

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.O. 2021

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

The Intestate Estate of Fatima Massaquoi Fahnbulleh by and)
thru its Administratrix and Administrator Vivian Fahnbulleh)
Seton and Samuel Seton of the City of Monrovia, Montserrado) County,
Liberia Appellant)

Versus)

APPEAL

The Liberia Electricity Corporation by and thru its Managing Director)
Paschal Buckley, all Corporate Officers and all those acting)
under the scope of its command, of the City of Monrovia, Liberia)
..... Appellee)

GROWING OUT OF THE CASE:)

The Liberia Electricity Corporation by and thru its Managing Director)
Paschal Buckley, all Corporate Officers and all those acting)
under the scope of its command, of the City of Monrovia, Liberia)
.....Petitioner)

Verus)

PETITION FOR A
WRIT OF
CERTIORARI

The Intestate Estate of Fatima Massaquoi Fahnbulleh by and) thru
its Administratrix and Administrator Vivian Fahnbulleh) Seton
and Samuel Seton of the City of Monrovia, Montserrado) County,
Liberia..... 1st Respondent)

And)

His Honor J. Kennedy Peabody, Resident Circuit Judge 6th)
Judicial Circuit, Civil Law Court, Montserrado County Temple)
of Justice, Monrovia, Liberia2nd Respondent)

GROWING OUT OF THE CASE)

The Liberia Electricity Corporation by and thru its Managing Director)
Paschal Buckley, all Corporate Officers and all those acting)
under the scope of its command, of the City of Monrovia, Liberia)
.....Movant)

Versus)

The Intestate Estate of Fatima Massaquoi Fahnbulleh by and)
thru its Administratrix and Administrator Vivian Fahnbulleh)

MOTION TO
DISMISS

Seton and Samuel Seton of the City of Monrovia, Montserrado)
County, Liberia.....Respondent)

GROWING OUT OF THE CASE)

The Intestate Estate of Fatima Massaquoi Fahnbulleh by and)
thru its Administratrix and Administrator Vivian Fahnbulleh)
Seton and Samuel Seton of the City of Monrovia, Montserrado)
County, Liberia.....Plaintiff)

Versus

The Liberia Electricity Corporation by and thru its Managing Director)
Paschal Buckley, all Corporate Officers and all those acting)
under the scope of its command, of the City of Monrovia, Liberia)
.....Defendant)

HEARD: November 11, 2021.

DECIDED: JANUARY 27, 2022

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This appeal is before us from the ruling of our distinguished Colleague, Madam Justice Sie-A-Nyene G. Yuoh, then presiding in Chambers during the October, A.D. 2020 Term of this Court in a petition for a writ of certiorari filed by the management of the Liberia Electricity Corporation (appellee) against the Intestate Estate of Fatima Massaquoi Fahnbulleh by and thru its administratrix and administrator, Vivian Fahnbulleh Seton and Samuel Seton (appellant). The Justice-in-Chambers reversed the final ruling of the trial court which denied the appellee's motion to dismiss the complaint, granted the alternative writ of certiorari issued, and ordered issued the peremptory writ prayed for; whereupon the appellant noted exception and announced an appeal to this Court *en bane*.

The records certified to us reveal that on July 24, 2020, the appellant instituted an action of summary proceedings to recover possession of real property at the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellee, alleging that it is the lawful owner of 5445 square feet or ½ lot of land lying and situated at the corner of Benson Street and Capitol Bye Pass, Monrovia, Liberia, duly purchased from Rachel Johnson Massaquoi, for which a warranty deed was issued, probated and registered. A copy of the warranty deed was annexed to the complaint. The appellant contended that the appellee illegally entered upon its property and took possession thereof, thereby depriving it from the use of the said property. The appellant prayed the trial court to oust the appellee from the property and adjudge it liable for wrongful withholding in the amount of one hundred thousand United States Dollars (US\$100,000.00).

On August 4, 2020, the appellee filed an answer to the complaint along with a motion to dismiss the complaint. In the motion to dismiss, which is the subject of the certiorari

proceedings before us, the appellee asserts that it acquired title to the property in question by adverse possession; that since 1975 it had openly and notoriously occupied the subject property on which it erected high - tension electric tower and had operated it for about forty five (45) years without protest or objection from anyone, including the appellant, therefore, summary proceedings to recover possession of real property is not applicable to it as a property owner who had acquired title to the said property by adverse possession. On August 31, 2020, the appellant filed returns to the appellee's motion to dismiss, contending that the appellee, being a corporation solely owned by the Government of Liberia, makes it a government entity; as such, the appellee is estopped from claiming title by adverse possession, since adverse possession is a plea growing out of the statute of limitation; that in law, the statute of limitation does not operate against the Government, so it does not also operate against a private person or entity to a suit in which the Government is a party as opined by this Court in the case: *Clark v. The Ministry of Finance*, 32 LLR 464 (1984).

The trial Judge entertained arguments from the counsels representing the parties and on September 24, 2020, ruled denying the motion. The judge held that the Government of Liberia is the sole owner of the Liberia Electricity Corporation (appellee) and that *Section 2.7 of the Liberian Code of Law Revised* prohibits the statute of Limitation from tolling against the Government; that because the statute of limitation cannot toll against the Government, it will be unfair for it to operate in favor of the Government; that the appellee was established by an Act of the Legislature as recorded in *Volume 5, title 30, Chapter 85 of the Liberian Revised Code*; as such, the Government of Liberia is the sole owner of the appellee.

The trial judge denied the appellee's motion to dismiss, sustained the appellant's resistance, and ordered the matter proceeded with. The appellee noted exception to the ruling and gave notice that it would take advantage of the laws controlling. This prompted the filing of this petition for the writ of certiorari before the Justice-in-Chambers, who, after conducting full hearing, granted the writ of certiorari thereby reversing the ruling of the trial judge. The appellant noted exception to the ruling and announced an appeal to this Court *en bane* for judicial review.

After carefully considering the entire records in this case which include the pleadings filed by the parties before the trial court; the petition for the writ of certiorari and the returns thereto; the ruling of the Justice-in-Chambers; the briefs filed by the counsels representing the parties and the oral arguments presented before us, we have determined that there are two (2) salient issues for the determination of this case.

1. Whether or not the statute of limitation can run in favor of a wholly state-owned corporation against a private entity or individual?

2. Whether or not the writ of certiorari will lie in this case? The purpose of the statute of limitation is to discourage and avoid still claims. When still claims are filed, the likelihood is that parties may have died, memories faded and documents lost, defaced or destroyed, thereby making it difficult, if not impossible, for courts of law to obtain cogent evidence on which cases can be fairly decided.

The statute of limitation is recognized and adhered to under Liberian law. *Section 2.2, 1LCLR, Civil Procedure Law* states that "The failure to commence an action within the time limited therefor shall constitute a defense to the action, which shall be pleaded affirmatively in the answer or reply..." In specific reference to real property, our statute provides at *Section 2.12(2), 1LCLR, Civil Procedure Law* that "An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years."

In numerous cases, the Supreme Court has consistently recognized the efficacy of the principle of the statute of limitation. In *Caine, Freeman et al. v. Fahnbulleh, Freeman et al.*[1983] LRSC 71;; 31 LLR 235 (1983), this Court, speaking through Mr. Justice Smith, said: "The right to recover real property, or its possession, shall be forfeited or barred if the defendant or his privy has held the property adversely for a period of not less than twenty years." This position adopted in the *Caine* case was reiterated in the case: *Badia, Ammons-Webster et al v. Cole Larison and Walker*[1985] LRSC 23;; 33 LLR 125 (1985), wherein this Court, speaking through Mr. Justice Morris stated: "An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years." And in two early cases: *Thorne et al v. Thompson*, 3 LLR193 (1930) and *Morris v. Kieta*, 39 LLR710 (1999) the Supreme Court said the following:

"Title to land by adverse possession owes its origin to and is predicated upon the statute of limitations, and although the state does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quits the possession of the actual occupant who proves that he has actually occupied the premises peaceably and quietly for the period prescribed by law."

Under the Land Rights Act enacted on September 19, 2018, and published on October 10, 2018, the Legislature, while maintaining the efficacy of the statute of limitation, however reduced the time within which the statute shall apply in respect of real property from twenty (20) years to fifteen (15) years. So based on the doctrine of the law of recency, we take due note that the period within which the statute of limitation will apply in real property cases is no longer twenty years and above as provided for under 2.12(2), *1LCLR, Civil Procedure*

Law. Rather, it is now fifteen (15) years in keeping with the Land Rights Act. Article 22 of the Land Rights Act (Acquisition of Private Land by Adverse Possession) provides:

1. A person acquires ownership of private land by Adverse Possession where: i) He or she occupies the said piece of private land under an asserted claim of right but without valid title where the use or occupancy is open, exclusive, notorious continuous period and hostile to the rights of the owner(s) for a period of fifteen (15) or more years without any legal objections from the owner(s) or ii) where he or she occupies the said piece of private land under an alleged color of title, which is not recognized by the owner(s) and remains in open, notorious, continuous possession of the aforesaid private land for a period of fifteen (15) or more years without any legal objections from the owner(s).
2. For the purpose of Adverse Possession, a "claim of right" shall mean any asserted ownership of private land whether supported by a document of title or not, while a "color of title" shall mean any claim of ownership of private land founded on a written instrument such as deed, a will or a judgment that is for some reason defective or invalid.
3. In addition to the requirement of Article 22(1), to constitute the defense of Adverse Possession, one claiming private land must present evidence or proof of regular payment of taxes for the entire period of fifteen (15) years along with any of the following:
 - I. Where the land has been usually cultivated or verifiably improved by the claimant.
 - II. Where the land has been protected by a fence or some substantiated enclosure; and
 - III. Where the land, although not enclosed, has been used by the claimant for the ordinary need or use by the claimant.
4. A defendant in an action to recover real property may assert the defenses of ownership of the property under a claim of right and color of title and such plea shall not be considered inconsistent or contradictory under any rule of pleading.
5. For purpose of computing the period required under Article 22, the period of possession of the person's predecessor-in-interest shall be considered or included in the calculation and determination of the period of the Adverse Possession.
6. Adverse Possession is inapplicable to Customary Land, Government Land or Public Land, and no person may claim any Customary land, Government Land or Public Land by Adverse Possession."

So, clearly the laws of Liberia, both statutory and decisional, scrupulously adhere to the statute of limitation as a means of preventing still claims and will apply to grant ownership of a real property to the person who has openly, notoriously, and exclusively occupied a real property hostile to the rights of the owner without legal objections from the owner for the period as provided by law.

In the case before us, the facts are not in dispute. The appellant claims to be the owner of 5445 square feet or ½ lot of land lying and situated at the corner of Benson Street and

Capitol Bye Pass, Monrovia, Liberia, said to have been duly purchased from Rachel Johnson Massaquoi. The appellee does not deny that the appellant indeed duly purchased the property as claimed, but the appellee asserts that title to the property has long been acquired by it through adverse possession; that where title is involved, summary proceedings to recover possession of real property is not applicable. The counter argument of the appellant is that the appellee, being a corporation wholly owned by the Government, is estopped from claiming title by adverse possession, since adverse possession is a plea growing out of the statute of limitation; that in law, the statute of limitation does not operate against the Government, so it will also not operate against a private entity to a suit in which a wholly Government owned entity is a party.

The appellant cited *Section 2.7 of the Liberian Code of Law Revised, Civil Procedure Law* which provides: "Unless otherwise specifically provided by statute, no statute of limitation shall bar any action brought or any defense or counterclaim interposed by the Government of the Republic of Liberia." The appellant relied on the interpretation of this law in the case: *Clark v. The Ministry of Finance, 32 LLR 464 (1984)*.

The Clark case involves a certain real property containing two lots lying and located in Robertsport, Grand Cape Mount County, which Mr. Clarke owned through descent from his grandmother. Clark wrote the Permanent Claims Commission requesting compensation for use of the property by Ministry of Posts and Telecommunications. When the Permanent Claims Commission failed to compensate Clark, he filed a petition for a writ of mandamus against the Permanent Claims Commission by and through the Ministry of Finance, as Chairman to the Commission and the Ministry of Justice as Secretary, to compel the Permanent Claims Commission to compensate him for his property which the Government of Liberia had occupied. The Government contended, and the trial court agreed, that the petitioner was barred from instituting the action because the Government had occupied and used the property in contention for over twenty (20) years prior to the filing of the petition for mandamus. The Supreme Court disagreed and held that since the statute of limitation does not run against the Government, it is fair that the statute should also not run against a private individual in a case in which the Government is a party. But the facts in the Clark case are not analogous to the instant case. It should be noted that in the Clark case, the party claiming adverse possession against a private individual was the Government of the Republic of Liberia. But in this before us, the Liberia Electricity Corporation (appellee) is not the Government; it is a public utility corporation established by an Act of the Legislature, with capacity to sue and be sued in its corporate name. As to whether the appellee is a

corporate entity, or a government agency is determined by the Act establishing the appellee and the operational modalities of the appellee. Like all corporations generally, the appellee works under the direction of a board of directors, and it observes all corporate formalities; it generates its own funds and is not supported by budgetary allocation from the Government of Liberia; its employees are not civil servants and therefore they are not subject to civil service laws and regulations as is with employees of ministries and agencies of the Government of Liberia, instead the employees of the appellee are subject to the Labor laws of Liberia. The fact that the appellee was created by the Act of the Legislature and is wholly owned by the Government does not make it a government entity. So, the facts in the Clark case are not akin to the case before us.

Under our law corporations are entities distinct and separate from their owners or shareholders. Section 2.5 of the Associations Law of Liberia provides:

"A corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation; and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation"

In harmony with the above quoted provision of the Associations Law of Liberia, this is what our Colleague, the Chambers Justice said:

"It is undisputed that the Public Authorities Law, Rev Code 30:85.6, establishing the Liberia Electricity Corporation (LEC), created a public corporation, with the responsibility to supply and regulate electricity, generate its own revenue from the sale of said electricity, and to manage its revenue as it deems fit. This being said, it should be noted that although we acknowledge the fact that the petitioner is a public corporation, 100% owned by the Government, we also take judicial cognizance of the fact that the petitioner, unlike other agencies of Government, is a "legal person" which the law recognizes as being separate and distinct from its shareholders with the power to sue and be sued; to acquire properties and protect and to explore every avenue of the law to protect its interests. The Supreme Court in recognizing the legal personality and power of a corporation has held thus: "a corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. Under this theory, a corporation, as a distinct legal entity, is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit commenced against it. Accordingly, the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such

party is joined with another party who is a proper party and has been joined only to represent the corporation..." *The Intestate of the late Shad Kaydea v. The Turay Family, Supreme Court Opinion, March Term, A.O. 2015.*

We affirm the holding of the Supreme Court ...in the *Intestate of Shad Kaydea* case, and hold that the petitioner is a public corporation, separate and distinct from its shareholder, the Liberian Government, and that the petitioner as a corporation has the right to assert every legal defense provided by law including adverse possession to protect its property interest".

Further to the above, the Supreme Court has held that the Government of Liberia, as a shareholder, cannot be held responsible for obligations of corporations. *National Iron Ore Company et al v Yancy*, 39LLR126 (1998). Therefore, the fact that the petitioner/appellee is wholly owned by the Government is immaterial in demanding the applicability of the statute of limitations and adverse possession.

We therefore hold that because a wholly state - owned public corporation or enterprise, such as the appellee is a juridical person, separate and distinct from the Government of Liberia, it can sue and be sued and has the right to exert any and all legal claim(s) under the law, including the statute of limitations and/or adverse possession against a person, group of persons or institution(s). Conversely, any person, or group of persons or institution(s) may exercise legal claim(s) under the law, including the statute of limitations and/or adverse possession against the appellee. We hold further that the appellee was legally justified to invoke the principle of adverse possession, having established that it had entered unto and installed on the subject property an electrical high-tension tower which it has conspicuously, openly and notoriously possessed and maintained uninterruptedly for about forty-five (45) years without objection from the appellant; the appellant is therefore forever barred by the statute of limitation from exerting ownership to the land, subject of these proceedings.

We now address the second and final issue - whether or not the writ of certiorari will lie in this case? And we hold that the writ of certiorari will lie. Certiorari is a writ issued from a superior court to an inferior court commanding the latter to send up its records for review to correct decisions of officials, boards or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a trial court. *Section 16.21, 1LCLR Civil Procedure Law*. At common law, certiorari is in the nature of an appellate process used to review, from the face of the record, whether the inferior court has entered an erroneous ruling and to make timely correction during the pendency of the case at the lower court.

From our careful review, we see that the trial judge in this case committed a reversible error when he ignored the right of the appellee to claim title by adverse possession. The trial judge also erred when he failed to dismiss the case on the ground that title was involved on both sides - the appellee claimed title by way of adverse possession, while the appellant claimed title through a warranty deed. Under the circumstance where two parties are claiming title over the same property, the law requires that the proper action to file is ejectment, not summary proceedings to recover possession of real property. *Andrews et al v. Cornomia*, 39 LLR 761 (1999).

WHEREFORE, and in view of the foregoing, the ruling of the Justice-in-Chambers is affirmed. Th alternative writ of certiorari granted is sustained, and the peremptory writ prayed for ordered issued. The Clerk of this Court is ordered to send a mandate to the lower court, commanding the judge presiding therein to resume jurisdiction over this case and give effect to this opinion. Costs are ruled against the respondent/appellant. And it is hereby SO ORDERED.

Counsellor Necular Y. Edwards appeared for the appellant.

Counsellor Benedict F. Sannoh appeared for the appellee.

Petition granted