

REPUBLIC OF LIBERIA, by and thru the Minister of Justice,
HONOURABLE JENKINS K. Z. B. SCOTT, Petitioner, v. **MORVE SONE**,
VARMUYAH CORNEH and all those claiming under the Aborigine Grant Deed
of 1931, Respondents.

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

Heard: May 2, 1988. Decided: July 29, 1988.

1. Exceptions taken and noted during the trial of a case, but not included in the bill of exceptions, are considered as having been waived.
2. Every allegation of fact in a pleading, if not denied specifically or by implication, shall be taken as admitted.
3. Contractually, the grantor of land is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed, and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract.
4. If the President of Liberia, acting by reason of misrepresentation, fraud, misinformation, or concealment of facts, executes a deed to transfer property which is not within the public domain, none of his successors can legally uphold such act; and since each of them is under oath to enforce the laws of the Republic, it is within their legal duty to correct any wrongs done against the interest of a citizen by their predecessor in office.
5. The constitutional guarantee that no one shall be deprived of property but by judgment of his peers was never intended to protect the unlawful ownership of property. Therefore, in order that this provision of the Constitution may be invoked by a citizen in the possession of his property, he must be able to show that his acquisition and possession are legitimate and that genuineness of his title is beyond dispute.

In 1906, the Republic of Liberia conveyed to Chief Murphy Sone and the inhabitants of Vai Town a 25 acre parcel of land located in Via Town. Subsequently, in 1931, President Edwin J. Barclay allegedly conveyed to Morve Sone, Varmuyah Corneh et al., of Vai Town, under an Aborigines Land Grant Deed, twenty-five acres of land

said to be the same parcel of land previously conveyed to Chief Murphy Sone and the inhabitants of Vai town. Thereafter, an ongoing dispute developed between the two groups.

In 1986, in an attempt to resolve the dispute, the President of Liberia constituted a Committee to investigate the authenticity and validity of the 1906 and 1931 deeds, and to submit findings and recommendations. Following the submission of the Committee's report, the President determined that the twenty-five acres of land in dispute be turned over to the legal representatives of the late Chief Murphy Sone, and that all public land sale deeds issued after 1906 for the same parcel of land be cancelled. Based on the foregoing decision, the Ministry of Justice, acting for the Government of Liberia, commenced cancellation proceedings for cancellation of the 1931 Aborigines Land Grant Deed, stating as grounds that the deed had been secured through fraud, misrepresentation and deceit.

The respondents did not file an answer. Instead, they filed a motion to drop misjoined party, asserting that they had no objections to the cancellation of the 1931 deed and that they had never claimed title to the land in question. The motion was resisted by the petitioner and denied by the trial court. Following a hearing on the facts, the trial court entered a decree cancelling the 1931 deed and ordered that the property be turned over to the representatives of the late Chief Murphy Sone. To this ruling, the appellants noted exceptions and announced an appeal to the Supreme Court.

In its judgment, the Supreme Court affirmed the decree of the trial court cancelling the 1931 deed. The Court noted that the bill of exceptions did not contain any counts challenging the final decree of the trial court. Instead, the Court observed, the entire counts in the bill of exceptions were limited to the trial court's denial of the appellants motion to be dropped as parties to the cancelling proceedings. As such, the Court opined that there was nothing before it to review as far as the trial court's decree was concerned. The Court also ruled that exceptions taken during the trial but not included in the bill of exceptions were considered as having been waived. It held accordingly that as to those exceptions, they were not cognizable before the Court.

In addition, the Court ruled that as the respondents had not denied in their motion to be dropped as party-respondents or at the trial that the 1931 deed was secured by fraud, misrepresentation and deceit, the allegations must be deemed as admitted. Moreover, the Court said, since the respondents had stated that they had no objections to the cancellation of the deed, they had suffered no harm or prejudice by

the trial judge's denial of the motion. The Court therefore *affirmed* the judgment decree of the trial court.

H. Varney G. Sherman appeared for appellants. *The Ministry of Justice* appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

In the year 1906, during the administration of President Arthur Barclay, the Government of Liberia, through the President, conveyed to Chief Murphy Sone and the inhabitants of Vai Town, Montserrado County, 25 (twenty-five) acres of land, situated, lying and being near the Mesurado River, Bushrod Island, Montserrado County. Subsequently, that is to say, in 1931, during the administration of President Edwin J. Barclay, he is alleged to have executed an Aborigines Land Grant Deed conveying the same 25 acres of land to Morve Sone, Varmuyah Corneh, et al., of Vai Town, Montserrado County, Liberia.

According to the records, there are two main rival groups, namely, the group claiming title to the 25 acres of land under the 1906 deed executed by President Arthur Barclay, and the group claiming title to the same 25 acres of land by virtue of the Aborigines Land Grand Deed, allegedly executed by the late President Edwin J. Barclay in 1931. Thus, since 1931, the two factions have challenged each other's right to ownership and possession of the 25 acres of land.

The records further show that in 1986, the present administration, under the leadership of Dr. Samuel K. Doe, President of Liberia, in an effort to resolve this long standing land dispute over the 25 acres of land, appointed a committee to investigate the authenticity and validity of the 1906 and 1931 deeds and to thereafter submit its findings and recommendations to the President so as to enable him to make a decision thereon and thus bring relief to the people of Vai Town. The committee, having investigated the circumstances surrounding the execution of the 1906 and 1931 deeds, submitted its findings and recommendations to President Samuel K. Doe, based upon which findings and recommendations, the President decided that the 25 acres of land, subject of the committee's report, be turned over to Boima Larty and Alhaji J. D. Lassanah et al., legal representatives of the late Chief Murphy Soni. The President also decided that all subsequent public land sale deeds executed for the same parcel of land after 1906 be cancelled. The President then ordered the Ministry of Justice to proceed, through the appropriate court to have the 1931 deed cancelled. It is in obedience to the President's order that the Ministry of

Justice, on March 6, 1986, filed a petition in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, for cancellation of the 1931 Aborigines Land Grant Deed, alleging, among other things, that the 1931 Aborigines Land Grant Deed was procured by the grantees through fraud, misrepresentation and deceit. For the benefit of this opinion, we hereunder quote verbatim petitioner's petition:

"PETITION

Petitioner in the above entitled proceedings, respectfully petitions this Honourable Court for the cancellation of an Aborigine Land Grant Deed purported to have been executed in favour of respondents in 1931 by the late President Edwin J. Barclay, and for reasons showeth the following to wit:

1. Because petitioner says that the said Aborigine Land Grant Deed was procured by the respondents from the Republic of Liberia in 1931 through fraud, misrepresentation and deceit perpetrated by the late Chief Morve Sone and the People of Vai Town for 25 acres of land situated, lying and being near the Mesurado River, even though the so-called grantees knew fully well that the said 25 acres of land had already been conveyed to the late Chief Murphy Soni and the inhabitants of Vai Town (Vai's People), Monrovia, in the year 1906, as can more fully be seen from copies of the deed of 1931 and that of 1906 hereto attached and marked exhibits "A" and "B" respectively to form a cogent part of this petition.

2. And also because as a further apparent act of fraud and deceit committed and perpetrated by the respondents in procuring the said Aborigine Land Grant Deed, the said deed was allegedly signed by the late President Edwin J. Barclay, but later on the 10th day of August, 1953, the said President Edwin J. Barclay categorically denied having at any time signed any public land sale deed during his tenure as President of the Republic of Liberia, unless such a deed was countersigned by the land commissioner, T. G. Collins. He went further to say that during his incumbency as President of Liberia, he always signed his name on deeds as "Edwin Barclay" and not "Edwin J. Barclay" as is reflected in the so called Aborigine Land Grant Deed of 1931. Petitioner submits that this well known practice and procedure of the late President Barclay in signing deeds is not shown on the so-called Aborigine Land Grant Deed. Therefore, it can be concluded that it was respondents who themselves prepared the 1931 deed and forged or signed President Barclay's signature thereon, which is an act of fraud and for which cancellation will lie.

3. And also because petitioner says that the President of Liberia, Dr. Samuel Kanyon Doe, appointed a committee to investigate the authenticity and validity of the 1906

and 1931 deeds, and concluded in his decision that the said 25 acres of land situated in Vai Town should be turned over to Boima Lartey and the late Chief Murphy, and that the deed of 1931 and all subsequent public land sale deeds executed after 1906 for the subject property should be cancelled. A copy of President Doe's decision in support of petitioner's contention, as well as his letter addressed to Mr. Lassanah, dated February 14, 1986, are hereto attached and marked in bulk Exhibit "C", to form a part of this petition."

4. And also because petitioner says that Vamuyah Corneh, and all those claiming under the purported 1931 Deed are heirs and representatives of the late Morve Sone who, through deceit, fraud and misrepresentation, procured the 1931 deed which is the subject of this dispute; and since indeed and in fact the late Morve Sone did not have title to the 25 acres of land in question, he could not pass same to his heirs and/or legal representatives.

Wherefore, and in view of the foregoing, petitioner prays this Honourable Court to cancel the fraudulent Aborigine Land Grant Deed of 1931 and make same null and void to all intents and purposes; and to grant unto petitioner such other relief which this Honourable Court in its judgment would deem legal and equitable."

There was no returns/answer filed by the respondents but the records show that on the 8^h day of April, same being the 17th day's jury session of the March Term of Court, A. D. 1986, when the petition for cancellation was called for hearing, counsel for respondents, counsellor Robert G. W. Azango, brought to the attention of the court that they had filed a motion to drop misjoined party, growing out of the cancellation proceedings, and that said motion should first be taken up before the hearing of the cancellation proceedings. The request was granted and the Republic of Liberia, through the Ministry of Justice, by permission of the court, spread on the minutes of the court its resistance to the motion. The court then entertained arguments *pro et con* and thereafter denied respondents' motion to drop misjoined party and sustained the resistance of the petitioner.

On the 15th day of April, same being the 21st day's jury session of the March A. D. 1986 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, the court handed its decree declaring the 1931 Aborigine Land Grant Deed cancelled. We hereunder quote the relevant portions of the court's decree:

"In view of the facts outlined above and laws cited, said deed of Morve Sone and Varmuyah Corneh et al., allegedly issued and signed by President E. J. Barclay in

1931, is hereby cancelled and made *null* and *void* to all intents and purposes, considering the surrounding facts and circumstances revealed by oral and written evidence. The criteria for the cancellation of public land sale deed together with the principle of law having been considered very carefully by court, we again confirm and emphasize that said 1931 deed is hereby cancelled and made null and void to all intents and purposes. Cost(s) of court ruled against the respondents. And it is hereby so ordered.

Given under our hand and seal of court this 15' day of April, A. D.1986.

Sgd: Hall W. Badio

ASSIGNED CIRCUIT JUDGE"

And to which ruling, respondents excepts and announce an appeal to the Honourable Supreme Court of Liberia, sitting in its October Term, A. D. 1986."

The exceptions were duly noted by Court and the notice of appeal granted.

It is interesting to note that despite the exceptions taken to the court's decree cancelling the 1931 Aborigine Deed which was allegedly executed by President E. J. Barclay and the appeal announced from said ruling, there is no showing in the records certified to this Court that the said exceptions taken by respondents to the ruling, as well as the notice of appeal to this Court by respondents from the court's final decree, are embodied in the bill of exceptions. Hence, there is nothing before us regarding the trial court's decree in the cancellation proceedings to review.

The Supreme Court has held that "exceptions taken and noted during a trial, but not included in the bill of exceptions, are considered as having been waived." *Torkor and Teete v. Republic*, 6 LLR 88 (1937). In the instant case, the bill of exceptions submitted by the respondents contains issues growing out of respondents' motion filed in the court below to drop misjoined party. That motion, in our opinion, was ancillary to the cancellation proceedings instituted by the Republic of Liberia for cancellation of the 1931 deed which was allegedly executed by President E. J. Barclay for the 25 acres of land situated in Vai Town, Montserrado County, Republic of Liberia.

A motion is defined as "an application made to the court or a judge for the purpose of obtaining a rule or order directing some acts to be done in favour of the appellant. It is usually made within the framework of an existing action or proceeding and is ordinarily made on notice; but some motions may be made without notice. One without notice is an *ex parte* motion. Written or oral application to court for ruling or

order made before (e.g. motion to dismiss) during (e.g. motion for directed verdict) or after (e.g. motion for new trial)." BLACK'S LAW DICTIONARY 913 (5th ed).

A careful perusal of the records submitted to this Court reveals that during the hearing of the cancellation proceedings as well as in the respondents' motion to drop misjoined party, respondents did not deny that the 1931 Aborigine Land Grant Deed was procured through fraud, misrepresentation and deceit perpetrated against the State by the grantees, Morve Sone, Varmuyah Corneh et al., of Vai Town as alleged in the Government's petition for the cancellation of the said 1931 Aborigine Land Grant Deed for the 25 acres of land, referred to *supra*.

Moreover, in counts 3 and 8 of the respondents' motion to drop misjoined party, as well as during the oral arguments before this Court, respondents counsel emphatically stated that they were not opposed to the cancellation proceedings because, according to respondents, neither they nor their ancestors had ever claimed title to the land under the 1931 Aborigine Land Grant Deed.

Counts 3 and 8 of the aforesaid motion are hereunder quoted verbatim.

"COUNT 3. That movants say that neither the late Varmuyah Corneh nor any of the said movants, individually or collectively, is a proper party to these cancellation proceedings, in that whilst it is true that the late Varmuyah Corneh did hold a power of attorney to represent the Tribal Authority of Vai Town, the people and inhabitants of Vai Town in respect of the Vai Town land dispute against Boima Lartey, Alhaji J. D. Lansannah and others, movants submit that on no occasion did Varmuyah Corneh or any of the movants individually or collectively, or their predecessors, ever claim title to any land in Vai Town by virtue of a 1931 Aborigine Land Grant Deed as alleged by the petitioner.

COUNT 8. That movants finally say that they are not opposed to the cancellation of the 1931 Aborigine Land Grant Deed purportedly issued by the late President Edwin J. Barclay, but to name them as respondents in said cancellation proceedings is a misjoinder as they have never claimed title to any land by virtue of said 1931 Aborigine Grant Deed."

In *Cavalla River Company, Ltd. v. Pepple*, 3 LLR 436 (1933), this Court held that "every allegation of fact in any pleading, if not denied specifically or by necessary implication, shall be taken as admitted." In addition to the failure to deny the petitioner's allegations, however, the respondents went further to assert in counts 3 and 8

of their motion to drop that they were not opposed to the cancellation of the 1931 Aborigine Land Grant Deed.

In the absence of any denial by the respondents that the deed was fraudulently procured by the grantee and in the face of the respondents' non-opposition to the cancellation of the 1931 Aborigine Land Grant Deed, as stated in their motion to drop misjoined party, as well as the statement made by counsel for respondents during oral argument before this Court, the Court is of the opinion that it has no other alternative but to affirm the trial court's decree granting the petition.

In the case *Davies v. Republic*, 14 LLR 249 (1960), this Court held as follows: "Contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed; and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract." . . . If the President, acting by reason of misrepresentation, fraud, misinformation or concealment of facts, executes a deed to transfer property which is not within the public domain, none of his successors can legally uphold such an act; and since each of them is under oath to enforce the laws of the Republic, it would be within their legal duty to right any wrongs done against the interest of a citizen by their predecessor in office.... The constitutional guarantee that no one shall be deprived of property but by judgment of his peers was never intended to protect the unlawful ownership of property. In order that this provision of the Constitution may be invoked by a citizen in the possession of his property, he must be able to show that his acquisition and possession are legitimate and that genuineness of his title is beyond dispute."

WHEREFORE, and in view of the foregoing, this Court is of the considered opinion that the final decree of the court below granting the petition for cancellation of the 1931 Aborigine Grant Deed for 25 acres of land situated in Vai Town, Montserrado County, Republic of Liberia, be and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to resume jurisdiction over the case and to enforce its final decree, referred to *supra*. The respondents are ruled to all costs of these proceedings. And it is hereby so ordered.

Judgment/decree affirmed.