

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS MARCH TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Ruth N. Lewis and Mr. Zein Jaffal of the City of Monrovia)
 and Patrick of the City of Monrovia, Liberia)
 APPELLANTS)

Versus)

) APPEAL

The Intestate Estate of the Late Alhaji Momo Rogers by)
 and thru its Administrators, Boakai Passewe and Mike)
 Rogers, Liberia)
APPELLEE)

GROWING OUT OF THE CASE:)

The Intestate Estate of the Late Alhaji Momo Rogers by)
 and thru its Administrators, Boakai Passewe and Mike)
 Rogers of Liberia.....PLAINTIFF)

Versus)

) ACTION OF
EJECTMENT

Ruth N. Lewis and Mr. Zeinn Jaffal of the City of Monrovia)
 and Patrick of the City of Monrovia, Liberia)
DEFENDANTS)

Heard: May 7, 2019

Decided: August 9, 2019

MADAM JUSTICE YUOH DELEVERED THE OPINION OF THE COURT

On April 22, 2014, the appellee, the Intestate Estate of Alhaji Momo Rogers by and through its administrators Boakai Passewe and Mike Rogers, filed an action of ejectment in the 6th Judicial Circuit Court, Montserrado County, sitting in its June Term A.D. 2014, against the appellants, Ruth N. Lewis and Zein Jaffal.

In a four-count complaint, the appellee alleged that in 1951 the late Alhaji Momo Rogers purchased a piece of property situated on the Bushrod Island from John N. Lewis; that the appellants illegally entered upon the said property and began construction thereon; that on several occasions, the appellee advised the appellants to halt the construction and to vacate the property, but these efforts proved futile. The appellee prayed the trial court to evict the appellants and hold them liable to the appellee in the amount of Ten Thousand United States Dollars (US\$10,000.00) for illegal withholding of the disputed property. We quote below the appellee's four (4) count complaint to wit:

“PLAINTIFF’S COMPLAINT

Plaintiff in the above entitled cause of action complains of the above named Defendants and says the following legal and factual reasons to wit:

1. That Boakai Passawe and Mike Rogers are the Administrators of the Intestate Estate of the late Alhaji Momo Rogers by virtue of Letters of Administration issued in their favor by the Monthly and Probate Court for Montserrado County, on the 30th day of September, A.D. 2013. Copy of the said Letters of Administration is hereto attached and marked as Plaintiff Exhibit “P/1” to form a tangible part of this Complaint.
2. Plaintiff also complains and says that during the lifetime of the late Alhaji Momo Rogers, he acquired real property from John N. Lewis on June 5, 1951, which said property is described and bounded as follows:

“Commencing at a part designated A on site plain which is the thence running North 38 degrees East, 170 feet along said Road to a point, thence running North 34 degrees 30 feet East, 47 feet to a point, thence running South 56 degrees 30 feet East 103 feet along a pt. thence running South 2 degrees West 145 feet to a point, thence running South 79 degrees West 145 ft. to a point, thence running South 69 degrees West 227 feet parallel with the right of Way of the Road to a point, thence North 6 degrees East, 75 feet to the point of commencement and containing three (3) lots of land and no more.”

Copy of the said title deed is hereto attached and marked as Plaintiff’s Exhibit “P/2” to form an integral part of this Complaint.

3. Plaintiff further complains and says that within named Defendants without leave, color of right and fear of God entered upon the property of the Plaintiff and began to carry on construction work thereon against the will and consent, and to the detriment of the Plaintiff, even though the Defendants on several occasions were advised by the Plaintiff to desist and vacate Plaintiff’s property but same prove futile.
4. Plaintiff further says that this Action of Ejectment is the proper remedy to have the Defendants ousted, evicted, ejected and removed from the Plaintiff’s property since indeed they have refused to move from the said property.

Wherefore and in view of the foregoing, Plaintiff most respectfully prays Your Honor and this Honorable Court to order the Defendants ousted, evicted, ejected and removed from the Plaintiff’s property and place Plaintiff in possession of its property, and to award Plaintiff damages for the illegal withholding of the Plaintiff’s property in the amount of UNITED STATES DOLLARS TEN THOUSAND (US\$10,000.00), and grant unto your humble Plaintiff any and all other further relief that Your Honor and this Honorable Court may deem just, legal and equitable.”

The appellee’s administrators, Boakai Paasewe and Mike Rogers, attached their letters of administration issued them by the Monthly and Probate Court for Montserrado County, and the certified copy of a title deed issued in favor of Alhaji Momo Rogers.

The sheriff’s returns show that Co-appellant Ruth N. Lewis refused to receive the writ of summons and complaint, while Co-appellant Zein Jaffal of KNZ Corporation was not found to be served. On July 2, 2014, upon being served with

the writ of summons and complaint, Co-appellant Zein Jaffal filed a 10 count joint answer that included both he and Co-appellant Ruth Lewis. The answer alleged that Co-appellant Ruth N. Lewis acquired the property from her late father, Johnnie N. Lewis in 2010; that Johnnie N. Lewis acquired the property from his father, John N. Lewis on November 20, 1984, and that the property was never sold to the appellee as alleged in the complaint. The appellants also alleged that the certified copy of the appellee's deed is a product of fraud; that the transcription, re-registration and re-issuance of the appellee's deed from mutilated records at the Center for National Documents and Records Agency (CNDRA) were *ultra vires*; and that the trial court should dismiss the appellee's action of ejectment. We quote herein below the appellants' eleven (11) count answer, to wit:

“CO-DEFENDANT RUTH N. LEWIS AND
ZEIN JAFFAL/KNZ CORPORATION’S ANSWER

Co-Defendant Ruth N. Lewis, Zein Jaffal/KNZ Corporation in the above-entitled cause of action deny the legal and factual sufficiency of Plaintiff's Complaint, and pray Your Honor to deny and dismiss same for the following legal and factual reasons, to wit:

1. That as to Counts One (1) through Four (4) of the Complaint, Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation say that they are the proper party defendants in the instant Action of Ejectment, and are therefore submitting themselves to the jurisdiction of this Court by the filing of this Answer.
2. That also as to Count One (1) above, Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation say that Johnnie N. Lewis acquired title to three (3) acres of land within the Freeport Community Bushrod Island, Montserrado County, from John N. Lewis for which he was issued a title deed. Attached hereto and marked as **Exhibit “D/1”** is a copy of said deed in substantiation of the averment contained herein.
3. That also as to Counts One (1) and Two (2) above, Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation say that Ruth N. Lewis acquired title to nine-point-seven-zero (9.70) lots of land from Johnnie N. Lewis' herein-mentioned three (3) acres of land in 2001, and was accordingly issued title deed therefor. Attached hereto and marked as **Exhibit “D/2”** is a copy of the referenced title deed in substantiation of the averment contained herein.
4. That Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation say that subsequent to the acquisition of title to the nine-point-seven-zero (9.70) lots of land by Co-Defendant Ruth N. Lewis, the said Co-Defendant Ruth N. Lewis, as Lessor, and Co-Defendant KNZ Corporation, as Lessee, executed a Lease Agreement for three (3) lots out of the 9.70 lots owned by Co-Defendant Ruth N. Lewis. Attached hereto and marked as **Exhibit “D/3”** is a copy of the referenced Lease Agreement in substantiation of the averment contained herein.
5. That based upon the averment contained in Counts Two (2) through Four (4) above, Co-Defendant Ruth N. Lewis and Zein Jaffal/KNZ Corporation deny the allegations contained in Plaintiff's Complaint, specifically Counts Two (2), Three (3) and Four (4) thereof, and say that the property, subject of the Action of Ejectment, is the legitimate property of Co-Defendant Ruth N. Lewis. Hence, the instant Action of Ejectment cannot, and will not lie against

Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation; and Co-Defendant Ruth N. Lewis and KNZ Corporation pray Your Honor to so rule and declare.

6. That specifically traversing Count Two (2) of the Complaint, Co-Defendant Ruth Lewis and Zein Jaffal/KNZ Corporation say that John N. Lewis did not sell the property, subject of the Action of Ejectment, to the Plaintiff as alleged in said Count Two (2) of the Complaint, and the purported True and Certified copy of a deed attached to the Complaint as Plaintiff's **Exhibit "P/2"** is a product of fraud, as the signatures of Alhaji and Abu-Bakar Jenkins K.Z.B. Scott and Jackson K. Purser, Deputy Minister/Legal Counsellor and Director of Archives, respectively, appearing thereon are not the known signatures of said individuals, and that the purported signatures were forged on said instrument. Co-Defendants Ruth N. Lewis and KNZ Corporation submit that at trial they shall subpoena the Ministry of Foreign Affairs to substantiate the averment contained herein.
7. That also as to Count Five (5) above, Co-Defendants Ruth N. Lewis and KNZ Corporation say that the purported True and Certified copy of a deed alleged that that said purported title deed was originally registered in Volume 67 but that due to mutilation of said volume, same was reregistered in Volume N/N-2005, Pages 244-245. Co-Defendant Ruth N. Lewis and Zein Jaffal/KNZ Corporation wonder how the metes and bounds contained in Plaintiff's **Exhibit "P/2"** was arrived at since the original volume was mutilated. Co-Defendant Ruth N. Lewis and KNZ Corporation say that the procedure in retrieving a deed which has been destroyed or mutilated at the Ministry of Foreign Affairs, is to petition the court for either a correction of title deed or the reissuance of a damaged or destroyed title deed; and the court would then constitute and designate a surveyor with notice to the general public to re-demarcate one's property and have the sheriff issue a Sheriff Deed to the petitioner, where there is no objection from the general public and it is established that the property in question is owned by the person petitioning the court. This not being the case, and there being no showing how the metes and bonds contained in Plaintiff's True and Certified Copy were arrived at, the said True and Certified Copy is definitely a product of fraud and should therefore be set aside and the Complaint growing therefrom dismissed.
8. That specifically as to Count Three (3) of the Complaint, Co-Defendants Ruth Lewis and Zein Jaffal/KNZ Corporation say that the Plaintiff is not the owner of the property, subject of the Action of Ejectment, for reasons stated in Counts Two (2), Three (3) and Four (4) above. Further, Plaintiff at no time prior to, during or after the construction work carried out by Co-Defendant Ruth Lewis and Zein Jaffal/KNZ Corporation allege that the herein-mentioned property was allegedly owned by Plaintiff. Co-Defendants Ruth Lewis and Zein Jaffal/KNZ Corporation challenge the Plaintiff to produce any proof that it claimed title and ownership to said property while Co-Defendant Ruth N. Lewis and Zein Jaffal/KNZ Corporation were carrying out their construction work or any time prior to or subsequent to said construction work.
9. That as to Count Four (4) of the Complaint, Co-Defendants Ruth N. Lewis and KNZ Corporation say that an Action of Ejectment cannot lie against them for reasons stated hereinabove.
10. That also as to the entire Complaint, Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation say there is an action of Ejectment pending before this Honorable Court between Peter B. Juah and Patrick Wesseh for which Co-Defendant Ruth N. Lewis and KNZ Corporation were granted intervention by this Honorable Court, and therefore are party defendants in said case. Your

Honor is requested to take judicial notice of the records of this Honorable court in substantiation of the averment contained herein.

11. Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation deny all and singular the allegations of both law and fact contained in Plaintiff's Complaint and not specifically traversed in this Answer.

Wherefore and in view of the foregoing, Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation pray Your Honor to deny and dismiss Plaintiff's Complaint in its entirety, rule costs of these proceedings against Plaintiff, and grant Co-Defendants Ruth N. Lewis and Zein Jaffal/KNZ Corporation any other and further relief as Your Honor may deem just, legal and equitable in the premises."

The Co-appellant Jaffal attached to his answer the following instruments: (i) a certified copy of a title deed from John N. Lewis to Johnnie N. Lewis and (ii) a warranty deed from Johnnie N. Lewis to Co-appellant Ruth N. Lewis.

On July 11, 2014, the appellee filed its reply, re-affirming the allegations stated in its complaint, but further alleged that the conveyance by John N. Lewis to Johnnie N. Lewis in 1984 was impossible, as the John N. Lewis' estate was officially closed in 1982.

On the same date of July 11, 2014, the appellee filed a motion to strike the joint answer, praying the trial court to hold Co-appellant Ruth N. Lewis to bare denial for failure to file an answer in accordance with law. On October 9, 2014, Co-appellant Lewis filed resistance, requesting the trial court to deny the motion on grounds that although she was never served the writ of summons and the complaint, Co-appellant Zein Jaffal, upon being served with the complaint and summons, had filed a joint answer on their behalf within the time allowed by statute.

On November 24, 2014, the trial court ruled on the motion, specifically holding Co-appellant Ruth N. Lewis to bare denial for her refusal to sign for the summons and the complaint as shown by the Sheriff's returns, but denied same as to Co-appellant Jaffal. This Court affirms the ruling of the trial court as to Co-appellant Ruth N. Lewis holding her to bare denial but denying the motion as to Co-appellant Jaffal. The Supreme has held that a defendant who fails to file an answer to a complaint shall be placed on general denial or bare denial; and that a party when ruled to general denial is legally entitled to introduce evidence at trial to the extent to support his denial. However, he cannot introduce by general or other form of testimony, an affirmative defense or evidence in support of any claim or right. *Freeman v. Fuller*, 29LLR 431 (1982); *Mitchell v. The Intestate Estate of the late Robert F. Johnson*, 39LLR 467 (1999) *Fiama Capital Corporation Ltd. v. Alpha International Investment*, 40LLR 561, (2001). We note from the records, that Co-appellant Jaffal did indeed file an answer that included Ruth N. Lewis, as well as attaching thereto, the Johnnie N. Lewis title deed, the Ruth N. Lewis title deed, and his lease agreement with Co-appellant Ruth N. Lewis. In view of this, Co-appellant Zein Jaffal was entitled to introduce affirmative defense to establish his entitlement to the property.

On October 26, 2016, a jury trial commenced, with the appellee producing three (3) witnesses to prove its title to the disputed property, and upon resting with the production of evidence, produced one (1) subpoena witness to disprove the appellee's case, while at the same time establishing their claim to the disputed property.

On October 28, 2016 final argument was held, and after its deliberation, the jury awarded the property to the appellee, the Intestate Estate of Alhaji Momo Rogers. On November 21, 2016, the co-appellant Jaffal filed a motion for new trial basically challenging the genuineness of the appellee's deed which was certified by the CNDRA from mutilated records, and that the verdict was contrary to the weight of the evidence adduced at trial.

On November 8, 2016 the appellee filed resistance to the motion asserting that the CNDRA is authorized by law to issue certified copy of deeds, and as such, there was nothing illegal about the CNDRA subsequently recording deeds in new ledgers due to mutilation of the original ledgers in which said deeds were previously recorded.

On December 7, 2016, the trial judge denied the motion for new trial and subsequently entered final judgment upholding the jury's verdict against the co-appellant who excepted to the final judgment, announced an appeal to the Supreme Court, and on December 12, 2016, filed a four (4) count bill of exceptions to have the Supreme Court review the records and decision of the trial court. The bill of exceptions reads thus:

"DEFENDANTS' BILL OF EXCEPTIONS"

Defendants having excepted to Your Honor's Final Judgment of December 7, 2016, and announced an appeal therefrom to the Honorable Supreme Court, Republic of Liberia, now presents this Bill of Exceptions for Your Honor's approval as follows:

1. That the Defendants established by preponderance of the evidence their title to the property subject of ejectment as follows: 1. Johnnie N. Lewis acquired title from John N. Lewis 2. Ruth Lewis acquired title from Johnnie N. Lewis 3. Zein Jaffal is leasing from Ruth N. Lewis. The Plaintiff introduced no evidence to rebut Defendants' chain of title and in keeping with David versus David said chain of title as established is deemed admitted. Accordingly, and consistent with the law controlling and cited herein, the Defendant is entitled to said land. Notwithstanding, Your Honor adjudged Defendants liable to Plaintiff and ordered that Defendant to be ejected, ousted and evicted, and that Plaintiff be placed in possession of the herein mentioned land, to which erroneous and prejudicial ruling of Your Honor Defendant excepts.
2. That it is an elementary principle of property law that plaintiff in an action of ejectment can only recover based upon the strength of his title deed. Plaintiff is said to have acquired title in 1951 with the said deed probated on the 6th day of June 1951 and registered according to law 1967 in volume 67 page 99. Defendant submits that under the Property Law of Liberia section 6 provides that the failure of a person to probate and register an instrument affecting real property within four (4) months after its real execution shall render title to

such property void as against any party holding subsequent instrument affecting such property which is duly probated and registered. In the instant case, assuming Plaintiff acquired title to the property subject of the action of ejectment from John N. Lewis but Plaintiff not having probated his title deed on the 6th day of June 1951 and registered his title deed after sixteen (16) years (ie) (1951 – 1967), and because of the Plaintiff deed was not registered within four months as required by law, makes Plaintiff's title deed void as against that of Johnnie N. Lewis which was acquired in 1964, probated and registered in keeping with law. It is not possible for the Plaintiff to have acquired title instrument in 1951, John N. Lewis and before Plaintiff's was registered in 1967, John N. Lewis re-sold the same and identical property to his Grandson Johnnie N. Lewis who later sold the herein mentioned property to the Defendant; and despite all of these inconsistencies reflecting on Defendant title instrument, Your Honor adjudged Defendant liable in an Action of Ejectment and ordered that Defendant be ousted, evicted and ejected from its premises; for which erroneous and prejudicial of Your Honor, Defendant except.

3. That the Defendant subpoena witness in person of Mrs. Catherine Benson testified that volume 67 is mutilated to the extent that no document contained in said mutilated volume can be reproduced. Witness Benson also testified that there are two separate pages 244 and 245 contained in volume NN2005 with separate documents recorded therein. She further testified that there is no law authorizing the re-registration of documents due to mutilation or original pages or volumes. She also testified that when the volume is mutilated and a party appeared for certified document, *the party's copy is re-recorded in a new volume* and a true and certified copy of said documents issued to a party after said document has been recorded in new volume. The Plaintiff did not show his title instrument that was said to have been presented to the National Archives for said title instrument to be re-recorded and re-registered into the said volume and pages. Due to these inconsistencies and fraudulent characteristics that occasioned the re-cording and re-registration of Plaintiff's Title instrument, the Defendant filed Motion for New Trial and same was denied by Your Honor, and to which ruling, Defendants excepts.
4. That the third witness for the defendants, Patrick Wesseh, also told the court that he knows Ruth N. Lewis, Johnnie N. Lewis, and Mr. Bhatti. This witness told the court that initially he was working for Mr. Bhatti who contracted him to identify true, proper, and title owner of the property subject of this litigation. The witness further told the court that in the process of executing the directive of Mr. Gbati, they were informed that the Chief Justice Johnnie N. Lewis was the owner of the premises. The link was established between Mr. Lewis and Mr. Gbati but the price offered by Mr. Gbati was never agreed upon on ground that the Chief Justice told Mr. Gbati that he has already conveyed the property to Ruth N. Lewis. Chief Justice Johnnie N. Lewis then authorized and empowered them through a limited Power of Attorney to the effect that they should evict or oust all those who were on the subject premises and later secure a lease agreement with an appropriate business person. The witness told the court that the squatters on the premises were ousted and evicted through the court proceedings at the New Kru Town Magisterial Court. Witness Wesseh further informed the Court and Jury that one Mr. King also sued them at the New Kru Town Magisterial Court but Mr. King did not prevail. This witness also informed court that one Mr. Juah also filed a suit regarding the subject premises at the same Bushrod Island Magisterial Court but could not attend the hearing of the court pursuant to the Notice of Assignment. The witness further informed court that the Plaintiff's deed was carved from Johnnie Lewis's Deed at the time when his friend Rubia held on

Ruth N. Lewis's deed because he was totally dissatisfied with their negotiation fees. None of these testimonies by Defendant's third witness in person of Patrick Wesseh was ever rebutted by the Plaintiff. There was no denial expressed or implied as to the testimony of Defendants' witness, Patrick Wesseh, and these testimonies are therefore deemed admitted. Despite these admissions as to Plaintiff's fraudulent acquisition of his title instrument, Your Honor entered Final Judgment in favor of Plaintiff, adjudging Defendant liable in an Action of Ejectment and ordered that Defendant be ousted, evicted and ejected from its premises; for which erroneous and prejudicial Final Judgment of Your Honor, Defendants except.

Wherefore and in view of the foregoing, Defendants submit this Bill of Exceptions for Your Honor's approval in fulfillment of the second jurisdictional step in the perfecting of its appeal."

After a careful examination of the certified records, including the bill of exceptions, we have determined that the sole issue dispositive of this appeal is whether the appellee proved its title to the disputed property to warrant the jury's verdict?

We shall proceed to address the issue by reviewing the testimonies of the parties' witnesses and the documentary evidence in support of their respective allegations.

The records reveal that the Registrar for the CNDRA, Josephine Ledlum Benson, was subpoenaed at the request of the appellants, to testify to the warranty deed allegedly issued by John Lewis to Alhaji Momo Rogers and recorded in two volumes at the CNDRA.

According to the witness, the appellee's deed was previously recorded in the volume 67 ledger with the Ministry of Foreign Affairs, and that it was the latter which re-registered the appellee's deed under a new volume, NN 94, 2005, a new ledger; that the CNDRA received both volumes from the Ministry of Foreign Affairs, and without making any alterations to the said volumes and the inscriptions made therein by the Ministry of Foreign Affairs, only issued the appellee a certified copy of its deed as was written in the new volume, NN 94, 2005.

Reviewing witness Benson's testimony, this Court notes the following: (a) that the CNDRA was without any knowledge as to the facts and circumstances relating to the act of the Ministry of Foreign Affairs in the new recording of the appellee's deed; (b) that witness Benson's testimony did not prove or disprove the legitimacy of the appellee's deed, neither did it prove the appellee's entitlement to the disputed property; (c) that the records do not indicate whether other deeds were also recorded in volume NN 94, 2005 besides the appellee's deed and a quitclaim deed from one Daniella E. Howard et al to J.A. Howard commencing on the same page 244.

We also note that witness Benson did not clarify or explain the practice of transcribing certified information from an original ledger to a secondary ledger due to mutilation of the original ledger. We further note that witness Benson's testimony was not the best evidence as to the question of 'why' and 'how'

information is transcribed from one ledger to another by the Ministry of Foreign Affairs for whatever purpose because she never worked there and never participated in any of the transcription processes regarding the appellee's deed. As such, the testimony offered by witness Benson sheds no light on the inconsistency of the volume numbers assigned to the ledgers in which the appellee's deed was recorded. This confusion is seen in the trial court's ruling on the application for mark of identification to be placed on the ledgers which we quote as follows, to wit:

"The Court: The application is noted and the same is ordered granted. It is worth having the records to reflect that the first page 244 found in Volume N/N 2005 which follows the sequence of the Volume from page 001 up to and including 255 contain the records of the title deed of Alhaji Momo Rogers which contains two sheets is ordered marked D/1 in bulk. The second page 244 is again found in Volume N/N 2005 but the recording of the same commence after page 255 of the first recording in chronological order which starts at page 226 and proceed up to and including the end of the pages in the said Volume and this contain the continuation of a quitclaim deed which registration starts on the second page 242 of the same volume and extends to page 245 from John A. Howard and his heirs and the photocopy of which title instrument is not currently available. This information is recorded because this court cannot mark the original book from the Archives because the same will expose the said record to destruction and damage so the photocopy and these narrations shall suffice for that purpose..."

Further reviewing witness Benson's testimony in light of the Property Law, we take judicial notice of the requisite provisions thereof which speak to the registration, recording, correction or re-issuance of mutilated instruments registered at the CNDRA. We also take judicial cognizance that in all of these provisions of the Property Law, the involvement of the Monthly and Probate Court is very critical to the registration, recording, correction, issuance or re-issuance of title deeds. Section 8.6 of the Property Law provides thus:

"a special part is hereby established in the Monthly and Probate Court of Montserrat County and in each of the Provisional Monthly and Probate Courts and probate division of the Circuit Court, with jurisdiction within their respective territorial areas over all proceedings and matters in connection with the registration of land and any estate, right and interest therein, authorized by the provisions of this chapter."

At Section 8.152 of the same law it is stated:

"If any duplicate certificate of registration of land, leasehold, charge or other register entry, or any registration copy delivered in accordance with provisions of this chapter is lost, or destroyed, or cannot be produced, the registered owner or other party in interest may make an application to the Probate Court Judge, setting forth the facts relating thereto. (emphasis added) Upon such application, after due notice and

hearing, the judge may direct the Registrar to issue a new duplicate certificate of registration of land, leasehold, charge or other registry entry, or any registration copy delivered in accordance with provisions of this chapter, containing a memorandum of the fact that it is issued in place of the lost duplicate certificates or other registry entry or registration copy, which shall be entitled to like faith and credit as the original.”

To further emphasize the critical role of the Monthly and Probate Court, section 8.191 of the above same law states:

“that upon application of the Registrar or any other interested person, or *sua sponte*, a Probate Court Judge in the following cases may direct a Registrar to rectify the register of any instrument presented for registration:

- (a) In formal matters and in case of errors or omissions not materially affecting the interests of any owner;
- (b) In any case and at any time with the consent of all persons interested;
- (c) Where, upon resurvey, a dimension or area shown in the register or Registry Map is found to be incorrect, but in such case the Probate Court Judge shall first give notice to all persons appearing by the register to be interested or affected by the proposed rectification and an opportunity to be heard thereon;
- (d) Upon proof by an owner of the change of his name or address.” *Id.* 8.191

Applying these provisions of the law to the present case, we see that there is no evidence in the records from the Monthly and Probate Court for Montserrado County showing that the appellee complied with the above quoted provisions of the Property law for the new recording of its deed or the issuance of a certified copy thereof. This Court says that the transcription of the appellee’s deed from mutilated records made it more compelling for the appellee to have availed itself of the requisite provisions of the Law and obtained the intervention of the Monthly and Probate Court. We hold that the given appellee’s failure to pursue the course of action articulated herein above, the issuance of a certified copy of its deed creates a cloud on its title.

But, assuming *arguendo* that the appellee did comply with the relevant provisions of the Property Law, or that there was no need for the transcription and issuance of a certified deed, can it be said that the appellee presented clear and convincing evidence of its title to the disputed property to warrant the eviction of the appellants? This question goes to the crux of ejectment principles relating to the burden of proof and the production of evidence in ejectment proceedings. We shall delve into a brief exposé on the fundamental principles of ejectment actions and their application to the facts and circumstances of the present case.

It is trite law that ejectment is a clash of title, and a plaintiff in an ejectment action is required to furnish clear and convincing proof of title. The plaintiff's burden of proof in ejectment cases is so strict that the Supreme Court has consistently placed the *onus* on the plaintiff to meet this requirement and recover on the strength of his own title and his title alone. *Donzo v. Tate* 39 LLR 72 (1998) Twe et al., v Twe-Paye & Twe, 39LLR 474 (1999); *Kollie v. Jarbo*, Supreme Court Opinion, October Term A.D. 2013. Further, the Supreme Court has espoused that "the plaintiff in ejectment action must recover unaided by any defect or mistake in the defendant's title; that a weakness in the defendant's title will not of itself enable the plaintiff to recover the disputed property. As a matter of fact, proof of plaintiff's title must be clear, convincing and beyond question." *Caine et al., v. Fahnbulleh*, 31LLR 235 (1983); *Cassell v. Karmie* 31LLR (1983) *Kollie v. Kpan* 31LLR 600 (1983); *Nyumah v. Kemokai* 34LLR 226 (1986); *Kollie v. Jarbo*, Supreme Court Opinion, October Term A.D. 2013.

A review of the records shows that, as pleaded in its complaint, the appellee set forth the same three (3) averments in its brief to substantiate its title to the disputed property, which were: (1) that the property was purchased by Alhaji Momo Rogers from John N. Lewis in 1951; (2) that the administrators were who they claimed to be, by attaching their letters of administration, authorizing them to administer the intestate estate of Alhaji Momo Rogers; and that the conveyance by John N. Lewis to Johnnie N. Lewis in 1984 was impossible since the estate of John N. Lewis was closed in 1982. The appellee also prayed for an award of Ten Thousand United States Dollars (US\$10,000.00) for the illegal withholding of its property by the appellants.

Given the rigid rule regarding the burden of proof in ejectment cases as outlined herein, we have closely reviewed the substance and preponderance of the appellee's evidence to determine whether it complied with the law, requiring the appellee to prove the strength of its title unaided by any defects in the appellants' title.

The testimonies adduced by the appellee's witnesses did not substantiate or prove the appellee's title to the subject property. For instance, the appellee's witness in person of Boakai Paasewe, one of the administrators, provided conflicting testimonies to the appellee's title deed. Witness Paasewe testified that he was in possession of the original title deed to the disputed property, but then testified to and admitted into evidence a photocopy of the certified copy deed. We quote below excerpt of witness Paasewe's testimony during direct examination with regards to the title deed for the disputed property:

"Q: In your testimony to this court you talk about series of documents; you talk about a letter of administration, you also talk about a deed and you just mentioned that the John Lewis Estate was closed. Were you to see these documents will you be able to recognize them?"

A: Yes, this is the deed, this is another deed; this is the letters of administration.

Q: These documents in my hands are all photocopies. Can you say where the original of these documents are?

A: Yes they are in my possession.”

We take judicial cognizant that an original title deed is distinct and different from a certified copy deed and that a photocopy of an original deed is not the same as a photocopy of a certified deed as the latter is a photocopy of a photocopy. *Teahjay v. Dweh et al.*, Supreme Court Opinion, October A.D. 2013

Witness Paasewe also testified that following the purchase of the subject property from John N. Lewis by the appellee, the John N. Lewis’ estate was closed in 1982. Again, he failed to present a decree from the Monthly and Probate Court ordering the closure of the John N. Lewis estate in 1982 as he had alleged in his testimony. The records show that he entered into evidence a legal memorandum of Counsellor Alfred Flomo which memorandum, we stated earlier, does not constitute proof of the closure of the John N. Lewis’ estate in 1982.

The appellee’s second witness, Mohammed Soni did not provide any testimony relevant to the appellee’s case as the witness clearly stated his lack of knowledge about the disputed property. We hereunder quote excerpts of witness Soni’s testimony on direct examination:

“Q. Do you know the property in question?

A. Yes, I know the property on the freeway.

Q. The plaintiff has sued the defendant for the property in question; please tell the court what you know about the property?

A. I don’t know anything about this property, but the little one that I can come in with is that I know Mr. Rogers has property in Clara Town from there he has another one on Somalia Drive along the Freeway. So far, that is all I know about the case.”

This bland testimony of witness Soni fails to establish the truth or falsity of the matter in dispute. Our Civil Procedure Law provides that “*all evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages*”. Rev. Code 1:25.4. Like witness Paasewe, this Court says that the testimony of witness Soni did not prove or disprove the legitimacy of the appellee’s title to the disputed property.

Although the appellee’s administrators claimed to have been administering the subject property, their third witness, Varney Gbessay’s testimony showed the contrary. He testified that the administrators and himself were all plank sellers who were squatting on the property at the behest of one Alhaji Varney, whom he testified was their boss and that he had placed them on the said property; that subsequently they were told to vacate the property by the said Alhaji Varney who informed them that he had received a court order of eviction; and that based upon

this order they, including the present administrators, were removed from the property.

Further reviewing the appellee's evidence, this Court observes that the appellee's claim pertaining to the closure of the John N. Lewis' estate in 1982 was never proved to substantiate its allegation that the conveyance to Johnnie N. Lewis by John N. Lewis in 1984 was invalid. The appellee did not produce any minutes, decree, clerk's certificate, or judgment from the Monthly and Probate Court showing that the John N. Lewis' estate was closed in 1982. The appellee's only reliance was a legal memorandum from one Counsellor Alfred Flomo, in his capacity as legal counsel for the House of Representatives, Republic of Liberia, dated September 10, 1986, and addressed to Representative Joseph D. Jallah, Chairman of the Standing Committee on National Security. The caption of the memorandum was entitled "Legal Opinion on Land Dispute Between the Administrator of the Intestate Estate of the Late J.N. Lewis and Varmunyah Nyeh". A review of the memorandum shows that the parties mentioned therein are not parties to the present case.

Moreover, Counsellor Flomo was never brought under the jurisdiction of the trial court to testify to the averments made in his memorandum and to be cross examined. And, even if the said Counsellor Flomo had testified to the averments stated in his memorandum, this Court says that Counsellor Flomo's testimony and the memorandum not being official records from the Monthly and Probate Court, cannot be considered as the best evidence to prove the allegation of the closure of the estate of John N. Lewis. Moreover, the memorandum relied on by the appellee did not involve the present parties, but rather J. N. Lewis and a different group of individuals.

The Supreme Court has stated that "every party alleging a fact must prove it, and absent the best evidence being produced even the best laid action will be defeated. In every case the best evidence which the case admits must be produced and as such no evidence is sufficient which supposes the existence of a better evidence." *The Management of the Forestry Development v. Walters and the Board of General Appeals* 34LLR 777, 783 (1988), *Knuckles v. TRADEVCO* 40LLR 511, 525 (2001). The prevailing law regarding the closure of an estate provides that: "after all of the debts and claims against the estate are paid, the curator shall file a declaration to the court, after satisfying itself that everything has been done as the law requires who shall give a receipt severally to the court, the Curator and the clerk of court shall thereupon enter in the minutes that said estate is closed." *Rule 27 of the Monthly and Probate Court*. We hold that absent the requisite minutes, or certificate from the Monthly and Probate Court showing the closure of the John N. Lewis' estate in 1982, this Court cannot accept the appellee's mere allegation that the conveyance of title from John N. Lewis to Johnnie N. Lewis in 1984 is invalid.

This Court has opined that the purpose of a plaintiff instituting an ejectment action against a defendant is to prove its title, and if successful, to have the court order the eviction of the defendant from the disputed property. The evidence and the witnesses from both sides in this case show that the appellants are in actual,

physical possession of the disputed property under a title deed. The appellants' witnesses testified that the property has been in possession of Co-appellant Ruth N. Lewis and her family; that Co-appellant Ruth N. Lewis acquired title to the property from her late father, Johnnie N. Lewis; and that Johnnie N. Lewis acquired title to the property from his late father, John N. Lewis. The appellants' witnesses testified that the late Johnnie Lewis evicted squatters from the property, and said testimony was substantiated by the appellee's witness, Varney Gbessay; and that subsequently, Co-appellant Ruth N. Lewis took possession of and leased same to Co-appellant Zein Jaffal who constructed a building thereon. We wonder where were the administrators during all of these activities on the subject property even leading to the building of a structure thereon. This Court has opined that an action of ejectment involves proof of title and possession of the specific real property. *Dasusea and Kargou v Colman*, 36 LLR 102, 142 (1989). The physical occupancy and possession by the appellants on the property and the undisputed fact of the eviction of the appellee's administrators and the latter pursuing no legal process to assert the title of the appellee creates serious doubt on its title. Hence, the appellee having failed to prove its title, cannot recover the disputed property.

WHEREFORE AND IN VIEW OF THE FOREGOING, the verdict and judgment of the trial court are hereby reversed. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellee. IT IS SO ORDERED.

When this case was called for hearing, Counsellors J. Johnny Momoh and Amara Sheriff of the J. Johnny Momoh and Associates Legal Chambers appeared for the appellants. Counsellor Anthony D. Mason of the Henries Law Firm appeared for the appellee.