However, in the instant case, since the parties did not seem sufficiently in tune with the law, the procedure and the competence to assist in guiding the court and did except to the court's decision or take further action so that the errors of the judge could be corrected by an appellate forum, the errors cannot form the basis upon which we can reverse the judge's rulings.

In fact, rather than seeking to correct the appalling situation that obtained in the trial court, the lawyer for the defendant further compounded the problem; for while

the board, having been instructed to commence the survey of the property, using the plaintiffs deed and the defendant's tribal certificate, was still attempting to conduct the survey, as mandated by the court, counsel representing the defendant filed a motion to intervene, for and on behalf of the Intestate Estate of the late Benneta T. Diggs, represented by its administrator. The three-count motion to intervene stated as follows:

1. That Intervenor's grantor, Lawrence M. Goakai, Sr. purchased 200 acres of land from the late Jao Mamah, alias Jawou Mananaai, in 1971, out of the 250 acres owned by said Jao Mamah at the time of the sale. Intervenor submits that the subject 200 acres was then sold to lntervenor/Benneta P. Diggs, on the 2nd day of July, A. D. 1973, as will evidentially appear from photocopy of said deed marked exhibit A hereof. Intervenor further hereby gives notice that at the hearing of this case it shall produce the deed from Jao Mamah to Lawrence Goakai, Sr., Intervenor also gives notice that they will produce Letters of Administration.

2. That intervenor has just discovered that the surviving daughter or administratrix of the late Jao Mananaai, Sarah Jao, has filed an action of ejectment against one Momo, using the original deed covering the 250 acres of land, out of which the 200 acres was sold to intervenor. Intervenor submits that if judgment is rendered in favour of respondent in the pending case, she will be put in possession of the entire 250 acres of land, quite to the detriment of intervenor. Intervenor therefore seeks to intervene so that its legal interest will be protected.

3. That should intervenor not be made a party to this case, it shall lose its property right or 200 acres of land, evidenced by the deed pleaded supra, as exhibit A.

Simultaneously with the filing of the motion to intervene, the intervenor filed an answer to the plaintiff's complaint. The answer, containing four counts, is quoted herein verbatim, the same as was done with the motion to intervene:

1. That the deed which plaintiff relies on as basis of her claim is a legal nullity, in that 200 acres out of the 2SO acres appearing thereon and described therein, have been sold to intervenor, as will evidentially appear from photocopy of intervenor's deed hereto annexed as exhibit A hereof. Letter of Administration

will be produced at the trial. Intervenor submits that the subject 200 acres of land was bought from Jao Mamah by the late Lawrence Goakai, Sr. as indicated on the back of intervenor's deed and also on the back of plaintiff's deed, which was fraudulently erased by plaintiff. Intervenor requests court to take judicial notice of the back, of both deeds aforesaid. Intervenor also gives notice that at the hearing it shall produce the deed from Jao Mananaai to Lawrence Goakai, Sr., at said trial.

2. That plaintiff can only recover the remaining SO acres of land and not the entire 2SO acres, it having disposed of the 200 acres out of the same parcel of land to intervenor.

3. That as to counts 1, 2 & 3 of the complaint, intervenor avers that it is not possible for defendant to encroach on the entire 2SO acres of land in that plaintiff only owns SO acres of land in said area.

Based on the foregoing assertions, the intervenor asked the trial court to rule that the 200 acres of land, for which intervenor held a deed, legally belong to intervenor and that plaintiff was therefore entitled to only SO acres out of the 2SO acres of land which the plaintiff had asserted claim to, and that accordingly the surveyors be ordered to re-survey said 200 acres in favour of intervenor.

In the motion and the answer, the intervenor alleged that it was represented by its administrator. Yet, there was a total failure by the intervenor to state the name of the administrator, the date on which the administrator was appointed, and the court that appointed the administrator. There was also a failure to annex to the motion and the answer a copy of the letters of administration allegedly issued by a court of competent jurisdiction and upon which the unnamed administrator was supposed to have relied to assert authority to represent the intervenor, the Intestate Estate of the late Benetta T Diggs. Even more disappointing. there was a complete failure by the intervenor to annex to the motion and the answer a copy of the warranty deed which was alleged to have been issued by the late Jarwuo Mananaai to Lawrence M. Goakai, Sr., from whom Benetta T. Diggs is supposed to have purchased the 200 acres. How, may we ask, was the plaintiff to intelligently address the allegations made in the motion and the answer in the absence of those documents? How was the plaintiff to challenge the capacity to sue or the authority of the

administrator to represent the intervenor? It was important that those documents which constituted the basis upon which the claim to ownership of the real property in dispute was being asserted be annexed to the pleadings, so that they can be questioned and their authenticity challenged. This has been the position held by this Court in a number of cases, and we continue to uphold that position.

In any event, the case file reveals that on May 1, 2008, the plaintiff responded to both the motion to intervene and the answer filed by the intervenor. In the resistance to the motion to intervene, the plaintiff prayed that the court discard, ignore, deny and dismiss the motion, and set forth the following reasons as the basis for the prayer.

1. That intervenor, defendant in the action of ejectment, Mr. Willie K. Momo, does not have the capacity to sue or intervene, in that the Late Lawrence M. Goakai and his late wife were married and had several living children, excluding other relatives, who are capable of administering the Intestate Estate of their late parents. Moreover, the plaintiff asserted, defendant Willie Momo could not recover on the strength of the motion because he did not have letters of administration as required by law from the probate division of the circuit court.

2. That the deed attached to the motion had no basis, in that the signature purported to be that of Mr. Goakai, was not the genuine signature of the late Goakai, and hence, the motion was misleading.

3. That the movant/intervenor was sued by the plaintiff for encroaching and intruding on the intestate estate of her father and he had filed an answer in which he had denied the allegations made against him, claiming that he had bought the property in question from the late Goakai, and in respect of which claim he had exhibited a tribal certificate, executive order and flag receipt but had woefully failed to present a credible title deed in support of his claim. The plaintiff added further that the defendant, now Intervenor, had withdrawn his certificate, executive order and flag receipt in open court and rested on the sole result of the BOARD OF ARBITRATION, without at the time any motion to intervene on behalf of the Late Benneta Diggs being filed.

4. That the entire motion was tainted with fraud, misrepresentation and deception and should therefore be dismissed.

As noted earlier, in addition to the resistance to the motion to intervene, the plaintiff also filed a reply to the intervenor's answer. In the reply the plaintiff advanced the following points, similar to those advanced in the resistance:

1. That the Willie Momo named in the answer of the intervenor was the same Willie Momo named as defendant in the ejectment suit and who told the court in his answer to the plaintiff's complaint that he had bought 200 acres of land from the late Jao Mananaai's out of the 250 acres owned by the decedent and in support of which allegation he had presented a tribal certificate but had failed to present any other documentary evidence showing that he had indeed obtained the land from the late Mananaai, and that as such he has no capacity to intervene since he does not possess any letters of administration from the probate division of the court.

2. That in the absence of letters of administration, any notice to produce documents during trial cannot prevail in this jurisdiction because the court is one of record and the party asserting a claim must attach his/her exhibits so as to give the opposite party the opportunity to defend any claim against such party. The plaintiff asserted further that the fundamental principle of all pleadings is to provide legal notice as to what the party asserting the claim intends to prove at the trial. This, the plaintiff said, the defendant, Mr.Willie Momo, had failed to do.

3. That the defendant/movant could not and would not recover through deception, as was being done In the instant case, in that while the defendant had earlier filed an answer claiming the very 200 acres of land from the estate as his bonafide property, it was the very same defendant that was now claiming the same 200 acres of land as representative of the intervenor on behalf of the Goakai's family. The plaintiff avers that the answer, being misleading, misrepresenting the fact and pregnant with deception, same was a fit subject to crumble and fall.

The plaintiff therefore prayed that the court discard, deny, ignore and dismiss the "purported answer and allow the "board of arbitration to complete their investigative survey in the interest of transparent justice" and that the court would award costs against the intervenor.

There are no further indications in the records as to what became of the motion to intervene. No records show any withdrawal or hearing of the motion; or whether the motion was granted or denied and what steps the parties informed the court they would take. Instead, the records show only that the court ordered the arbitration to proceed and that the board proceeded to continue with the arbitration. The records also only show that for a period of more than a year the surveyors were unable to conclude the survey due to a number of factors. Either one of the parties was not present, or their counsel was not prepared to cooperate; or the surveyors were threatened and the court had to conduct contempt proceedings against the persons interfering with the survey; or the surveyors disagreed as to how they would proceed and what documents they would require of the parties; or the parties failed to present documents essential to the survey; or the surveyors showed confusion amongst themselves as to what they were doing or what was expected of them; or the lawyers continued to file additional or ancillary proceedings, including a bill of information that accused the surveyors of trying to invent new lines in favor of the plaintiff since, according to the defendant, the metes and bounds on the ground did not correspond with the bearings on the ground. The lawyers for the defendant also filed objections to the chairman of the board of arbitration, Mr. Roland Binda, on the ground that the defendant had discovered that the said surveyor was not a licensed surveyor and, hence, any report signed by him would be invalid. Accordingly, the defendant requested the court to remove Mr. Binda from the board.

The dates on all of the above actions and events occurred over several terms of the court, presided over by three separate circuit court judges assigned to the court, viz. Judge J. Boima Kontoe, Judge A. Blamo Dixon and Judge Sakijipo A. Wollor. Yet, nothing in the records of the court shows, except for the bill of information, that copies of the filed documents in the ancillary proceedings or other information brought to the attention of the court were served on the adversary party ,or that any of those proceedings were heard by the court, investigated, or ruled upon by the court .The sole basis for the

denial of the bill of information was that the defendant and his counsel had failed to appear in court at the time designated by the court for hearing of the information. What, we wonder, was the object of filing all of those proceedings, not following them through or not giving them the required legal attention? Was it a display of incompetence or indifference by the lawyers, or attempts by them to delay the disposition of the case? And how did the court fit into this scenario, the case having been presided over by three different circuit court judges?

As a result of the foregoing, the surveyors found themselves submitting a number of status reports, most of which failed to address the issue for which the arbitration board had been constituted by the court.

Finally, what was supposed to be a final report, bearing date August 17, 2009, was prepared and signed by the Chairman of the board and D. Willie S. Weeton, the surveyor designated by the plaintiff. That report was filed with the court on August 31, 2009. The report read as follows:

SUBJ. ARBITRATORS'REPORT

A Board of Arbitration was set up by the 9th Judicial Circuit Court, Gbarnga City, Bong County, to do an investigative survey of (500) five hundred acres of farm land, (250) two hundred and fifty acres each between Madam Sarah Jawou Manali and Mr. Willie Momo in Gbawota, Bong County.

Notices dated April10, 2008 and survey to commence on April17, 2008 were served to 13 persons including the Hon. Paramount Chief, Hon.Clan Chief, general town chief, town chief and elders, Mamadee Sirleaf, Mr. Blamo, Mr. Yarkpawolo Kurpolu, Henry Tokpateh, Blayeama Jarbateh Tohnkollie Tearbeh and Suahkollie Joe, with copies to both Mr. Willie Momo and madam Sarah Jawou Manali.

We arrived at the site of the survey on the above scheduled April 17, 2008, and we requested for both parties to bring their land documents. Madam Sarah Jawou Manali presented to us a title deed registered and probated for (250) two hundred and fifty acres of land commencing from the South Eastern

corner of Mr. Mamadee Sirleaf deeded line and running parallel with the same Mamadee Sirleafs surveyed line (5,500.44) feet to the point which is the end of Madam Sarah Jawou Manali (250) two hundred and fifty acres of land. Madam Sarah Jawou Manali showed an old house spot with some plum and orange trees around the said old house spot. That Mr. Willie Momo, the one who built the house and planted the crops on her land some years ago. Madam Sarah Jawou Manali 250 acres survey was completed.

Mr. Willie Momo refused to give his certificate to us when we requested for their land documents but he told us that his point of commencement is on the line we are carrying in the bush. We cut the line of (5,500.44) distance which completed the end of Madam Sarah Jawou Manali (250) acres and Mr. Momo Willie did not show any corner stone nor life tree as his point for the land he have. Up to the end of Madam Sarah Jawou Manali's 250 acres of land surveyed, Mr. Willie Momo did not give nor show his certificate to us or for him to show us any point of demarcation of land for him.

Mr. Willie Momo's survey was not done because he refused to give his certificate to us or show his point of commencement.

Reference to our letter dated May 28, 2009 concerning Mr. Willie Momo refusing to give his land documents to us.

Recommendation: We therefore recommend to this Honourable Court to let Mr. Willie Momo give his documents, if any, for his land to be surveyed according to the court's mandate.

We respectfully submit.

The defendant's surveyor, Mr.David Momo, did not sign the report of the majority. Instead, he prepared a separate report on August 26, 2009, which he filed with the court. Mr. Momo's report stated substantially that:

On 10th April 2008, a notice for the commencement of the work was issued and served on the parties and the work commenced on 17th April, A. D. 2008. During the exercise, a letter dated April 17, 2008 (self- explanatory on court's file)

as well as July 19, 2008 (self-explanatory on court's file). On May 13, 2009, during the second exercise, a request was made for police protection and was granted. However, Sarah Jawou sent an unlicensed surveyor to represent her in person of Peter Togba, and he was not permitted to take part.

On the second assignment, all surveyors, the parties and lawyers were present but the equipment provider did not carry the equipment and as a result there was disagreement upon the concrete monument, and as a result no work went on that day.

On the 28th day of May, 2009, the team (all parties) was present when we finally received the deed from Mr. Blama but we did not agree on the means [sic] and bounds because the surveyors did not agree to go by the means [sic] and bounds on the deed for Sarah Jarwuo.

Mamadee Sirleaf has 100 acres, Sekou Blama has SO acres and Sarah Menial Jawou has 2SO acres, all deeded and probated. Willie Momo has 2SO acres certificated land and all documents were brought before the board.

As a member of the board, I hereby inform this Honourable Court that the delay of this job is emanating from the disagreement among the surveyors and Sarah Menial Jawou. Therefore, I request that the surveyors, the parties and their lawyers be cited and advised for better commencement points free from confrontation with other non-parties members.

On September 10, 2009, as per assignment, and with the plaintiff and defendant and their counsel in attendance, the report of the board was read in open court. Following the reading of the report, counsel for defendant informed the court that he seriously objected to the report, stating the following grounds as the reasons for his objection:

1. That the representative of the defendant, who was David Momo, and according to the chairman David Momo did not take part in the arbitration. How is it possible that the arbitration report can be accepted by this Honourable Court when the defendant's representative surveyor David Momo did not take part?

2. That in keeping with the arbitration report it seems to be tainted with fraud because three surveyors were named as arbitrators. The chairman is one Roland Binda. Since indeed three surveyors were assigned as arbitrators and the defendant's representative surveyor was not present as in keeping with the chairman of the arbitration, yet three surveyors or three signatories are on the arbitration report. Where did the other surveyor come from that made them three?

3. That since indeed and in keeping with the statement of the arbitration chairman, Mr. Roland Binda, who told this court openly that the defendant's representative did not take part and he has brought a report also telling this Honourable Court that the opposing party which is Willie Momo whose land was to have been surveyed by the arbitrators according to him, because Willie Momo failed to show them his certificate is why they did not survey his land. Obviously, the work was not completely done. As the result, the arbitration report cannot be accepted by this court as fair.

Wherefore and in view of the above foregoing, counsel for defendant request this Honourable Court to set the so-called arbitration report aside or it be done over because according to them, one party's side was not done; of if the court elects, forget about the arbitration and rule the main case to trial and whereby the law issues will be disposed of as in keeping with law and the parties take the stand to prove their sides of the ejectment case since indeed defendant Willie Momo has paper title, that is to say he has tribal certificate and the executive order from the President; and to further grant the defendant such relief that justice and equity may deem. And submits.

The records certified to this Court do not reveal that the plaintiff's counsel resisted the objections made by counsel for the defendant to the arbitration report, although the minutes do show that counsel was in court at the reading of the report; nor is there anything in the records of the trial court that the court informed counsel for the defendant that the objections placed on the minutes of the court were inconsistent with the provision of the Civil Procedure Law regarding arbitration and the procedure to have the court vacate an award. Section 64.11(1) provides that a party seeking to have the court vacate an

award of the arbitration board must do so "upon written motion" while Section 64.11(2) of the Civil Procedure Law states that "an application under this section shall be made within thirty days after delivery of a copy of the award to the applicant except that if the application is predicated upon fraud, or corruption, or other undue means, it shall be made within thirty days after the grounds are known or should have been known." Civil procedure Law, Rev. Code 1:64.11(1) and (2).

Further, there is nothing in the records showing that copy of the report was delivered to the parties, although we assume that they must have received the report; otherwise, they would have or should have informed the court prior to the reading of the report that they had not received copies of the report. We also cannot and do not assume that the letter written by the arbitrator designated by the defendant, filed with the court, was a response to the arbitration report, an objection by the said arbitrator to the report, or a dissention from the report by the arbitrator, for nowhere in the said letter is any mention made of the arbitration report, of a disagreement with the findings or conclusions stated in the report, or as to why the said arbitrator had failed or refused to sign onto the report. Rather, the letter concentrates mainly on recapping the events that had occurred following the appointment of the arbitrators, the disagreements between the arbitrators and the plaintiff, and a request to the court to cite for the arbitrators, the parties and the lawyers so that they can be instructed on how to better carry out their tasks.

We therefore fail to see the basis upon which counsel for defendant recorded on the minutes of the court the defendant's objections to the arbitration report. The failure of counsel for the plaintiff to react and of the court to take notice of this lapse is also troubling. When the statute prescribes a process for the party litigants to follow, that process must be adhered to scrupulously and the court is under a legal duty to correct any deviations by the parties. Thus, where the statute requires that a written motion must be filed, the court cannot entertain objections placed on the records of the court, for such a procedure does not meet the standard prescribed by the statute. We are of the opinion that the Legislature must have had some specific intent in mind in requiring that the motion to vacate the arbitration award be in writing. Perhaps it wanted to provide sufficient time to the applicant or movant the

opportunity to study, consider, analyze and investigate the events leading to the report as well as the report itself. It also may have intended that appropriate opportunity also be provided the respondent to respond or react to the motion or objections. Yet, none of these were considered by counsels for the parties or the court.

Instead, immediately upon the objections being placed on the minutes of court by counsel for the defendant, and without any response being made to the said objections by counsel for the plaintiff, or the court enquiring as to whether the plaintiff desired to resist or seek time to file a formal resistance to the objections, the court, presided over by Judge Emery Paye, the fourth judge to preside over the case, proceeded to hand down a final judgment in the matter. The judgment read as follows:

COURT'S FINAL JUDGMENT

The Supreme Court says that in a case where a trial is not aided by a trial jury, the judge may proceed to render its final judgment immediately. It is in the circumstances that this court will now proceed to render its final judgment.

From our perusal of the record before us, it is obvious that this case was filed by the plaintiff in these proceedings on February 26, 2007. This was followed by defendant's answer and reply, thereby joined pleadings.

This court having perused the complaint and the defendant's answer, found it expedient and necessary that the only way to resolve this boundary dispute is by arbitration. It is believed that the parties in these proceedings concurred with the Court, thereby setting up the Board of Arbitration by this Honourable Court so as to proceed to conduct its survey in order to determine the boundary dispute. The Board having been set up, the two parties were represented and the chairman, who is a neutral person usually from the Ministry of Lands, Mines and Energy, was also named.

The Board having carried out its mandate, said arbitration report having been read, Counsel for the Plaintiff has prayed this Court to accept the arbitration report whereas, counsel for the defendant is praying this Court to reject the arbitration on its grounds mentioned on the minutes of this Court:

One of the cardinal instructions given to the Board of Arbitration was that since the plaintiff has a valid deed, its land constituting two hundred and fifty acres be demarcated. The report of the Board as read in open court indicated that the plaintiff's land was being surveyed and that the defendant refused to submit its documents in order to proceed with its survey. The report was signed by two of the three persons. The law says that under the circumstance the two persons who signed the arbitration report are in majority and as such this Court is under duty to receive said report. Counsel for defendant is contending that the defendant's surveyor did not sign the survey report. But, the survey report was filed before this Court on May 31, 2009, almost three months ago. There is no record on this file to the effect that the defendant or its surveyor has filed a caveat against the survey as required by law in this jurisdiction. Under the circumstances, this court is left with no other alternative but to accept the survey report.

Wherefore and in view of the foregoing, it is the final judgment of this Court that Plaintiff Sarah Mananaai is entitled to her two hundred and fifty acres being surveyed by the Board of arbitration and must be placed in possession of this land. As such, this court hereby places plaintiff under review in possession of its two hundred and fifty acres,of land surveyed in its favour.

The Clerk of this Court is hereby ordered to proceed to prepare a writ of possession, placing plaintiff in possession of its property with immediate effect. Should there be known that defendant in this case is occupying portion of the plaintiff's property, he is hereby ordered ousted, evicted and ejected from the plaintiff's property as in keeping with the metes and bounds based on the survey that was just conducted. Costs ruled against the defendant. And it is hereby so ordered. Matter suspended.

Given under our hand and Seal of this court this 10th day of September, A.D.2009.

Emery S. Paye
Assigned Circuit Judge Presiding

It is from this judgment that the defendant took exceptions to and announced an appeal to this Honourable Court for review of the proceedings held in the lower court, including the final judgment. The appeal having been granted, the defendant, consistent with the requirements of the civil procedure law governing appeals, on September 16, 2009, filed a twelve-count bill of exceptions. We quote the bill of exception verbatim, as follows:

1. That Your Honour erred when you ruled that there was an arbitration report which was not objected to by defendant, in that:

a. That Your Honour also erred in the third paragraph of your ruling on the Court's minutes of the 28th day's sitting, September 10, 2009 by saying that the two parties were represented by the two parties. Said statement of yours is found on the seventh line of said minutes. You also erred by accepting the said one sided arbitration report on said sheet No. Two of the 28th Day's Sitting, September 10.2009; thereby placing the so- called plaintiff in possession of the two hundred and fifty acres of land contrary to the arbitration report and procedures. To which counsel for defendant excepts.

2. The record showed that plaintiffs land could not be traced on the ground which made it impossible for the surveyors to complete the survey. Your Honour erred when you adjudged defendant liable without a comprehensive report indicating what portion or quantity of the purported land is being allegedly occupied by defendant Willie Momo. To which Counsel for defendant excepts.

3. That Your Honour's final judgment is not clear as found on page no. two and page no. Three of the 28th Day's sitting. September 10,2009 and therefore does not put finality to the case; in that Your Honour admitted on the above motioned sheet no. two that the land was not demarcated and ordered that plaintiff's land should be surveyed and when the defendant is found to be in possession of any portion thereof, said defendant should be ousted and evicted. Hence, your judgment is not conclusive, and therefore unenforceable. To which counsel for defendant excepts.

4. That Your Honour reversed the ruling of your colleague in this case to the effect that the board should survey the entire land commencing from the metes

and bounds of plaintiff's deed in keeping with the bearing thereof, which could not be done because the bearing on the deed are not the same on the ground.

5. That Your Honour should have investigated the complaint written by defendant's surveyor, David Mono and John Binda, claiming that the survey could not be completed because of the discrepancy between the land and the bearings inserted in the deed. In fact, the land of plaintiff Sarah Jawou Mananaai was never surveyed and resurveyed by the one- sided arbitrators. In other words, the so-called arbitration report is false and misleading to all intents and purposes. To which counsel for defendant excepts.

6. That Your Honour's judgment is not supported by the records since no evidence has shown that defendant Willie Momo is occupying any portion or quantity of the subject land.

7. Plaintiff Sarah Jawou Mananaai has Letters of Administration to administer her late step-father Jawou Mananaai's Intestate Estate the subject land of two hundred and fifty acres has common boundary with defendant Willie Momo. Instead of her plaintiff being the administratrix for said Intestate Estate filing suit before the probate court of Bong County as provided by law, by way of saying that defendant Willie Momo is interfering with the Intestate Estate of her late step-father, she elected instituting ejectment suit against defendant Willie Momo. This cardinal principal of law was raised In defendant's answer, yet the court ignored defendant's said answer and proceeded with said so-called ejectment suit without even disposing the law issues as provided by statute. To which counsel for defendant excepts.

8. That the Court erred by not disposing the law issues in the so-called ejectment suit and submitted same to arbitration, whereby law issues were raised in the pleading of the defendant's answer. To which erroneous procedure counsel for defendant excepts.

9. The Court having ruled the ejectment suit to arbitration, appointed three arbitrators to conduct same [with] one Roland Binda as chairman. According to said Chairman and the arbitration report, defendant's representative

surveyor, in person of David Momo, was absent during conducting the arbitration. Yet the said arbitration report carried three signatures. Who made them three? Based upon these irreparable legal blunders which Your Honour paid deaf ears to were raised by counsel for defendant on the court's minutes, thereby denying the request made by counsel for defendant relative to setting aside the arbitration report and award new arbitration, and you ruled the one-sided arbitration report in favour of plaintiff Sarah Jawou Mananaai of the ejectment suit, which of course, should not have been ejectment suit. To which Counsel for defendant excepts.

10. That due to the fraudulent act of the Chairman Roland Binda by affixing three signatures on the arbitration report, falsifying same, created fraud in the entire report. Your Honour, same was brought to your attention on the court's minutes, yet Your Honour ignored said information and ruled said so-called arbitration report in favour of Plaintiff Sarah Jawou Mananaai, without taking cognizance of the fact that defendant Willie Momo was not represented by the arbitrators. To which counsel for defendant excepts.

11. That the plaintiff in the so-called ejectment suit is an administratrix of the late Jawou Mananaai's Estate, the subject two hundred and fifty acres of land. Instead of this administratrix filing her complaint in the probate division of the Ninth Judicial Circuit Court, she instituted ejectment suit against the defendant. What form of wrong action is this? Your Honour ruled that she be put into possession of the subject land because of the so-called ejectment suit that resulted to arbitration. To which erroneous judgment counsel for defendant excepts.

12. Plaintiff, Sarah Jawou Mananaai instituted her so-called ejectment suit with photocopy of letters of administration to administer her late step-father Jawou Mananaai Estate, this is clear indication that the so- called ejectment suit should have been filed before the Probate Division of Bong County because of her letters of administration. One of the maxims of the law says "ignorance of the law excuses no one". Since she did not file her suit in the probate division of the Ninth Judicial Circuit court, let her suffer lashes of the law. Hence, our bill of exceptions for Your Honour's approval.

From the foregoing enumerated counts of the bill of exceptions, the following issues are presented for resolution:

1. Whether the trial court judge erred when, in disposing of the law issues, he concluded that the case contained only mixed issues of law and facts, and hence that it was being submitted for trial on the merits, and that, assuming such error, is the appellant positioned to raise such issue before this Court?

2. Whether in an action of ejectment, where one party relies on a warranty deed and the other party relies on a tribal certificate and an executive order, the matter can be deemed fit for an investigative survey to determine the metes and bounds of the property or the superior title or whether one party is encroaching on the property of other party?

3. Whether the trial judge erred in confirming the arbitration report and entering judgment thereon awarding possession of the property, subject of the plaintiff's claim, to the plaintiff and ordering the defendant evicted and ejected therefrom if he is found to be on any portion of said property?

With regards to the first issue, that is whether the trial court judge erred when, at the disposition of the law issues, concluded that the case contained only mixed issues of law and facts, and hence that it was being submitted for trial on the merits, and that assuming such error ,is the appellant positioned to raise such issue before this Court, we answer, as to the first part of the issue in the affirmative and, as to the second part in the negative.

As stated earlier in this opinion, there were clearly a number of issues of law raised in the pleadings which required the attention of the trial judge and which should have been disposed of before the trial judge submitted the case to a trial of the merits. The defendant had raised a number of issues which were purely of a legal nature and which could not be treated as mixed issues of law and facts, as the trial court did. For example, the question of whether the plaintiff should have brought her action in the Probate Division of the Circuit Court in Bong County rather than the Monthly and Probate Court for Bong County, as she had done, raised a clear and obvious issue of law that required disposition by the court. There was nothing in the issue raised by the defendant in his answer that was

ambiguous as could be characterized as mixed law and fact or as would have required or warranted that it be submitted for trial on the merits of the case. In the face of this obvious legal lapse, we are constrained to reach the conclusion, regrettably, that either the trial judge before whom the case was assigned for disposition of the law issues was incapable of recognizing or lacked the legal ability to recognize a law issue or that he had determined not to be bothered with specifically addressing the law issues raised in the pleadings. Whatever may have been the reason for such serious omission or error, it reflects poorly on the Judiciary and on our courts.

As a second example, the defendant raised the further issue that the action should have been one for interference of the intestate estate rather than an action of ejectment. How did the judge reach the conclusion that the issue was one of mixed law and fact, and therefore it should be submitted for trial of the merits of the case? The issue, in our opinion, was of a purely legal nature and this should easily have been recognized by the trial judge. We fail to see how His Honour, Judge J. Boima Kontoe, could have mistaken the issue to be one of mixed law and fact or that it required submission to be tried on the merits of the case. The action brought by the plaintiff was one of ejectment. The records of the court clearly reflected that. No evidence was required by the court to verify that the action was one for ejectment. The defendant believed that the proper action should have been one of interference with the intestate estate rather than one of ejectment. The trial court was under a legal duty to take judicial notice of its records, under authority vested in it by the Civil Procedure Law, and to proceed to declare, as we believe it should have, that ejectment was the proper action, and that therefore the defendant's contention was legally untenable. Freeman et al. v. The Intestate Estate of the Late Patience R. S. Trinity-Fahnbulleh, March Term 2005, decided September 14 2005. What then was the need in submitting the issue for trial on the merits? What further information of fact or evidence did the trial court require before it could make a determination or ruling as to whether the plaintiff had brought the right or the wrong action? The ruling of the judge leaves one with the impression that the court required testimony from or by the parties or other witnesses to determine if it had jurisdiction over the subject matter of the case or whether the proper action had been brought or whether the court had jurisdiction to entertain the action.

But even if testimony was required, which we hold was not the case, where in the entire proceedings was such testimony taken by the court to give it the basis for resolving the issue. Or did the court expect that the defendant had the duty and the obligation to produce the further testimony of a matter which the statute vests in the court the right to take judicial notice of, same being part of the records of the court? Indeed, the records certified to us reveal that the issue never again claimed the attention of the court, no mention was ever made of it, and therefore it was never resolved by the court up to the rendition of final judgment in the case. Should we then hold Judge Emery Paye as being in error in rendering judgment in the case without, in the process, disposing of the issue of whether the plaintiff had brought the wrong action or not? Our judges must take the greatest care in ensuring that matters brought before them are adequately and properly disposed of by them. There is no short cut to the administration of justice and our courts must never adopt such a course.

Then there is the further issue raised by the defendant in his answer relating to whether the fact that the plaintiff had secured her letters of administration from the court three years after the death of her father, or that she had not filed an inventory as required by law, or that she had not processed an indemnity bond or apportioned the intestate estate, were sufficient in law or even required by law in an action of ejectment, to dismiss an action. Why did the trial judge not deal with those issues and, in so doing, exposed to the client the incompetence of the lawyer? The failure of the trial judge to address those issues leaves the impression that he too may not have been in tune with the laws, especially the procedural law, of this jurisdiction.

We have said repeatedly that one who seeks admission to the practice of law in Liberia or who is given the authority to administer the law is assumed to be knowledgeable in the law, and where he fails to demonstrate such know- ledge, the court must speak of that failure so that we can, using the knowledge of that failure, make the further efforts to improve the legal system. We realize how painful these assertions must be, but we must cease and refrain from hiding behind our failures and openly confront them, so that our people, especially the policy decision makers, can see that our system needs reform.

This Court has opined in manifold opinions that a trial judge must dispose of all of the issues of law raised in the pleadings before submitting the case to trial of the facts or on the merits. The Heirs of the Intestate Estate of the late S. B. Nagbe, Jr. v. The Intestate Estate of the Late S. B. Nagbe, Sr., 40 LLR 337 (2001). The requirement is not optional or discretionary; it is mandatory and must be adhered to by our lower courts. As recently as March 2, 2012, this Court, in the case Universal Printing Press v. Blue Cross Insurance, Inc. reiterated its position on the issue. The Court, speaking through Mr. Justice Banks, said: This Court has held repeatedly that the lower court is without authority to proceed into an examination of the factual issues in any case until it has disposed of the issues of law. The Court cited a long line of cases in support of its position, including Computer Services Bureau v. Ehn, 29 LLR 206 (1981); Liberia Mining Company, Ltd. v. Lebbi, 29 LLR 237 (1981); Firestone Plantations Company v. Fortune and the Board of General Appeals, 30 LLR 547 (1983); Middle East Trading Corporation v. The Chase Manhattan Bank, N.A., 31 LLR 707; Wilson v. Firestone Plantations Company and the Board of General Appeals, 34 LLR 134 (1986); LamcoJ. V. Operating Company v.Gailor, 36 LLR 351 (1989). In the Heirs of the Intestate Estate of the Late S. B. Nagbe,Jr. case, cited supra, that Court said: A judge must first dispose of the law issues in a case before proceedings to dispose of the issues of fact, and the failure of the judge to so act constitutes a reversible error. Similarly, in Ketter v.Jones et al., 41LLR 81 (2002), this Court, speaking through Mr. Justice Jangaba, said: A trial judge must adhere to the well settled principle that all issues of law must be decided before any questions of fact can properly go to a jury for trial. See also Jawhary v. The Intestate Estates and Heirs of Rosetta Watts Johnson and Rebecca Watts Pierre and J. N. Lewis, 24 LLR 474 (2005).

Perhaps some of our lower courts may be of the impression that because this Court has ruled that it need not pass upon all of the issues raised by the parties on appeal that the lower courts also have the right to dispense with passing on all of the law issues raised in the pleadings. Jawhary v. Hassoun, 40 LLR 418 (2001); Knuckles v. The Liberian Trading and Development Bank, Ltd., 40 LLR 511 (2001). We would like to make it abundantly clear, in no ambiguous term, that no lower court has that authority, and a deviation from the prescribed rule requiring that the lower courts dispose of all of the law issues contained in the pleadings will be treated as an abuse of justice by the court if by such action the rights of a party-litigant is seriously jeopardized. In such a case, this Court will take

appropriate action against the trial judge or make the appropriate recommendations to ensure that our justice system is secured and that it functions to the expectation of the Liberian people and the Liberian nation state. This system no longer has room for such tolerance that has the propensity to place our justice process, the justice system, and the justice mechanisms at risk.

We must state here that the position we have espoused do not conflict with the position taken by this Court in the Universal Printing Press case or the other cases upon which that decision by the court relied for the conclusion reached in the case. We note that while in the Universal Printing Press case, this Court held that the failure of a trial judge to abide by the foregoing principle constitutes a reversible error and we relied on the case The Heirs of the Intestate Estate of the Late S. B. Nagbe, Jr. v. The Intestate Estate of the Late S. B. Nagbe, Sr., 40 LLR 337 (2001) for that position, the same situation does not obtain in the instant case to subscribe to the position taken in the Universal Printing Press case. In the Universal Printing Press case, the action of the judge was excepted to by the defendant and properly placed before this Court for determination. In the instant case, while the errors constituted reversible errors, and were raised in counts 7, 8, 9, 11, and 12 of the appellant's bill of exceptions, we note that the defendant/appellant never excepted to the trial judge's ruling on the law issues. In fact, not only did the defendant/appellant not except to the ruling of the trial court made to the effect that all of the issues were of mixed law and fact, however erroneous that conclusion may have been, but he also waived jury trial thereafter, preferring to have a bench trial, without the aid of a jury, and electing thereafter to make application to the court for the matter to be submitted to arbitration and waiving the production of any witnesses in that regard. He cannot now therefore complain that the trial judge erred in not disposing of the law issues or seek to have this court reverse the ruling of the trial court.

Thus, while we can be critical of the action of the trial judge, we are unable to provide a remedy sought by the defendant in respect of the above for the reason that the defendant's counsel (with the acquiescence of the plaintiff's counsel) believed at the time that the judge was not acting in error, and hence did not except to the ruling made by the trial judge. Indeed, acting upon that acceptance of the trial judge's ruling, counsel for the defendant made a submission to the

court waiving a jury trial and opting instead for a bench trial without the aid of a jury. Indeed, acting further on the acceptance of the judge's ruling, counsel for defendant subsequently made application to the court to submit the case to a survey arbitration board.

This Court has held in numerous opinions that unless the parties in the trial court except to the action of the trial court or the decisions made by the court, they are precluded from raising the issues on appeal for the first time and this court is without the authority to entertain such issues or to grant remedy in respect to the issues accepted by the parties or not excepted to in the court that had made the ruling. Knuckles v. The Liberian Trading and Development Bank, Ltd., 40 LLR 511 (2001). In the case The Heirs of the Intestate Estate of the Late S. B. Nagbe, Jr. et al. v. The Intestate Estate of the Late S. B. Nagbe, Sr. et al., 40 LLR 337 (2001), this Court said: Issues not raised during the trial of a case will not be heard on appeal, and the Supreme Court will not review issues where no exceptions were taken in the lower court, or consider an issue not included in the bill of exceptions. Similarly, in the Knuckles case, this Court said: This Court cannot therefore entertain those issues on appeal. (CITATIONS) The defendant had raised the issues, even if we disagree with them. The trial judge was obligated to pass on them and not shelve them with or seek to hide behind the factual issues raised. But equally important is that the defendant owed the client the obligation to except to the judge's ruling, the judge having failed to pass upon the issues raised. Counsel cannot now, in retrospect, raise the issue that he should have excepted to in the trial court but which he failed to except to, and expect that this Court will violate the law in order to accommodate him raising the issue before it. As with the trial court, we are equally bound to adhere to the law, to the letter and the spirit. Our constitutional oath requires that of us and no less is expected of the Court. Therefore, as to the said issue, we must overrule the contention of the appellant.

The second issue which this Court is called upon to decide, culled from the defendant/appellant's bill of exceptions and as contained in the objections to the report of the board of arbitration is whether in an action of ejectment, here one party relies on a warranty deed and the other party relies on a tribal certificate and an executive order, the matter is fit for arbitration to determine the metes and bounds of the property or the superior title or whether one party

is encroaching on the property of other party. Our answer to the issue is no. For a number of reasons, such a matter is not a fit subject for arbitration and a judge commits an error in submitting same to arbitration, even where requested by the parties or acquiescence in by them.

In the instant case, the plaintiff had sued out an ejectment action against the defendant. In his defense, the defendant had denied encroaching upon the land of the plaintiff decedent estate, asserting, firstly, that the decedent had sold the land to third parties and therefore had parted with title thereto; secondly, he said, he had secured from the decedent squatters rights, not to the parcel of land in dispute, but to a separate parcel of land opposite that of the estate thirdly, that he had secured a tribal certificate for the said land and that he held an executive order from the President of Liberia in regard to the land being occupied by him. These multiple defenses have no basis in law. This Court has held that a tribal certificate does not vest title to any parcel of land in a party; rather, it is the execution of a public land sale deed or other deeds which the Republic is clothed with the authority to issue in particular circumstances that vest title in a party. This Court, at its March Term, 2007, in the case Surmie et al. v. Calvary Baptist Church, decided on August 9, 2007, stated the following as regards to the process for making determination as to ownership to real property: The method or process to arrive at a conclusive finding as to ownership is to conduct a survey using the title deeds relied upon. Supreme Court Opinion, March Term 2007, decided August 9, 2007. While the instruments in the Surmie case did not involve a deed and a tribal certificate, the opinion is clear that in land dispute matters where the parties are laying claim to the same property, a survey is the best mode or mechanism to establish ownership and that in the process thee deeds of the parties will constitute the basis for the conclusion. A tribal certificate is not a deed, and hence, under no circumstance can it be a basis for contesting a deed validly executed in favour of a party. A tribal certificate, the Public Land Law states, is only the first step in an attempt to secure title to real property; it only evidences that a person seeking to secure a piece of property in an area in the interior of Liberia has secured the permission from the chiefs and people of the area. It must be followed by a certificate from the Land commissioner, payment must be made to the Revenue for the land, and finally the President must execute a public land sale deed in the person's favour. It is that public land sale deed, and only that deed, executed by the President that

vests title to the land in the person claiming such title. We herewith quote how the Public Land Law captures the process:

A citizen desiring to purchase public land located in the Hinterland shall first obtain consent of the tribal authority to have the parcel of land deeded to him by the Government. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen. The Paramount or Clan Chief shall sign the certificate, which the purchaser shall take to the office of the District Commissioner who acts as Land Commissioner for the area. The District Commissioner shall satisfy himself that the parcel of land in question is not a portion of the Tribal reserve, and that it is not otherwise owned or occupied by another person and that it therefore may be deeded to the applicant. He shall thereupon issue a certificate to that effect.

An applicant for the purchase of public land, having received from the District Commissioner or Land Commissioner a certificate as provided for in the foregoing paragraph, shall pay into the Bureau of Revenues the value of the land he desires at a minimum rate of fifty cents per acre. He shall obtain an official receipt from the Bureau of Revenues which he shall attach to his application to the President for an order directed to the surveyor of that locality to have the land surveyed. If the President shall approve the application, he shall issue the order to the surveyor to have the land surveyed. The applicant shall then present the order to the named surveyor who shall do the work. The applicant shall pay him all his fees. A deed shall thereafter be drawn up in the office of the Land Commissioner, authenticated by him, and given to the purchaser who shall submit it with all the accompanying certificates to the President for signature. The deed shall then be probated.

No such process obtained in the instant case as could have vested any title in the defendant's ancestor grantor predicated upon which the defendant could have relied to claim title to the property in question. Indeed, under the procedure outlined by the Public Land Law, a mere tribal certificate cannot be relied on to assert title. There must be other instruments, including a public land sale deed, upon which a party relies or can trace his or her title or authority to assert the right to the land or to be on the land. All of these are absent from the instant case,

except for the tribal certificate, which as we indicated above, does not vest title to land.

Moreover, we should add that a tribal certificate does not carry the metes and bounds of any real property. It is only an instrument designed to verify or acknowledge that the person seeking to purchase public land has gotten the permission of the chiefs and elders to purchase land in their locality. It does not profess to convey to the grantee any parcel or acreage of land, the meet's and bounds of which is unspecified and unknown, and regarding which no survey has been conducted as would even enable the parties to know or have an idea or to make a determination as to what the metes and bounds will look like.

Even where, in the alternative, the land has been given to a particular ethnic group or family, under conditions which require the approval of the Government for a disposition of the land to be carried out, such order or approval must still be obtained from the Executive. In 1979, this Court, speaking through Mr. Justice Tulay, in the case McGill et al. v. Magisterial Court and Yeagon, 28 LLR 179 (1979) held that land grant from the Republic of Liberia to tribal chief and elders cannot be alienated without consent of the Government.

How then could the trial judge have ordered that the survey arbitration board to conduct an investigative survey to determine ownership to the property or encroachment by and party using an instruments which, firstly, is not a deed, and secondly does not carry any metes and bounds, and thirdly, regarding which no allegations were made and no documents exhibited that the Government had consented to a conveyance as required by law.

Under the circumstances, the defendant's assertion that he holds real property by virtue of a tribal certificate or an executive order issued by the President, none of which he exhibited with his answer, being of a far lesser grade to vest title to real property in a person, does not as a matter of law vest in the defendant any right to claim title to or ownership of the said real property, subject of the ejectment litigation. The judge should therefore, strictly as a matter of law, have discounted the defendant's claim to any property, whether it was the same property held by the plaintiff or another property.

As recently as 2011, this Court in the case Kiazolu v. Cooper Hayes, held that while it is true that in an ejectment action where the parties titles are derived from the same grantor, the party with the older title is preferred, an older deed whose procurement is shrouded in doubt and uncertainty, as in the instant case, cannot prevail. Supreme Court Opinion, March Term, 2011, decided July 22, 2011.

In that case, which was submitted to an arbitration board of surveyors to do an investigative survey, the arbitrators reported that while the defendant/ appellant's deed from the Republic of Liberia was older than that of the plaintiffs/appellants which was also from the Republic of Liberia, not only did the defendants' deed not correspond with the acreage and successive lines on the ground and other ground information, and indeed differed substantially from what was shown on the ground, but also there were a number of erasing and/or typographical error in the deed. The board therefore concluded that there was no relation between the deed and the ground information. Hence, the board recommended that the defendant be encouraged to proceed to the Ministry of Foreign Affairs to follow up information in his deed as it was suspected that information in the deed was tampered with. This court adopted the recommendation and affirmed the award of the property to the plaintiff/ appellee. We believe similarly that as the instrument relied upon by the appellant does not meet the criteria of a legitimate instrument for establishment of title the arbitration report should not be disturbed.

Indeed, it is our holding that under the circumstances of this case the trial court was in error in having the matter submitted to arbitration in the first place. How, and by any parity of law or logic, could the trial court have submitted the matter to arbitration, with direction to the arbitration board that they should survey the plaintiff's 250 acres of land which was supported by a warranty deed, and then proceed to survey the 250 acres claimed by the defendant based on an unseen tribal certificate and executive order to aid the court in deciding the issue of ownership. For the reasons we have stated above, we hold that to direct that a tribal certificate be put against a warranty deed was legally untenable, but utterly unsound.

This lead us to the final issues, which is Whether the trial judge erred in confirming the arbitration report and entering judgment thereon awarding possession of the property, subject of the plaintiff's claim, to the plaintiff and ordering the defendant evicted and ejected therefrom if he is found to be on any portion of said property?

Given what we have said above relative to the legal status of a deed and a tribal certificate, we do not believe that the judge committed any error in confirming the arbitration report and in entering judgment thereon in favour of the plaintiff, although we do not believe that he was justified in proceeding with the haste with which he proceeded in entering the judgment. We note that following the reading of the report in open court and the placing of objections by the defendant on the minutes of the court, the trial judge, without entertaining any response from the plaintiff to the objections or allowing time for such response to be given, immediately proceeded to enter final judgment. His stated as his rationale that: The Supreme Court says that in a case where a trial is not aided by a trial jury, the judge may proceed to render its final judgment immediately. It is in the circumstances that this court will now proceed to render its final judgment.

We disagree with the reason given by the trial judge for proceeding to enter judgment immediately following the reading of the arbitration report and the submission of objections by the defendant. Firstly, section 64.10 of the Civil Procedure Law, which is part of the provisions governing arbitration, clearly states that [u]p on written motion of a party, the court shall confirm an award unless within the time limitation herein imposed, grounds are urged for vacating, modifying, or correcting the award, or reasons are assigned for clarifying it, in which case the court shall proceed as provided in section 64.11 and 64.12. Section 64.11 sets out that a party desiring that the court should vacate the award shall filed with the court a written motion. In the instant case, there was no written motion filed by the plaintiff seeking the court's confirmation of the award following the reading of the arbitration report. There was also no written motion filed by the defendant for the court to vacate the award; instead, objections were placed on the minutes of the court, in violation of the statute.

More than that, the court not only failed to allow any time for a resistance to be filed by the plaintiff, but it did not dispose of the objections before proceeding to enter final judgment, although it did address some of the issues contained in the objections in the final judgment. Although the court, in its final judgment, addressed some of the issues raised by the appellant in the objections to the report of the arbitration board, that action did not meet the requirement of the law, which is that the court should first have, and was under a legal duty, to dispose of the objections before proceeding to enter the final judgment. We hold that the wording of the statute contemplates, firstly, that the motion to vacate, or as in the instant case, the objections placed on the minutes of the court, would be denied before the court proceed to confirm the award. This means that the court was under a legal duty to enter two separate rulings, one on the application to vacate, and the other confirming the award. We must state here in the most certain term that a trial judge is without the authority to proceed to enter final judgment without first disposing of the objections placed on the minutes of the court by the appellant's counsel. Unfortunately, and as stated several times before in this opinion, the appellant elected not to raise the issue in his bill of exceptions, thereby precluding this Court from passing thereon and providing a remedy to him.

A further matter of concern is that the judge proceeded immediately following the reading of the arbitration report to enter a final judgment. In our opinion, it was an error on the part of the trial judge to proceed to enter judgment immediately following the reading of the report. The appellant did not raise the issue in its bill of exceptions. Why, we wonder, did counsel for the appellant not see this as an issue and to therefore include it in the appellant's bill of exceptions? His failure to include it as an issue is tantamount to a waiver, and by such act, to thereby preclude this Court from passing on same. Yet, notwithstanding the failure of the appellant to include in his bill of exceptions the error made by the trial judge, which therefore precludes us from providing a remedy to him, we must emphasize the point that the fact that the statute imposes an obligation on the parties to file written motions, either to confirm or vacate the award, implies that a judgment cannot be made by the trial court immediately following the reading of the report. Indeed, section 64.11{4) clearly sets out that if the application to vacate, which clearly is what the objections placed on the minutes of the court were about, even though in violation of the

statute, is denied and no motion to modify or correct the award is pending, the court shall confirm the award. The law contemplates and the trial judge must allow the parties ample opportunity to file objections to or motions to vacate the arbitration report or the award made therein. The time frame for such filing should be the same as provided by the Civil Procedure Law where a jury trial is had. A trial judge failing to accord the parties the opportunity to contest the award shall be deemed to have violated the rights of the parties, and where injustice ensues as a result of such violation, his action shall be considered a fit subject for reversal by this Court.

We must note, however, that we have not alluded to the issue, and our reference to it, do not affect the determination of this case; yet, we have felt the need to make reference to it because we want to again caution our judges to demonstrate competence in the law. In that respect, both lawyers and judges must adhere to the letter and the spirit of the statute and comply with its directives. A deviation by the parties is ground for the judge not to entertain the request of the parties.

In the bill of exceptions, the defendant asserted that the arbitration report was incomplete and inconclusive because it stated that the defendant had not presented his tribal certificate to allow a survey to be carried out on the parcel of land claimed by him. We reject this contention, noting, as we had stated before that the tribal certificate would not have indicated any metes and bounds to enable such survey to be carried out on any parcel of land claimed by the defendant based on said certificate. Moreover, no tribal certificate, lacking the force of a deed, could be used against a deed by the surveyors to determine ownership. It was sufficient that a survey had been carried out on the parcel of land claimed by the plaintiff, using her deed. But even more importantly, the defendant, having failed for a period of several years, to submit the co-called tribal certificate to thee arbitration board, and not having proferted same with his answer, he is estopped from claiming that his tribal certificate should have been taken into consideration. In the face of such waiver and estoppel, this Court cannot sustain the contention of the defendant.

We opine further that the fact that the surveyors had in an earlier status report indicated that the plaintiff's deed did not correspond with the ground location

did not preclude them from correcting, in their final report, what from all indications, was an error by them. Hence, the trial judge did not err in confirming the final report.

Additionally, the appellant contends that the final arbitration report carries the signatures of the three surveyor arbitrators when in fact the arbitrator designated by the defendant did not participate in the arbitration. That assertion is not supported by the records. Firstly, our review of the records reveals that the arbitrator designated by the defendant communicated with the court on several occasions. In each of those communications, he indicated that he was a part of the board and was participating in the survey, although he pointed out that they were encountering a number of difficulties. The last of those communications was dated August 26, 2009, nine days following the report of the arbitrators. Nowhere in the said communication did the arbitrator point out that he was not a part of the survey team.

The trial judge, in his final judgment also addressed the issue, rejecting the contention that three persons signed the report. He referred to the statute which allowed a majority of the arbitrators to sign a report. We uphold the judge's view. A majority of the arbitrators, as in the instant case, was sufficiently clothed with the legal authority to decide on the matter. A unanimous vote was not required of the arbitrators; and the mere fact that only two of the arbitrators signed the report, coupled with the fact that the report did not show that three arbitrators signed and that the arbitrator designated by the defendant, by his several communication, acknowledged that he did take part in the arbitration process, showed the appellant's contention to be invalid, and the allegation of fraud to be without any basis in law or fact.

Wherefore, and In view of the foregoing, we hold that while the trial judge erred in certain elements of the case, they were not of a sufficient magnitude to warrant reversal of the arbitration award, especially given the fact that in most of those errors, the appellant was a part-taker or did not except to them. We also hold that there was no basis for the use of the appellant's tribal certificate, which he did not attach to his answer and which he failed to produce during the arbitration process; hence, the lack of its use by the arbitrators was not an error and cannot serve as a basis for reversal of the conclusion reached

by the arbitrators following the survey of the plaintiff's property using the valid deed presented by the plaintiff.

Accordingly, the report of the arbitrators, along with the judgment entered thereon by the trial judge, is affirmed and confirmed. Costs are assessed against the plaintiff. And it is hereby so ordered.

Judgment affirmed.

Counsellor Richard K. Flomo, Sr., appeared for the movant/appellee. Counsellor Albert S. Sims of Sherman and Sherman Inc., appeared for the respondent/ appellant.