

**THE INTESTATE ESTATE OF THE LATE CHIEF BAH BAI** and **THE PEOPLE OF MATADI GBOVE TOWN**, by and thru FODAY KAMARA et al., Petitioners/Appellees, v. **THE HEIRS OF THE LATE C. D. B. KING** and **D. G. W. KING**, sons of the Late C. T.O. KING I, by and thru the Representatives of the King Family, CHARLES C. T. O. KING, III, et al., Respondents/Appellants.

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

Heard: May 18, 1994. Decided: September 22, 1994.

1. Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary." Civil Procedure Law, Rev. Code 1:43.1.

2. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or *cestui qui trust*, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto

3. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

4. Issues not raised in the pleadings may not properly be raised during the trial of a case.

5. The fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised during the trial.

6. Failure on the part of respondent to attack the defectiveness of petitioners' title in the returns or the amended returns constitutes a waiver.

7. A trial judge cannot review the act of his predecessor having concurrent jurisdiction.

Appellant National Housing Authority (NHA) appealed from the final judgment of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in a petition for declaratory judgment. Appellees are heirs of the late Chief Bah Bai to whom President Arthur Barclay, in 1908, granted an aborigines land grant deed for 209.55 acres of land in the settlement of Congo town for agricultural purposes and to enable them exercise their voting rights. The heirs of Chief Bah Bai and his families inhabited the property uninterrupted until 1973 when the National legislature of Liberia passed an Act to expropriate certain parcel of land in Matadi for the construction of low cost housing units, referred to as the Old Matadi Estate. The National Housing Authority proceeded with the construction of the housing project without negotiating with the appellees regarding the compensation and the quantity of land involved. When the petitioners, the heirs of the Late Chief Bah Bai, were informed that government had appropriated funds to compensate the owners of the land upon which the Old Matadi Estate was constructed, and that the King family was also claiming ownership to the area, they made their claims to government and presented their title deed to the Lands, Mines and Energy Ministry. Petitioners also filed a petition for declaratory judgment before the Sixth Judicial Circuit Court, Montserrado County, naming the King family and the National Housing Authority as respondents. The National Housing Authority appeared and filed its returns but the King family never appeared, filed returns, or proceeded to trial. Trial was had, which culminated into a final judgment declaring that the petitioners, the heirs and decedents of the Late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of land, subject of this petition. The Court also ruled that the petitioners, having been declared lawful owners of the subject 209.55 acres of land, were declared entitled to just compensation for that portion of their land occupied by the Matadi Housing Estate of Co-respondent National Housing Authority. Co-respondent NHA was therefore ordered to deal with and consider petitioners as legitimate owners of the 209.55 acres of land and as such must compensate them for the portion of the 209.55 acres of land it occupied as the Matadi Housing Estate. From this ruling, appellant NHA appealed to the Supreme Court.

Appellant contends on appeal that the judge erred in granting title in a declaratory judgment action; that appellee' s title was defective; and that the correction of appellee' s deed was defective. The Supreme Court disagreed with the contention of the appellant with respect to the granting of title and held that Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed; hence the

trial court committed no error. With respect to the claim that appellee's title was defective, the court held that appellant having failed to attack the defectiveness of petitioners' title in the returns or the amended returns, they are deemed to have waived such defence. The judgment of the trial court was therefore *affirmed*.

*Marcus Jones* appeared for appellants. *Frederick Cherue* appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The late Chief Bah Bai and his people lived in the settlement of Congo Town in a town called Gbove Town before 1908. The Constitution of Liberia at the time provided that only people with property could vote. President Arthur Barclay, on February 7, 1908, during tenure, granted Chief Bah Bai and his thirty (30) families an aborigine land grant deed for 209.55 acres of land. The grant was also pursuant to an Act of the National legislature of Liberia, approved January 25, 1905 which provided that there be granted to the inhabitants of each town of a district inhabited by aborigines, sufficient lands around each town for agricultural purposes and to enable them to vote under the property clause of the Constitution as citizens of the Republic of Liberia.

The heirs of the late Chief Bah Bai and the families enjoyed this piece of property until July, 1973 when, during the administration of the late President William R. Tolbert, Jr., the National Legislature of Liberia passed an Act to expropriate certain parcel of land in Matadi for the construction of low cost housing. Without any negotiation with the heirs of the Late Chief Bah Bai, the owners of the 209.55 acres of land, regarding compensation and quantity of land, the National Housing Authority, in reliance upon the Act of the Legislature, proceeded to construct the Old Matadi Estate in violation of the 1847 Constitution as amended in 1972, which provides that private property shall not be taken for public use without just compensation. LIB. CONST., Art. 1, §13 (1847).

The records reveal that when the petitioners, the heirs of the Late Chief Bah Bai were informed that government has appropriated funds to compensate the owners of the land upon which the Old Matadi Estate was constructed and also that the King family was claiming ownership to the area, they made their claims to government and presented their title deed to the Lands, Mines and Energy Ministry. The petitioners also filed a petition for declaratory judgment before the Sixth Judicial Circuit Court for Montserrado County and named the King families and the National Housing Authority as respondents. The National Housing Authority appeared and filed its

returns. The King Family never appeared; accordingly, a re-summons was issued. After they did not appear, the writ and copy of the petition were mailed to their last known addresses in Liberia and in the United States of America. Up to the final disposition of the petition in the lower court, the King Family had not appeared. Trial was held culminating in a final judgment from which this case is now before us on appeal, predicated upon a six-count bill of exceptions.

Count one of the bill of exceptions attacked the judge for having erred in granting title in declaratory judgment. We shall quote the concluding part of the judge's final judgment:

"WHEREFORE, and considering all the law, facts and circumstances surrounding this case, it is the ruling and final judgment of this court that the petition as filed and established by petitioners be and the same is hereby granted; and having granted the said petition, it is the decree and declaration of this court that the petitioners, the heirs and decedents of the Late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of land, subject of this petition. The said petitioners now having been declared lawful owners of the subject 209.55 acres of land, they are hereby declared entitled to just compensation for that portion of their land occupied by the Matadi Housing Estate of the Co-respondent National Housing Authority and the said NHA is hereby ordered to deal with, consider and treat petitioners as legitimate owners of the 209.55 acres of land and as such therefore, must compensate petitioners for the portion of petitioners' 209.55 acres of land which the NHA occupies as the Matadi Housing Estate, pursuant to the constitutional provision relating to expropriation of private property for public purposes. **LIB. CONST.**, Art. 24(a). The exact amount of compensation to be paid by Corespondent NHA will necessarily depend on the exact amount of petitioners' land the Government expropriated and payment will be made accordingly.

Costs of these proceedings ruled against respondents. And it is hereby so ordered.

GIVEN UNDER MY HAND AND SEAL OF  
COURT THIS 3 RD DAY OF DECEMBER, A. D. 1993.

M. Wilkins Wright

RESIDENT CIRCUIT COURT JUDGE PRESIDING.

We disagree with the contention of the appellant in count one of the bill of exceptions, for the judge's declaration was only in keeping with the statute. The statute provides that:

"Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary."  
Civil Procedure Law, Rev. Code 1: 43.1

The statute further provides, under adjudication of rights, that:

"Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or *cestui qui trust*, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others;  
or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings." *Id.*, 43.3

As to count three in which the respondent, National Housing Authority raises defective title, the court says according to our civil procedure hoary with age that:

"Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided". *Id.*, 1:9.8(3), *Defect of Failure to Deny*:

The deed and other documents were proferted and attached to the petition to which the respondent filed its returns, withdrew and filed an amended returns. Yet, it never attacked the defectiveness of petitioners' title in the returns or the amended returns. Hence, this is a waiver.

As to count six, the records show that the correction of the deed was ordered by the Late Judge Frederick K. Tulay in a final decree rendered by him on February 19, 1992. Besides, if the respondents intended to challenge said correction, it would have done so in its amended returns. Hence, the present judge could not have reviewed the act of his predecessor with concurrent jurisdiction. In *Shabbeen v. Compagnie Francaise De L 'Afrique Occidentale*, 13 LLR 278 (1958), this Court held that:

"Issues not raised in the pleadings may not properly be raised on the trial of a case."

And

"The fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial."

The Co-respondent National Housing Authority in its amended returns said in count one that:

"...respondents submit that it has not raised any issue with respect to the petitioners' title ownership to the property in question; but rather the King Family and Zoe Barma. Therefore, it is incumbent upon the petitioners to prove their title right to the said property..."

In counts four and five respondent also maintained that:

"Respondents further contend and say that as regard compensation for land expropriated from private individuals, said person or group of persons are entitled to prompt payment of just compensation therefor from the Government of the Republic of Liberia, after the presentation of valid title deeds by claimants to the Ministry of Finance..."

In count five it contends that:

"Respondents further say that in as much as there are more than one claimants to the property in question, each claimant, including the petitioner, may under the law challenge, freely in the court of law for compensation after he has proven title to the court of law. Respondents not having made any claim to such property therefore petitioners' petition should be dismissed in its entirety as its relates to the respondents and thereby sustain count five of respondents' amended returns.

As gathered from the amended returns, the co-respondent National Housing Authority is indicating that she has no property interest nor is she looking for compensation. Therefore, the petitioners should proceed to our law courts to exhibit their title deed and government will justly compensate them. In other words, she is saying that she is not a party of interest but rather an agent of government.

The records reveal that the petitioners presented their title deed to Minister Willie P. Nebo, then Minister of Lands and Mines. Minister Nebo then wrote the petitioners on February 9, 1981, suggesting that their deed be carried in the court of record for correction.

The records further show that a final decree of correction was handed down by the Sixth Judicial Circuit Court of Montserrado County sitting in its March Term, A. D. 1992 on the 19<sup>th</sup> day of February, 1992, which we quote hereunder.

"COURT'S FINAL DECREE

IN RE: THE PETITION OF MUSA KIAZOLU, PETITIONER PRAYING THIS HONOURABLE COURT FOR COR-RECTION OF A DEED AS GOVERNMENT GRANT IN FAVOR OF THE LATE CHIEF BAH BAI AND THE PEOPLE OF MATADI CALLED FOR FINAL DECREE

In passing upon the request made to court yesterday by Attorney Moses Agbage, Sr., counsel for petitioner herein, the court hereby grants petitioner's petition and decrees the correction of the minutes and the distribution as appeared in the aforesaid Government Grant Deed which was executed in favor of the petitioner's grand father and his people. It is further decreed that the correction as recommended by the surveyor in his memorandum herein be reflected in the records of the Registrar of Deed for Montserrado County as follows:

Commencing at a point in the southwestern direction of Deline's property, said point being a soap tree and also service as a boundary point between Deline and Chief Bah Bai's property, and running thence on magnetic bearings: North 86 degree 30 minutes East 1840.0 feet along the property line of Deline to a point; thence running South 55 degree 30 minutes East 780 feet to a point, thence running South 38 degrees East 1043.0 feet to a point, South 38 degrees 30 minutes 1880.0 feet to a point; thence running South 40 degrees West 3800.0 feet to a point; thence North 3 degree 30 minutes West 1240.0 feet to the place of commencement and containing 209.55 acres of land and no more."

Cost ruled against the petitioner and it is hereby so ordered.

GIVEN UNDER MY HAND SEAL OF COURT IN OPEN COURT THIS 19<sup>th</sup>  
DAY OF FEBRUARY, A.D. 1992, SO FOURTH AND SO ON.

FREDERICK K. TULAY

RESIDENT CIRCUIT JUDGE PRESIDING

MATTER SUSPENDED".

In view of all we have said, the laws relied upon, and the facts and circumstances surrounding this case, the judgment of the court below is hereby affirmed and confirmed with costs against respondents. The Clerk of this Court is hereby instructed to send a mandate to the court below informing it of this judgment. And it is hereby so ordered.

*Judgment affirmed*