

CLARENCE K. MOMOLU and MARY K. MOMOLU, Appellants, v. McKINLEY K. CUMMINGS, Appellee

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY

Heard: September 11, 1996. Decided: September 27, 1996

1. A motion for judgment during trial in respect of a claim or issue is granted either when the opposing party has closed the presentation of evidence or, if it is based on admissions, then at any time.
2. The ground of a motion for judgment during trial is that the moving party is entitled to judgment as a matter of law; that is, there is no factual issue in dispute to warrant a full jury trial.
3. A motion for judgement during trial does not waive the right of the party to jury trial or to present further evidence; but where it is granted by the judge in an action tried by a jury, the judge must instruct the jury to bring a verdict for the moving party; and if the jury does not comply with the instruction of the judge, the judge may in his discretion award a new trial.
4. Documentary evidence annexed to a pleading is a factual issue to be testified to by witnesses, marked and confirmed by the court, and presented to the jury, the trier of facts in the case.
5. An action of ejectment invariably involves mixed issues of law and fact, and as such, it is an action, which, in our jurisdiction, should be tried by a jury to determine the weight and credibility of evidence or the validity of any title deed presented by the parties.
6. The judge is charged with the responsibility of passing on issues of law, and the jury of passing on issues of fact; and in particular, all documentary evidence which is material to issues of fact raised in the pleadings and which is received and marked by the court should be presented to the jury.

This appeal emanates from an action of ejectment filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. During the trial of the case, the appellee filed a motion for judgment during trial, claiming in substance that there was no material issue before the trial court to warrant a trial by jury because, in their reply, appellants failed to deny or traverse certain factual issues raised in the answer and that by such failure admitted to these averments. These averments relate to the alleged cancellation of the deed for appellants' grantor and the falsity of appellants' deed for the property.

The trial judge granted the motion for judgment during trial and dismissed the complaint, together with the entire action of ejectment, from which ruling the appellant excepted and announced an appeal to the Supreme Court.

The Supreme Court found that the reply was not an admission of any of the allegations of the answer; instead there was both a denial and an allegation of fraud. The Court also held that as both appellants and appellee have proferted deeds, as evidence of their respective title to the property, only a jury, not the trial judge, could determine the validity or invalidity of any of the deeds. The Court therefore held that the trial judge erred when he granted a motion for judgment during trial in the face of disputed issues of fact and also in the face of the profert of documents by both sides. The judgement was therefore reversed and the case remanded to commence with the jury trial.

Flaawgaa R. McFarland appeared for appellants. William K Godfrey appeared for appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

We have been called upon, in this matter, to exercise the duties imposed upon us by the Constitution of this Republic, as interpreters of the statutory laws of Liberia, to give a fair and impartial interpretation and construction of Section 26.2 of our Civil Procedure Law, Revised Code, relating to motion for judgment during trial.

This is an appeal before us from the judgment of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, presided over by His Honour M. Wilkins Wright, resident circuit judge, during its September Term, A. D. 1994, granting a motion for judgment during trial and thereby dismissing appellants' action of ejectment without a trial by jury.

The records transcribed and certified before this Court reveal that on the 25th day of June, A. D. 1994, appellants herein, Clarence K, Momolu and his wife, Mary K. Momolu, instituted an action of ejectment against Max Cummings, appellee, and other defendants for wrongfully withholding their premises containing two lots and the houses/apartments thereon, situated and located in Paynesville, Montserrado County. Appellants claimed US\$7,000.00 (Seven Thousand United States Dollars) as rental and US\$10,000.00 (Ten Thousand United States Dollars) as damages for wrongful withholding.

The pleadings in this proceeding progressed to the filing of an answer and rested at the filing of a reply. Appellants, on the 18th day of July A. D. 1994, filed a three-count motion to strike appellee's answer. The motion was resisted by appellee, heard and denied by Judge Varney Cooper, assigned circuit judge, on October 12, 1994. Thereafter, the law issues were disposed of on November 23, 1994 and the case ruled to jury trial.

On the 17th day of April A. D. 1995, appellee filed a two-count motion for judgment during trial under section 26.2 of our Civil Procedure Law, Rev. Code 1. The motion was resisted, and arguments were entertained by Judge M. Wilkins Wright, Resident Circuit Judge. Thereafter, Judge Wright granted the motion for judgment during trial on the 13th day of June A. D. 1995, as follows:

"WHEREFORE and in view of the foregoing, the court hereby grants the defendant's motion as a matter of law and accordingly dismisses the complaint and the action in its entirety. Cost of these proceedings ruled against the plaintiff/respondent. And it is hereby so ordered."

It is from this ruling, granting appellee's motion for judgment and thereby dismissing appellants' action of ejectment, that appellants excepted and appealed to this Court for final review and determination upon a six-count bill of exceptions. Only counts five (5) and six (6) of the bill of exceptions are deemed worthy of determination by this Court; and therefore we hereunder quote these counts verbatim for the benefit of this opinion:

"5. Besides, Your Honour, a reading of your ruling on defendant's motion for judgment during trial presupposes that there was a trial had, as the said ruling went into the details of the said ejectment action, passing on issues raised in the complaint, answer, and reply, when in fact no trial had been held. Your action in this regard constitutes a reversible error for all intent and purposes and makes your said ruling a fit subject for reversal by the appellate court.

6. That Your Honour's ruling failed to observe and take into consideration counts seven and eight of the plaintiff's reply, which constituted a denial to count eight of the defendant's answer, and not an admission."

Appellants alleged in count five (5) of the bill of exceptions and argued before this Court that the trial judge committed a reversible error in passing on issues raised in the complaint, answer and reply in his ruling on defendant's motion for judgment in the absence of any trial of the ejectment suit. Appellants also alleged in count six (6) of their bill of exceptions and strongly argued before this Court, that the trial judge failed to take cognizance of counts seven (7) and eight (8) of their reply, which constituted a denial and not an admission to count eight (8) of defendant's answer.

Appellants also contended that their deed for the property, acquired from Mr. Lincoln P. Cooper and Edith Cooper in 1983, still exists and has not been canceled by any court upon the application or petition of the late J. C. N. Howard, Sr., as alleged by appellee. Appellants submitted that in the absence of any records and judgment of any cancellation proceeding from a court to substantiate appellee's allegation that appellants' deed had been canceled, the alleged canceled deed from the Ministry of Foreign Affairs proferted by appellee is fraudulent.

Appellants also contended that the documentary evidence proferted with the pleadings by both parties should have been testified to by witnesses, marked and confirmed by the trial court, and presented to the jury. They submitted that the trial judge erred, in the absence of

an admission and a trial held, to grant appellee's motion for judgment and to thereby dismiss appellants' action of ejectment without a trial by jury.

Based on the foregoing, appellants requested this Court to reverse the judgment of the trial court.

On the other hand, appellee contended that the appellants failed in their reply to deny the fallacy of their deed, as evidenced by a non-discovery certificate issued by the National Archives. Appellee also contended that appellants failed to traverse the issue of their title deed not being registered in accordance with law in the National Archives and that their deed bears pages for registration, which do not exist. Such failures, submitted appellee, amount to admission of the appellee's allegation.

Appellee further contended that he acquired a title deed for the subject property from the late J. C. N. Howard, Sr., long before appellants' grantors, Mr. Lincoln P. Cooper and his wife, Edith Cooper, allegedly acquired said property from the late J. C. N. Howard, Sr. Appellee submitted that appellants' deed had been canceled by the late J. C. N. Howard, Sr. in 1978 in accordance with the records of the National Archives, as evidenced by an attached canceled deed.

It was further contended by appellee that the trial judge committed no reversible error when he granted appellee's motion for judgment during trial and dismissed appellants' action of ejectment because there was no triable issue before the court since indeed appellants' reply failed to specifically deny count eight (8) of appellee's answer.

Appellee submitted to this Court that the law issues in the ejectment action were disposed of by Judge Varney Cooper, who ruled the case to a jury trial notwithstanding appellee's application to dismiss said action, since there was no triable issue before the trial court.

Appellee therefore requested this Court to uphold and affirm the judgment of the trial court and to further order said trial court to resume jurisdiction and enforce its judgment.

The decisive issue for the determination of this proceeding is whether or not the trial judge committed a reversible error when he granted appellee's motion for judgment and dismissed appellants' action of ejectment without a trial by jury, relying on section 26.2 of our Civil Procedure Law, Rev. Code 1.

We shall pause for a moment to address ourselves to other issues raised in the pleadings by both counsels before passing on the decisive issue in this matter.

A careful perusal of the records in this case shows a certificate of non-discovery issued by the National Archives alleging that appellant's title deed does not exist; the records also show a canceled deed, also proferted by appellee, with the allegation that the warranty deed from J.

C. N. Howard, Sr. to appellants' grantors, Mr. and Mrs. Lincoln P. Cooper, has been canceled by a court since 1978.

This Court says that a documentary evidence annexed to a pleading, as in this instant case, is a factual issue to be testified to, marked, confirmed by witnesses and presented to the jury, the trier of facts in our jurisdiction. This Court also notes that the records in this case are devoid of any judgment or records from any court substantiating that cancellation proceeding for the cancellation of deed for appellants' grantor was granted and a judgment was entered canceling said deed.

On the issue of admissions, this Court observes that count eight (8) of appellee's answer alleges that appellant's deed from Mr. and Mrs. Lincoln P. Cooper is fraudulent as evident by a proferted certificate of non-discovery from the National Arc-hives. Counts seven (7) and eight (8) of appellant's reply allege that there is no fraud and that count eight (8) of appellee's answer is false and misleading, both factually and legally.

Appellants also alleged specifically in count seven (7) of their reply that appellee's Exhibit 'A', purported to be a canceled deed for Mr. and Mrs. Lincoln P. Cooper, appellants' grantors, is a forgery and a deceit and should not be granted any credence.

The allegations in appellant's reply do not constitute admission; they are specific denials to count eight (8) of appellee's answer. We therefore perceive no admission in appellant's reply; to the contrary we see both a denial and also an allegation of fraud as to the cancellation of their grantors' deed.

Therefore, count six (6) of appellants' bill of exceptions is sustained. As to count five (5) of appellant's bill of exceptions, this Court sustains appellant's submission that the lower court, in its ruling on the motion for judgment, passed upon factual issues raised in the complaint, answer and rely without a trial of said action. If the case is to be dismissed as a matter of law, as stated in the trial court's ruling, then there should be no material factual issues in dispute for the trial court to pass upon. But it is clear that there were several material factual issues which the trial judge erroneously passed upon in his ruling. Count five (5) of appellant's bill of exception, being sound in law, is therefore sustained.

We shall now pass on the decisive issue in this matter, which is whether or not the trial judge committed a reversible error when he granted appellee's motion for judgment and dismissed appellants' action of ejectment without a trial by jury, relying on section 26.2 of our Civil Procedure Law, Rev. Code 1.

The relevant statutory provision relied upon by the trial judge in granting the motion for judgment and dismissing appellants' action of ejectment provides that:

"After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with

respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. Civil Procedure Law, Rev. Code 1:26.2.

We have gathered from the above quoted statutory provision the following:

- (a) That any party may move for judgment with respect to a claim or issue at the close of evidence by an opposing party;
- (b) That any party may also move for a judgment at any time on the basis of admissions;
- (c) That the moving party is entitled to such judgment as a matter of law;
- (d) That the motion does not waive the right to jury trial, or to present further evidence;
- (e) That the court shall direct the jury what verdict to render in an action tried by jury; and
- (f) That the court in its discretion may grant a new trial if the jury disregard its direction.

An action of ejectment invariably involves mixed issues of law and fact, and as such, it is an action, which, in our jurisdiction, should be tried by a jury to determine the weight and credibility of evidence or the validity of any title deed as in the instant case. *Karnga v. Williams et al.*, 10 LLR 10 (1948).

As stated earlier in this opinion, we perceive no admission by appellants, plaintiffs in the court below, upon which the trial court granted a motion for judgment and thereby dismissed their ejectment suit without a trial by jury. The quoted statute relied upon by the trial judge does not in any way waive the right to trial by jury in an action of ejectment as in this case on appeal.

This Court has held that the judge is charged with the responsibility of passing on issues of law, and the jury that of passing on issues of fact; and in particular, all documentary evidence which is material to issues of fact raised in the pleadings and which is received and marked by the court should be presented to the jury. *Dagber v. Money*, 26 LLR 422 (1978).

The pleadings therefore present triable issues to be determined by a jury. Only the jury, under our laws, can determine the validity of the deeds or documentary evidence proferted, as both appellants and appellee are claiming title to the subject property and are also alleging fraud.

We therefore hold that the trial judge committed a reversible error when he granted the motion for judgment, in the absence of admission of the material factual issues. The

dismissal of the ejectment suit without the aid of a jury trial, constitute an invasion of the province of the jury.

In order that parties to the issues before a court may have a fair and impartial trial, where all the issues of law and fact are squarely and properly placed before the court, this Court of last resort, in rendering transparent justice, will not hesitate to reverse a judgment of a trial judge, who performs his duties in an irregular manner, as in the instant case.

Wherefore and in view of the foregoing facts and the law controlling, it is the opinion and judgment of this Court that the judgment of the trial court granting the motion for judgment during trial and thereby dismissing appellants' action of ejectment without a jury trial is and the same is hereby reversed.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and proceed with the ejectment action beginning with the trial by jury. Costs in this proceeding to abide final determination of this matter. And it is hereby so ordered.

Judgement reversed; case remanded.