

Sarnor v. Leigh-Sherman [2012] LRSC 8 (5 July 2012)

Archie Ishmael Sarnor of the City of Monrovia, Liberia, APPELLANT
Versus **Theresa Leigh-Sherman** of the City of Monrovia, Liberia, APPELLEE

APPEAL FROM THE CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY, REPUBLIC OF LIBERIA

Heard: May 15, 2012 Decided: July 5, 2012

MR. JUSTICE JA'NEH delivered the opinion of the Court.

Theresa Leigh-Sherman, appellee in these proceedings, instituted an Ejectment Action at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its June, 2008 Term. Appellee substantially complained that the Appellant, Archie Ishmael Sarnor, without any legal basis, has continued to occupy her property, ignored all demands made to vacate the premises or provide any reasons for his refusal to quit the property.

Appellee annexed to her complaint a copy of the Warranty Deed, executed jointly to Theresa Leigh-Sherman and Rudolph Sherman during their marriage, by Evans Dunbar on February 27, 1975. Under these circumstances where her property was being illegally and wrongfully withheld, Appellee contended that an action in ejectment may be properly brought against the illegal occupant, pursuant to section 61.1 of the Civil Procedure Law, (Liberian Code of Laws), Title I, (1973). The section provides that An action may be brought pursuant to the provisions of this chapter to recover a chattel wrongfully detained, whether or not wrongfully taken, and damages for wrongful taking and detention.

Answering to the complaint, the Appellant, Archie Ishmael Sarnor, first briskly questioned the legal capacity of the Appellee to institute this suit. While conceding that the subject property was jointly owned by the Appellee and her late husband, Rudolph Sherman, Appellant yet argued that the dissolution of the marital contract (*avinculo matrimonii*) between Theresa Leigh-Sherman and Rudolph Sherman automatically terminated the joint tenancy *de jure* and vested exclusive ownership of the property in the late husband. Based on this, Appellant has argued that Rudolph Sherman could and did sell and properly convey title to the Appellant. In further support of his Answer, the responsive Pleading in the court below, Appellant Sarnor proffered copy of an 'Agreement of Sale', executed by Rudolph Sherman on the 10th day of July A.D. 2006, which was probated and registered respectively on May 17 and May 19, 2007. Also annexed to the answer was a copy of a Warranty Deed executed by the late Rudolph Sherman on August 24, A.D. 2006.

In disposing of the law issues, His Honor, Peter W. Gbeneweleh, presiding by assignment over the Civil Law Court during its March Term 2009, by a ruling dated June 9, 2009, held that as tenant

in common, Co-tenant Rudolph Sherman had no legal authority to convey the subject property to the defendant Judge Gbeneweleh further concluded thus:

The issues of facts raised in the Complaint, Answer and Reply are hereby ruled to trial on their merits by jury under the supervision of this court .

We note here that counsel for the Appellee excepted to the ruling by Judge Gbeneweleh forwarding the case to trial by jury. [See minute of 22nd Day's Jury Sitting, Thursday, June 9, A.D. 2009, June Term, 2009]. But Appellant's counsel failed and neglected to avail himself of the available legal remedy.

A succeeding judge presiding over the December, 2009 Term of the Civil Law Court, His Honor, Yussif D. Kaba, entertained Appellee's Motion for Summary Judgment

The three-count motion is substantially quoted below as follows:

(1) That following the disposition of law issues in this case on July 10, 2009, this Honorable Court indicated that the late Rudolph Sherman had no authority to sell the property which is the subject matter of this case to the Defendant/Respondent. As such, the then presiding Judge, His Honor Peter W. Gbeneweleh indicated that the late Rudolph Sherman as co-tenant cannot legally convey the subject property without the will and consent of the other co-tenant, Plaintiff, in view of the fact that the property was never partitioned following the divorce of Plaintiff and the Late Rudolph Sherman. Copy of said Ruling is hereto attached as Movant's Exhibit M/1 to form a cogent part hereof. Hence no issue of material fact and law is in dispute and therefore summary judgment should lie.

(2) Movant submits that with the ruling of this Honorable court containing the assertion referred to in count one (1) of this Motion, it clearly shows the none existence of any material fact that is in dispute to warrant the unnecessary production of evidence at trial. This is so because the ruling of this court on the disposition of the law issue settles the matter relative to the authenticity of Defendant's title. Hence, the Motion for Summary Judgment should lie.

(3) That under the law, the court shall grant Summary Judgment in the event that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. In the instant case, the Plaintiff/Movant instituted this Ejectment Suit against the Defendant and the Defendant in reliance on the strength of his title had same exhibited, thereby placing said instrument on test to have its authenticity established. Now that its existence as a good title has been declared illegal by this Honorable court, Summary Judgment is the appropriate action to give relief to the parties. Hence, same should be granted.

As can be seen, the substantial argument raised in the Motion For Summary Judgment was that Judge Gbeneweleh, having ruled on the questions of law to the effect that the late Rudolph Sherman could not have legally conveyed the subject property, clearly indicates that no material fact was left for production of evidence to warrant a trial; that the Appellee, on the strength of that holding, was entitled to summary judgment as a matter of law.

His Honor, Judge Kaba granted the motion for summary judgment by a ruling dated April 21, 2010. The Judge held that the sale was "void ab initio and (of) no legal effect and substance. But converse to the ruling of Judge Gbeneweleh, a judicial officer of similar ranking, who, on June 9, 2009, had ruled the case to trial by jury, Judge Kaba determined that the pleadings raised no genuine issues of material fact to warrant a trial by jury. Judge Kaba then granted Appellee's Motion for Summary Judgment notwithstanding Judge Gbeneweleh's earlier ruling.

In granting the Motion For Summary Judgment in the face of his colleague's ruling in contrast, Judge Kaba cited and relied on this Court's opinion in the case: 'American Li(e Insurance vs. Ajami, 37LLR 530 (1994), indicating as follows: this {circuit/ court says it possesses the legal competence and authority to enter a summary judgment in spite of the fact that another judge presiding here before must have ruled the case to trial, provided that there is no issue of material fact in dispute and that the party in whose favor judgment is had is entitled to the same as a matter of law.

Judge Kaba then ordered that the Appellant be ousted, evicted and ejected from the premises and that the Appellee be placed in unrestricted and complete possession of same; the Judge also ruled all the costs of the suit against the Appellant.

In the Bill of Exceptions, Appellant Sarnor assigns as erroneous Judge Kaba's ruling granting the motion for summary judgment. Appellant has questioned as well, the propriety of Judge Kaba's reliance on the case: American Life Insurance vs. Ajami.

In that Opinion by Mr. Chief Justice Bull, this Court held that the granting of the motion for summary judgment by Judge Reeves, after Judge Pearson had ruled the case to jury trial, (did) not have the effect of reviewing, modifying or rescinding the ruling of a colleague judge. Appellant charges that Judge Kaba failed to take into account that the Supreme Court of Liberia, in a subsequent case eight years later: Halabv et al vs. Cooper and Messrs Import/Export Company, decided in the year 2000, (reported in 41 LLR 136, (2000), effectively overturned and set aside the holding in American Life Insurance vs. Ajami, the earlier case of 1994, which Judge Kaba cited and relied upon in granting the Motion for Summary Judgment.

In the Halaby case, plaintiffs-in-errors obtained a money judgment in 1969 against Co-defendant-in-error, Import-Export Company. The Judgment was not enforced on account of non-service of the bill of costs, as the offices of Co-defendant Import/Export Company could not be located. The judgment was entered by His Honor, John A. Dennis, presiding over the 6th Judicial Circuit of Montserrado County.

Roughly thirty-two (32) years later in the year 2000, the Co-defendant-in-error filed a Motion at the Civil Law Court praying the court for relief from judgment. Co-defendant-in-error also filed a motion for declaratory judgment. Plaintiff-in-error contended that neither the first nor the second motion was served on plaintiff-in-error.

Notwithstanding the undisputed fact that the judgment which Co-defendant-in-error sought to set aside was one duly entered thirty-two (32) years earlier, and in disregard of the fact that the said ruling was entered by a judicial officer of concurrent jurisdiction, which he had no authority to disturb in any manner or fashion, His Honor, Judge Vanie D. Cooper, heard and entered a

judgment in September 2000. Judge Cooper's ruling reversed the March 3, 1969 ruling, entered by his predecessor Judge of concurrent jurisdiction. In setting aside his predecessor's ruling, Judge Cooper described and declared the previous ruling of 1969 as fake and fraudulent.

Addressing the issue whether Judge Cooper had the authority to 'render or interfere with the act or ruling of his predecessor Judge of concurrent jurisdiction', this Court in that Opinion by Mr. Justice Morris, reversed Judge Cooper's ruling, declaring it as 'null and void ab initio'. The Supreme Court further stated:

The law, procedure, and practice hoary with age in our jurisdiction is that one judge cannot review the judicial acts of another judge of concurrent jurisdiction, and that it is only this Court of last resort that has the authority to undertake such review.

Referring to numerous cases in which the principle prohibiting a judge from reviewing another judicial officer of concurrent jurisdiction was consistently upheld, the Supreme Court further said:

[A] judge cannot review the judicial acts of his peers; therefore, as in the case presented, a circuit court judge cannot grant a motion for summary judgment after the case has been ruled to trial by another circuit court judge. Ibid. 146.

The Bill of Exceptions, in which the Appellant has mounted a legal attack on Judge Kaba's final ruling, raises the following dispositive issues:

- (1) In the face of the ruling by a judicial officer of similar ranking, ordering a trial by jury, could Judge Kaba properly grant a motion for summary judgment?
- (2) Did Counselor Rudolph Sherman, in conveying title of the disputed property to the Appellee, act in harmony with the applicable laws on tenancy?
- (3) Whether the facts in this case provided sufficient legal basis to authorize the granting of a motion for summary judgment as a matter of law?

On the first question, whether or not Judge Kaba committed an error of law by granting summary judgment when his colleague judge of concurrent jurisdiction and authority had ruled the case to trial by jury, we concur with the position articulated by the Appellant that Judge Kaba was indeed in error. Not only did Judge Kaba's ruling granting the motion for summary judgment seek to review and modify Judge Gbenelweleh's previous ruling, but Judge Kaba's conduct in this regard constituted a clear reversal of a judicial officer of concurrent jurisdiction, for all intents and purposes.

It has long been a settled law in our jurisdiction that no judge has a scintilla of judicial authority to conduct himself/herself in a manner that amounts to reviewing, setting aside, or modifying, let alone rescinding or reversing a ruling duly entered by a colleague of concurrent judicial authority. Numerous Opinions of this Court support this position. This principle of law has been rigidly applied in this jurisdiction even where a judicial act or decision rendered by a colleague judge is said

to be glaringly flawed and the fault apparent on its face. The correction of any such defect or error is the proper province of appellate jurisdiction. *Jartu v. Konneh*, 10 LLR, 318, 324 (1950); *Republic v. Aggrev*, 13 LLR 469, 479 (1960); *Sherman, et al., v. Reeves*, 23 LLR 227, 240 (1974); *In re The Testate Estate of Finebov Larzalee et al.*, 28 LLR 99, 103 (1979); *Cheng and American International Underwriters (AIU) v. Togba*, 29 LLR 22, 28 (1981); *Donzo v. Tate*, 39 LLR 72, 84 (1998).

As indicated earlier, Judge Gbeneweleh, in disposing of the law issues, passed on the legal question of whether Appellant's grantor, the late Rudolph Sherman had the authority to convey title of a property jointly owned by him and Theresa Leigh-Sherman without the former spouse's knowledge, consent and acquiescence. To this decisive legal question Judge Gbeneweleh correctly answered in the negative.

The judge correctly determined that the property being jointly owned by the Appellee and her former husband could not have been sold under the circumstances set forth in the complaint. And this indeed was the determinative question.

However, Judge Gbeneweleh went ahead to rule the case to jury trial for reasons we are unable to comprehend. Notwithstanding Judge Gbeneweleh's error of ruling the case to jury trial, the law in this jurisdiction prohibits any judge of similar judicial ranking to thereafter grant a motion for summary judgment. Therefore, the grant of the motion for summary judgment under the circumstances, as Judge Kaba did, was not only improper but also reprehensible. This Court hereby signs a stern warning that it shall set aside any such decision and declare it a legal nullity without any reservations.

We take due cognizance of the case, *American Life Insurance Company versus Fawzi K. Ajami*, (37 LLR 530 decided by this Court in 1994), which Judge Kaba cited and relied on in granting the motion for summary judgment. Clearly, a review of that case appears to illustrate similarity of facts with the case under review.

The Appellee/Plaintiff in that case, filed an action of damages for breach of an insurance contract. The bone of contention between the parties was whether the value of the insurance policy in the amount of 20,000.00 was to be paid in American or Liberian currency. Appellee Fawzi Ajami was demanding payment of the policy value in American dollars. The insurance company, on the other hand, had contended that its obligation should be discharged in local currency. The principal reason put forth by the insurance company in support of its position was that Liberian dollar was on par with the American dollar and constituted the official medium of exchange for business transaction in Liberia.

Presiding over the Civil Law Court was Judge Henrique Pearson who ruled on the law issues. He held that the American Life Insurance Company was estopped from disavowing its contracted obligation to pay the Appellee, Fawzi Ajami, the value of the insurance policy in United States dollars. Although this ruling basically settled the substantial and only determinative question before the court, Judge Pearson nevertheless proceeded to rule the case to trial. In this respect, it can be said that Judge Gbeneweleh's ruling is similar to that of Judge Pearson's. For in the case before us, Judge Gbeneweleh held that Appellant Sarnor's grantor, Rudolph Sherman, had no legal authority to

convey the property, and by that ruling settled the determinative issue. Yet Judge Gbeneweleh, like Judge Pearson also went ahead thereafter to rule the case to jury trial.

The Appellant, American Life Insurance Company, assigned as a reversible error, the ruling of Her Honor, Charlene A. Reeves, a succeeding judge of similar ranking, granting the motion for summary judgment in the light of her predecessor's determination that the case be tried by jury.

Dealing with the issue whether the conduct of Judge Reeves to grant the motion for summary judgment constituted an act of reviewing, modifying or rescinding the ruling of a colleague of similar judicial office, this Court, in an opinion by Mr. Chief Justice Bull, speaking for the Court, without dissent, held that by granting the summary judgment after Judge Pearson had ruled the case to trial, Judge Reeves entered no ruling which modified, reviewed or rescinded Judge Pearson's ruling who passed upon the law issues and ruled the case to trial.

As can be seen, Judge Kaba cited and relied on the principle enunciated by this Court in American Life Insurance Company an opinion handed down by this Court in 1994. We wish to observe also that the facts, both in the case at bar and those of the American Life Insurance Company case, in relation to a judge of concurrent ranking otherwise granting a motion for summary judgment in converse to a prior ruling, are essentially analogous.

This Court therefore wishes to be copiously clear that it is unable to reconcile itself with the conclusion reached in the case: American Life Insurance Company versus Fawzi K. Ajami. Firstly, the principle therein enunciated by this Court unmistakably runs in sharp contrast to the long held principle of law hoary with time in this jurisdiction; that is, no magistrate or justice of the peace has the authority to review the decision of another judicial officer of similar ranking. Circuit judges and those of similar judicial status are equally circumscribed by this principle of law from reviewing the rulings of their colleagues. It is settled in this jurisdiction that any errors committed by judges and magistrates are confined and restricted to appellate review only. Secondly, the prohibition on review embedded in this old aged principle seeks to preserve judicial integrity and circumvent what possibly could be a tendency for a matter to be subjected to endless review and modification by magistrate or circuit judges; for to allow such a practice in the judicial system would amount to sowing a seed of discord and remove any foundation of certainty and reliability in judicial outcome.

It is our considered opinion that the facts in the American Life Insurance Company case, unquestionably present a clear example of what amounts to reversal of a judicial act of one circuit judge by another.

The granting of summary judgment by Judge Reeves in a case which her colleague circuit judge had ruled to trial was not a mere review. In our considered opinion, it constituted unarguably, a reversal of her colleague's judicial decision.

In taking this position, we here reaffirm the long held principle that even if the error made by a judge of concurrent jurisdiction was glaringly offensive on its face, no judicial officer shall have the authority to venture on the path of reviewing said error. This Court will not permit a judge to contemplate climbing such a slippery and dangerous slope.

The position we have taken in this case is consistent with the holding of this Court in *Republic v. Aggrev*, decided in 1960, some 52 (fifty-two) years ago. See: 13 LLR 469 (1960).

In that case, the Appellee/Criminal Defendant was charged with grand larceny and tried. He was however acquitted on account of the verdict of the empanelled jury. Notwithstanding the acquittal, the Appellee/Defendant was later re-arrested at the instance of the Ministry of Justice and subjected to what clearly amounted to a second trial for the same offense, something forbidden by the constitution of our nation since its inception.

When the case came up for trial, the defendant's motion for dismissal of the indictment invoking the doctrine of double jeopardy was denied by a Circuit Judge. Subsequently, a successor judge of the same court, believing, and correctly so we must say, that double jeopardy would attach, granted the defendant's motion, from which the Republic of Liberia appealed.

Considering this matter on appeal, this Court, 52 years ago, reversed the successor judge's ruling which granted Appellee/Defendant's motion to dismiss the indictment. It must be stated that when this Court reversed the successor judge's ruling, the Supreme Court did not, in principle, disagree with said judge's decision that double jeopardy attached. The Supreme Court was not in disagreement that to be tried twice for the same offense was within constitutional prohibitions. But in reversing the successor judge, this Court sought to uphold its fidelity to the old aged principle that no judge may review, modify, rescind or reverse the ruling of a colleague of similar ranking. This Court has never been oblivious of the fact that the consequences of allowing such a review would be too enormous to contemplate. This is indeed the case even if the previous ruling was evidently wrong. *Jartu V. Estate of the Late Famble Konneh*, 10 LLR 318, 324 (1950).

Sound as his ruling might seem for granting the motion for summary judgment, we say without any hesitations whatsoever, that Judge Kaba's conduct as such constituted an obtrusive reversal of Judge Gbeneweleh's ruling, an act he had no authority to perform.

The ruling, in our considered opinion, runs contrary to both the common law and the numerous decisions of this Court. Therefore, the ruling entered by Judge Kaba on April 21, 2010, granting appellee's motion for summary judgment and ordering appellant ousted, ejected and evicted, is hereby annulled and treated as if it was never entered. Also under the same breath, that part of the case: *American Life Insurance Company v. Ajami*, relied upon by Judge Kaba, which gave an impression that a review of concurrent jurisdiction is approbated by this Court, is hereby recalled.

Guided by this principle, the only proper course Judge Kaba could have pursued in the case at bar was to conduct a jury trial, as directed by the predecessor judge. He could then authorize a directed verdict, consistent with section 26.2 of ILCLR (Liberian Code of Laws Revised, title I (Civil Procedure Law), [1973]). The section provides, *inter alia*:

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 .

We proceed to consider the second question: Did Counselor Rudolph Sherman, in conveying title of the disputed property to the Appellee, act in harmony with the applicable laws on tenancy?

Appellant in his answer to the complaint has submitted that assuming, *arguendo*, that the Appellee and the late Counselor Rudolph Sherman jointly acquired the property through lawful purchase, their joint acquisition created a tenancy by the entirety which has its basis in the principle of survivorship. However, it is Appellant's contention that when the marital relationship, which in fact created tenancy by the entirety, was terminated by divorce, the cardinal principle of tenancy by the entirety was totally shattered. At that point, the ownership of the property, Appellant has insisted, is determined by judicial partitioning. Therefore, according to Appellant, the Appellee lacked the capacity to claim the subject matter of this suit and the entire complaint should be denied and dismissed.

On the other hand, Appellee did not deny that she and Counselor Rudolph Sherman dissolved their marriage through divorce in accordance with law.

But the dissolution of the marriage, according to Appellee, created a tenancy in common, whereby she and Counselor Sherman owned the property (*per tout et per my*), by the half and by the whole, and without a partition of the property or the issuance of a quit claim deed by either party, Counselor Rudolph Sherman, during his life proceeded, without the knowledge, consent and acquiescence of the Appellee, to sell the entire property to Appellant, as evidenced by a deed issued by Counselor Sherman to the Appellant.

It must also be observed that the Appellant has not essentially disagreed that tenancy by the entirety is the estate created when the unity of husband and wife are added to the four unities of joint tenancy. Appellant seems to agree that the property in question was inseparably owned by both Theresa Leigh-Sherman and Counselor Rudolph Sherman, together in unity. Appellant has vigorously contended nevertheless that the property having been owned by the two persons, as husband and wife, their divorce subsequently dissolved the joint tenancy and vested the title entirely in the former husband, Counselor Sherman. We note that appellant cited no law in support of this disposition. But there is a difference between tenancy in common and tenancy by the entirety.

In *Hill and Hill v. Parker*, 13 LLR 556, 560 (1960), this Court adopted a common law definition of joint tenancy as follows:

To create a joint tenancy, there must co-exist four unities: (1) unity of interest; (2) unity of title; (3) unity of time; (4) unity of possession; that is, each of the owners must have one and the same interest, conveyed by the same act or instrument, to vest at one and same time, except in cases of uses and executor devises; and each must have the entire possession of every parcel of the property held in joint tenancy as well of the whole.

Consistent with the herein above, it is the law in vogue that where a property was conveyed to two or more persons, and there was no expressed indication of any intention that it should be divided among them, the conveyance is construed to be joint tenancy. It was also settled in *Hill*, as cited

herein, that where a joint tenancy exists, the survivors, on the death of one of the joint tenants, take the whole estate free from any charges on the property made by the deceased tenant; and on the death of the last survivor, the whole goes to his heirs or personal representatives.

According to Black's Law Dictionary (Ninth Edition) page 1063:

The rules for creation of joint tenancy are these: The joint tenants must get their interest at the same time. They must become entitled to possession at the same time. The interest must be physically undivided interests, and each undivided interests must be an equal fraction of the whole- e.g., a one - third undivided interest to each of the three joint tenants. The joint tenants must get their interests by the same instrument- e.g., the same deed or will. The joint tenants must get the same kinds of estates- e.g., in fee simple, for life, and so on.

One marked difference between joint tenancy and tenancy in common is the right of survivorship in the former with no right of survivorship in the latter. Tenancy by the entirety refers to a joint tenancy between a husband and wife, or one created by marriage. Upon the death of either the husband or wife, the survivor automatically takes title to the deceased spouse's share.

In the case at bar, it appears to us that all the four unities required for the creation of joint tenancy obtained. The undisputed facts show that the property in question was purchased and conveyed in 1975 to two names, Rudolph Sherman and Theresa Leigh- Sherman, thereby creating a unity of title. The unity of title unarguably tied their interest together in the property fulfilling the requirement of unity of interest. The other two requirements, unity of time and unity of possession naturally followed. This transaction created a joint tenancy in the property with both Counselor Sherman and Theresa Leigh- Sherman owning the property together. This also means that each of the owners had one and the same interest, conveyed by the same act or instrument, vested in the two at one and same time.

It must be observed also that where the conveyance is made to a man and woman in their two names while they are husband and wife, as in the case at bar, a tenancy of the entirety is created. This Court adopted this common law principle in the case: *In re The ESTATE OF LLOYD K. WHISNANT*, 24 LLR 298 (1975) stating as follows:

An estate by the entireties is the estate created at common law by a conveyance or devise of property to husband and wife. Under such a conveyance or devise, the husband and wife, by reason of their legal unity by marriage, take the whole estate as a single person with the right of survivorship as an incident, so that if one dies the entire estate belongs to the other by virtue of the title originally vested. The estate conveyed, whether for life or for years, is held by them as a whole and not by moieties -per tout and not per my- with unities of time, title, interest, and possession. Except as the time of the estate may be limited by the instrument creating it, it is held by husband and wife together so long as both live, unless the marriage relation is dissolved by judicial decree. *Ibid* 303.

But in his answer to the complaint, Appellant does not argue that Appellee and Appellant's grantor, Counselor Rudolph Sherman were vested with joint title in fee simple at one and the same time, and by one single instrument, while Appellee and Appellant's grantor were husband and wife.

Appellant contends however that the property in question, having been owned by husband and wife, their divorce subsequent to the conveyance dissolved the tenancy by the entirety and vested the whole title in the former husband, Counselor Rudolph Sherman. Therefore, Appellant has insisted that Counselor Sherman had the authority to properly convey the subject property of dispute in these proceedings in whole or in part. This Court however finds this proposition as simply untenable under the law as expounded herein above.

The case, *In re The ESTATE OF LLOYD K. WHISNANT*, referenced herein above, is instructive in dealing with the issue at bar as the facts both in the case before us and the referenced case are almost exactly identical.

Mrs. Catherine Johnson, a former wife in the Whisnant case, lodged a claim against the Estate of Lloyd K. Whisnant. The former wife claimed that during their marriage, she and the late Whisnant acquired some property. The marriage was subsequently dissolved. But Mrs. Johnson insisted that the tenancy by the entirety created in the property passed said property to her upon the demise of the former husband.

The surviving widow, Mrs. Whisnant, in defense of the husband's estate, argued on the other hand, that the dissolution of marriage between Mr. Whisnant and Mrs. Johnson terminated the tenancy by the entirety and created a tenancy in common.

The trial court ruled that the property was a joint tenancy at the time Mr. Whisnant passed to the Great Beyond, and that the property therefore passed to Mrs. Johnson, his divorced wife, upon Mr. Whisnant's death.

On appeal, the Supreme Court reversed the lower court's ruling in keeping with the common law principle indicated herein. The Supreme Court held that an estate by the entireties created at common law by a conveyance or devise of property to husband and wife [that the property] it is held by husband and wife together so long as both live, unless the marriage relation is dissolved by judicial decree.' *Ibid* 303.

Reversing the decision of the trial court awarding the property to the divorced wife, Mrs. Johnson, the Supreme Court observed:

It is obvious that the ruling of the lower court is not supported by law; in that, by virtue of the absolute divorce between the late Lloyd K. Whisnant and Catherine Johnson, the real property acquired by them, by operation of law, could appellee being entitled to one-half of all real property acquired by the late Lloyd K. Whisnant and herself as husband and wife in fee simple, and the estate of Lloyd K. Whisnant being entitled to the remaining half for the benefit of his widow and heirs.

Inspection of the certified records in the case before this Court are clear that on February 27, 1975, one Evans Dunbar executed a deed conveying three (3) lots of land, lying and situated in the settlement of Congo Town, Montserrado County, Republic of Liberia, to Theresa Leigh-Sherman and Rudolph Sherman. There was no difference of opinion that the property in question was indeed executed to Theresa Leigh-Sherman and Rudolph Sherman. It is also not contested that Rudolph Sherman and Theresa Leigh-Sherman, at the time of conveyance were husband and wife, thereby creating tenancy by the entirety in the property. The parties are also not in

disagreement in their understanding of the law controlling in this jurisdiction that an estate by the entirety emanates from a conveyance to husband and wife though the conveying instrument, be it deed or will, may not describe them as husband and wife, and even if the husband and wife have had no intention as to what technical estate they were creating. Under the circumstance, it is safe to conclude that the property conveyed to Theresa Leigh-Sherman and Rudolph Sherman, while they were husband and wife, was held in tenancy by the entirety with the right of survivorship.

It must be noted also that there was no quarrel or disagreement that Theresa Leigh-Sherman and Rudolph Sherman obtained an absolute divorce, *vinculo matrimonii* dissolving their matrimonial relationship, in which case, the tenancy by the entirety changes automatically by operation of law and the property converts to one of tenancy in common with no element of survivorship. In other words, the tenancy by the entirety was terminated when the marriage between the husband and wife, Theresa Leigh-Sherman and Rudolph Sherman, was dissolved in accordance with law.

It therefore seems to us that the case at bar presents one of tenancy in common where the Appellee, Theresa Leigh-Sherman and Counselor Rudolph Sherman, Appellant's grantor, are owners of undivided interest in the property. Upon the death of one co-tenant, his/her share is passed on to heirs or devisees.

It follows that the conveyance of the property in dispute, being one of tenancy in common at the time Counselor Rudolph Sherman sought to convey it to Appellant through sale, was done in clear violation of the law controlling. Counselor Sherman being entitled to half of the three (3) lots, acquired through a division properly undertaken by means of judicial partitioning, with Theresa Leigh-Sherman equally entitled to the remaining half of the same three (3) lots, for her exclusive benefits which she shall enjoy without any hindrances and molestations. Not clothed with authority to convey the property, the conveyance by Rudolph Sherman, Appellant's grantor, was therefore null and void ab initio. And we so hold.

Considering the final question whether the facts in this case provided sufficient legal basis to authorize the granting of a motion for summary judgment, we answer in the affirmative based on the facts as certified in the records before this Court as well as the laws controlling.

Section 11.3, paragraph 3 of ILCLR (Liberian Code of Laws Revised), Title I (Civil Procedure Law, [1973]), clearly and unambiguously provides the basis for granting summary judgment, stating as follows:

The court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest on mere allegations or denials of his pleadings, but his response by affidavit or as otherwise provided in this section must set forth specific facts showing that there is genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be entered against him.

As indicated earlier, Appellant appeared following service of the complaint and filed an answer setting forth all the material issues of dispute. We deem it appropriate to quote substantially the answer, word for word. This is for the primary purpose of demonstrating that the averments therein contained provided sufficient basis to justify the granting of a motion for summary judgment.

Appellant, in his answer essentially averred as quoted below:

1. Because Defendant avers and says that as to the entire complaint, same is a fit subject for immediate dismissal in that even though the plaintiff and the late Counselor Rudolph Sherman of sainted memory did consummate a legally binding material contract, yet, prior to the demise of the late during trial he will produce sufficient evidence in support of the averments herein contained.

2. Further to count one (1) of this answer hereinabove, Defendant submits and says that assuming without admitting that indeed the plaintiff and the late Counselor Rudolph Sherman did by lawful purchase jointly acquire the property subject matter of this Action of Ejectment, the said acquisition created a tenancy by the entirety which has its basis in the principle of survivorship. That is, after the demise of any of the spouses the surviving spouse becomes the owner of the said property. However, when the relationship (the marriage) that created the tenancy on the property is terminated prior to the demise of one of the spouses, as in the case at bar, the cardinal principle of the Joint Tenancy is totally destroyed and the ownership of the property is determined by a Judicial Partitioning. That being the case, the Plaintiff herein therefore lacks the capacity to claim the said property subject matter of this suit and the entire complaint should be denied and dismissed and Defendant so prays.

3. And also because Defendant submits and says that as to counts one (1) and two (2) of the Plaintiff's Complaint, he lacks knowledge and information sufficient to ascertain the veracity of the averments contained therein; however, since the said counts raise no triable issue, same should be denied and dismissed including the entire complaint and Defendant so prays.

4. Also that as to count three (3) of the complaint, Defendant says that the averments contained therein are false and misleading in that after the dissolution of their marriage in 1980 she was no longer the wife of the late Rudolph Sherman and therefore did not have the legal authority to proceed to the property for any reaction whatsoever. The said count three (3) including the entire complaint should be denied and dismissed and defendant so prays.

5. And also because Defendant furthering answering to the plaintiff's complaint avers and says that as to counts four (4) and five (5) of the complaint, possession and occupancy of the said property subject matter of Sherman for the purchase of the subject property. A photocopy of the said Sales Agreement is hereto annexed as "D" to form a cogent part of this answer. Subsequent to the consummation of the said Sales Contract, the defendant having paid the amount of US42,000.00 (Forty Two Thousand United States Dollars), same being the cost price for the property, title to the said property was then transferred to him by a transferred deed on the 24th day of August, A.D. 2006. A photocopy of the said transferred deed is hereto attached as Exhibit D/2 to also form a cogent part of this answer.

6. Furthermore, defendant submits and says that after execution of the transferred deed Exhibit D/2 consistent with law, practice and procedure he proceeded to the Probate Court and the National Archives where the said deed was probated and registered thereby giving notice to all sundry including the plaintiff herein that the said property is his. Therefore plaintiff's contention as contained in counts four (4) and five (5) of the complaint that the Defendant's entry upon and occupancy of the subject property was illegal and wrongful has no legal basis and the said counts including the entire complaint should be dismissed and defendant so prays.

7. And that as to count six (6) of the complaint, Defendant says and avers that he is cognizant of the law cited therein with respect to the remedy available to a person who is wrongfully deprived in Section 61.1 of the Civil Procedure Law. However, in the instant case, the said law is inapplicable in that by virtue of an outright sale of the said property by the late Counselor Rudolph Sherman former husband of the plaintiff, title to the said property automatically became vested in the defendant and therefore his occupancy of the property is in no-way wrongful and illegal. Therefore, count six of the complaint including the entire complaint should be denied and dismissed and defendant prays.

8. And that defendant herein denies all and singular the allegations of both law and facts that have not been made of any special traverse in this answer.

As can be gathered from the answer filed to the complaint, Appellant has offered no legal or factual arguments to justify the sale transaction and conveyance of title to the Appellant. Nowhere in his entire answer has Appellant contended that Theresa Leigh- Sherman participated, acquiesced or approved the conveyance in any manner or fashion.

The records before us are void of one single allegation made by Appellant of any collusion on the part of the Appellee to perpetrate fraud against Appellant in the sale transaction consummated between Co-tenant, Rudolph Sherman and Appellant. Also, Appellant does not deny that the Appellee, Theresa Leigh-Sherman and Appellant's grantor, Counselor Rudolph Sherman, jointly acquired the property and that a deed, as evidence thereof, was issued in their two names. If Appellant ever made any material factual assertion in his answer or did so in any papers filed in these proceedings, such allegation must have escaped our most diligent judicial scrutiny.

To the contrary, what Appellant has vigorously contended is that the tenancy by the entirety created between Appellee and the late Counselor Rudolph Sherman was terminated, as a matter of law, when the marital contract between Rudolph Sherman and Theresa Leigh- Sherman was dissolved at the instance of the Appellee. Appellant has taken the view that when the marriage which in the first place established and gave birth to the tenancy by the entirety was terminated in 1980 by a decree of divorce, the essential principle underpinning tenancy by the entirety was not only totally destroyed but that the ownership of the property, was also non-existent. In such instance, each co-tenant's share would be determined by what Appellant has termed Judicial Partitioning. In which case, according to Appellant, the Appellee, as in the instant case, would lack the legal capacity to claim the property. Consequently, this suit and the entire complaint should be denied and dismissed as a matter of law, Appellant has insisted.

In further support of his title, Appellant submitted a sales agreement concluded with the late Counselor Rudolph Sherman. The agreement shows \$42,000.00 (forty-two thousand) United States Dollars, as the purchase price for the premises. Also attached as well, was a copy of the transferred deed executed by Counselor Sherman, dated August 24, 2006, said date being National Flag day, a National Holiday in Liberia.

It is interesting to note further that in his two count resistance to the motion for summary judgment filed, Appellant failed to set forth specific facts, as required by the controlling law on summary judgment, to justify that there was indeed a genuine issue of fact for trial.

All Appellant dwelt on in the resistance and argued before us with eloquence at the call of the case for hearing was the law strictly prohibiting one judge from reviewing another judge of similar ranking. And on this point we have perfectly agreed with Appellant's counsel. But to raise that issue alone, as counsel for Appellant elected to do in the resistance, and fail to raise the material question counsel for Appellant believed warranted a jury trial in our considered opinion, of satisfying the requirement under the law.

While we have held that Judge Yussif D. Kaba was ultra vires and illegal, and his judgment therefore void, we also say, without any hesitations whatsoever, that Judge Gbeneweleh acted in error when he ruled the case to trial acknowledging that the late Counselor Rudolph Sherman was without authority to convey the subject property to the Appellant, without the consent of his former wife, with whom he held the property as a tenant in common after the dissolution of their marriage.

The case, we must remark here, was one that could have been terminated on matters of law as the parties had basically not disagreed on the material issues of facts for resolution. It was for Judge Gbeneweleh to determine, as a matter of law, and this he did during disposition of the law issues, that the conveyance made by Counselor Sherman was illegal and therefore void ab initio. We believe Judge Gbeneweleh's determination in this respect was correct and in full conformity with the law.

So the obvious questions then would be: what was the essence in ruling the case to trial when there were no facts in dispute? What did Judge Gbeneweleh hope to achieve through a jury trial when the parties had effectively agreed that the only issue which needed determination by the court was whether Counselor Sherman acted legally and properly in conveying the property to the Appellant?

As we have stated herein, this Court subscribes to the conclusion that no further litigation was required. And we desire to further indicate here that the conclusion reached by Judge Kaba in ruling on the matter when he granted the motion for summary judgment was clearly in conformity with the law. Our only issue with His Honor, Yussif D. Kaba, is that he did not have the authority to make the ruling granting summary judgment as to do so was tantamount to reviewing and reversing the ruling of Judge Gbeneweleh, which he could not legally do. Such a review could only have been done by this Court, the Court of appellate jurisdiction. *Ezzedine v. Sambola*, 35LLR 239,246 (1988); *Bong Mining Company v. Bah*, 35LLR 513, 522(1988); *Johnson-Maxwell v. Mitchell and Bishop*,35LLR609, 613 (1988); *Denco Shipping Lines v. The Casual Workers of Denco and the Board of General Appeals*, 31 LLR593, 596 (I 983).

Accordingly, since under our law the Supreme Court is clothed with the authority to do what should have been done in the court below, as reiterated in numerous opinions of this Court as in *Wahab v. He/lou Brothers, et al*, 24 LLR 250 (1975), we hold that Judge Gbeneweleh having correctly ruled that Counselor Sherman was without legal authority to execute the warranty deed in favor of the Appellant without the express written consent of the Appellee, and that the deed so executed was therefore illegal and void ab initio, the matter should have been terminated at that stage in favor of the Appellee.

Notwithstanding our declaration of the warranty deed executed by the late Counselor Rudolph Sherman, as same was executed without the consent of the Appellee as Counselor Sherman did not own the entire three lots but held it in common with the Appellee after the dissolution of their marriage, we at the same time do not believe that Counselor Sherman's estate can properly disavow itself of the act of the decedent. The records are abundantly clear without any denial that the late Counselor Sherman did receive from the Appellant a substantial amount of money; that he intended in consideration thereof, to convey to the Appellant a certain parcel of land; and that he in fact executed a deed in an attempt to convey the parcel of land in fulfillment of the obligations he held to the Appellant.

Under these circumstances, the interest of justice, equity, honor and the avoidance of further litigation dictate that the estate of the late Counselor Sherman respects and honors the obligation undertaken by the late counselor Sherman in regard to the parcel of land which he sought to convey to the Appellant.

Consonant herewith, and given the fact as we have indicated herein, it is our Opinion that the three plots of land was held by the decedent and the Appellee as tenants in common, with the estate of the late Counselor Sherman being entitled to one equal half share of the said parcel of land while Appellee is also equally entitled to the remaining one equal half of the said parcel of land. Accordingly, the Estate of Counselor Sherman, in honor of his obligation, which he wrongly attempted to fulfill, should ensure that Counselor Sherman's obligation is carried out; that is, that his estate should execute in favor of the Appellant, an appropriate transfer deed for the remaining one-half of the parcel of land held in common between the decedent and the Appellee.

We believe that such a course would avoid the prospect of Counselor Sherman's estate being exposed to litigation and possible ridicule. We do not believe that exposing the Sherman Estate to lawsuits on such account was ever intended by the decedent when he executed the deed in favor of the Appellant, an act we also believe was an oversight or lapse by the decedent.

WHEREFORE AND IN VIEW OF THE FOREGOING, and this Court exercising its authority under the law to enter the judgment which the trial court should have entered, hereby adjudges as follows:

1. That the judgment entered by Judge Yussif D. Kaba on April 21, 2010, granting summary judgment, in converse to the ruling of July 10, 2009, by a judicial officer of concurrent jurisdiction, same being a reversal of Judge Gbeneweleh's ruling, is hereby declared a legal nullity, for all intents and purposes;

2. That on account of the absolute divorce decreed by the court dissolving the marriage between Counselor Rudolph Sherman and Theresa Leigh-Sherman was terminated the tenancy by the entirety as to Rudolph Sherman and Theresa Leigh-Sherman. Consequently, Counselor Rudolph Sherman and Theresa Leigh-Sherman, as former husband and wife, became tenants in common by operation of law and became co- owners of undivided interest in the property, with the share of each co-tenant passing to his/her heirs or devisees under the principle of survivorship;

3. That the property in dispute having been one of tenancy in common at the time Counselor Rudolph Sherman sought to convey it through sale to Appellant, and at that time said Counselor Sherman being entitled to only one-equal half of the three (3) lots, with his former wife, Theresa Leigh-Sherman entitled to the remaining equal half with all the rights appertaining thereto, Counselor Sherman could have only conveyed in keeping with law what he was entitled to; i. e., the one-half portion he was vested with;

4. That consistent herewith, the trial court shall proceed to put the Appellee, Theresa Leigh-Sherman, in possession of half of the property, the subject of these proceedings. Counselor Sherman's estate cannot disavow itself of the act of the decedent, and therefore is under a legal obligation to execute a transferred deed in favor of the Appellant for the remaining half portion of the subject property.

JUDGMENT REVERSED.

THE CLERK OF THIS COURT is hereby ordered to send a mandate to the judge presiding in the court below to give effect to this judgment. Costs are disallowed. IT IS HEREBY SO ORDERED.

Counselor Charles Abdulai of Watch Law Chambers, Inc., appeared for appellant, while Counselor Alexander B. Zoe of the Zoe, Greaves & Partners Law offices, appeared for appellee.