

**MEMBA TOE**, Appellant, v. **JOSEPH TATE**, Appellee.

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

Heard: December 10, 1998. Decided: January 21, 1999.

1. Notice is a fundamental requirement in all litigations and is designed to afford a party litigant an opportunity to appear and be heard. As such, it should be served in keeping with law and the returns to the manner of service by a ministerial officer should be clear and without impropriety.
2. The mutual agreement of the parties to submit their respective claims to a board of arbitration for the speedy determination of such claims is valid and binding on them and is enforceable by the trial court granting the application.
3. Where the parties agree to submit their claims to an arbitration board, it is legal for the trial judge to hear the report of the arbitration board without a trial by jury.
4. Where the parties agree to submit to submit their claims to arbitration proceedings for determination, they thereby waive their right to jury trial.
5. Where an agent does not have a transfer deed or other express authority from his principal to dispose of his property, the agent is without the authority to issue a transfer deed disposing of the principal's property.
6. The transfer by an agent of property of his principal, without express authority from the principal, does not extinguish the principal's lawful title to the disputed property.

Appellee filed an action of ejectment against the appellant for a parcel of land said to belong to the appellee and which he alleged the appellant was illegally occupying. Following the exchange of pleadings, the parties agreed to submit their respective claims to a board of arbitration and made application to the trial court to the effect. Also, the grantor of the appellant filed a motion to intervene, claiming that the parcel of land in question had been conveyed to him by the agent of the previous owner. The trial court, acting on the application of the parties appointed a board of arbitration to investigate the claims of the parties and make a determination as to the location of the parcels of land claimed by the parties and as to the parties entitled thereto. The board disagreed as to the party entitled to the parcel of land in dispute and therefore prepared two reports: a majority report and a minority report. The

report was submitted to the court which entered judgment thereon for the parties to be placed in their respective possession as recommended by the majority report. From this judgment, the appellant, defendant in the trial court appealed to the Supreme Court, claiming that she did not have her day in court as neither she nor her surveyor was duly notified by the court. She also claimed that the trial judge had erred in entering judgment without submitted the matter for a jury trial based on the report of the arbitrators.

The Supreme Court agreed with the appellant that proper notice was not served on her, that the returns of the sheriff showed inconsistencies as to date of service which cast doubts on its legitimacy, and that therefore the trial court committed a reversible error in not having the appellant properly notified. However, the Court did not reverse the judgment of the trial court, observing that as the case had been pending for almost a decade, it would render such fair and just decision as should have been rendered by the trial court to bring the matter to an end.

In deciding the matter, the Court opined that the agreement of the parties to submit their claims to arbitration was binding on the parties and therefore enforceable. The Court noted that because the parties had agreed to arbitration of their claims and had not revoked their agreement, the trial court could properly dispose of the report of the arbitration board without submitting the matter to a jury trial. It therefore overruled appellant's contention that a jury trial should have been conducted by the trial court.

The Court then ruled that the transfer deed executed in favor of the appellant was invalid since it had been executed by an agent who had no authority from the principal to execute such transfer deed. However, the Court noted that this did not deprive the principal, Francis Tarr Grimes, of his legal title to the land. The Court observed that both Mr. Grimes and the intervenor had derived their title from the Republic, and, hence, the principle of the older deed obtained. In the instant case, Francis Tarr Grimes held an older deed and therefore was entitled to possession of the land specified therein. Thus, the Court ruled that because of the invalidity of the appellant's deed, the appellee should be placed in possession of the one lot claimed be him, provided that the one lot did not fall within the acreage granted to Francis Tarr Grimes since the mother of Mr. Grimes executed by the Republic was older than the mother deed of deed of the appellee's grantor. Accordingly, the Court *affirmed* the judgment of the trial court, which had affirmed the report of the majority of the arbitration board, but with the modification mentioned made by the Supreme Court, and which was not taken into consideration by the trial court.

*Ishmael P. Campbell* of the Legal Aid Inc. appeared for the appellant. *Snosio E. Nigba* of the Legal Services Inc. appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case originates from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, wherein the appellee herein, Joseph Tate, filed an action of ejectment on August 29, 1984, against Madam Memba Toe, during the September Term A. D. 1984, of said court, under the gavel of His Honour Frederick K. Tulay, then resident circuit judge. Appellee alleged principally in his four-count complaint that he is the legal and bonafide owner of one lot of land lying in New Georgia, which he purchased from one Williette Berrian in 1967, and that his grantor acquired the aforesaid of from the Republic of Liberia in 1966. Appellee asserted in his complaint that the appellant encroached on his premises and illegally, wrongfully, and prejudicially withheld possession thereof, and constructed a building thereon, notwithstanding several warnings from him to appellant to discontinue her encroachment and illegal possession of the property. Appellee prayed the trial court to eject, oust and evict the appellant from the property and repossess him thereof and to award him damages for the un-lawful occupancy and use of the premises.

A writ of summons was duly issued but returned unserved for reason that the appellant could not be found. A writ of resummons was issued upon request of the appellee on the 19<sup>th</sup> day of September A. D. 1984. It was served, acknowledged by the appellant and returned served.

The defendant, appellant herein, filed a three-count answer on October 29, 1984, alleging that Mr. Matthew T. Weah was the lawful owner of the property by virtue of a warranty deed from O. J. Kai Gray, probated on the 19<sup>th</sup> day of November, A. D. 1969, and registered in volume 88-GA, page 987.

The records in the case indicate that Mr. Matthew T. Weah filed a two-count motion to intervene, along with a five-count answer on the 29<sup>th</sup> day of October, A. D. 1984. The intervenor claimed ownership of two lots, including the one for which the appellant had been sued, alleging that he bought the property from O. J. Kai Gray II, as evident by his warranty deed, and that the appellant was his wife who has been placed upon and was living on the subject property with his knowledge, will and consent. As such, he said, appellant was not occupying the premises illegally or unlawfully. Intervenor also contended that his property was not the same as that of

the appellee, and he therefore challenged the legal sufficiency of appellee's title. Intervenor also claimed that his interest would be affected by a judgment of the trial court should he fail to be joined as a party defendant in the ejectment suit. Intervenor prayed the trial Court to intervene in the matter to protect his property interest and rights, and to further dismiss appellee's complaint in its entirety. The appellee filed a three-count reply upon which the pleading rested.

The records in the case also reveal that counsel for both parties applied to the trial court on the 9<sup>th</sup> day of August, A. D. 1985, for a board of arbitration to hear and determine the controversy between the parties upon evidence to be produced from the parties as well as the report of the survey. They requested that the board be mandated to submit its award within 15 days of the date of submission of the controversy to it.

During the September Term, A. D. 1985, of the trial court, presided over by His Honour Jesse Banks, Jr., assigned circuit judge, on the 6<sup>th</sup> day of December, A. D. 1985, disposed of the law issues and ruled this case to trial by jury under the direction of the trial court on ground that the issues presented in the pleadings were mixed law and facts.

On the 30<sup>th</sup> day of March, A. D. 1989, the trial court appointed and qualified Mr. Kempson Murray as chairman of the board of arbitration, and Messrs Arah Kamara and Henry K. Sieh as members of the said board, and instructed the to report to the trial court their findings as to the ownership of the property within two weeks. The board was divided in its report to the trial court. The majority report of May 12, 1989, showed that the land in dispute was in the same area and that the metes and bounds of the deeds of the parties had the same description except that Matthew T. Weah's deed was for two lots. The majority of the board recommended that Mr. Gray should present to the trial court supporting documents authorizing him to execute a transfer deed of two lots to Matthew T. Weah. It also reminded the trial court to *focus its attention on the ages of all the deeds including the mother deeds*. The majority finally observed appellee's warranty deed from Williette Berrian to Joseph Tate was probated in 1967, and that the public land sale deed to Williette Berrian was probated on November 1, 1966. On the other hand, the records also showed that the warranty deed in favor of Henry T. Weah, from O. J. K. Gray, II, was probated November 19, 1969; that there was a letter of recommendation from Francis Tarr. Grimes to Mr. O. J. K. Gray, II, to act as an agent for his property; and that there was a certified photocopy of a public land sale deed in favor of Francis Tarr Grimes containing 22.8 acres of land, which was probated on September 28, 1942. It also observed that there was no

transfer deed from Francis Tarr Grimes to O. J. Kai Gray, II, and that there was no letter of authorization for Mr. Gray to execute a deed in his name.

The minority report of the board submitted on May 19, 1989 by Henry K. Sieh, public land surveyor, Ministry of Public Works, also acknowledged all of the deeds, including the mother deeds of the parties and a letter of recommendation to Mr. Oscar J. Gray, II, to act as agent on behalf of Mr. Francis Tarr Grimes. He also observed that the properties could be easily illustrated, and that Mr. Weah had made development and improvements such as buildings for almost 20 years without any legal objections. He further observed that the letter of authority to Mr. Gray to act as an agent for Mr. Francis Tarr Grimes empowered and authorized him to legally sign all required documents and that the deed executed was therefore legal. Thus, he recommended that the majority report, on page 2, at paragraphs 2 & 3, be nullified as such did not fall within the surveyor's technical rule. He also recommended the dismissal of the majority report on ground that it projected partial recommendation by imposing upon the court the burden of demanding a letter from Mr. Gray showing his legal authority, and noted that Mr. Joseph Tate was not bound by any party to any land dispute or boundary because his *area fell in the swam* which had no demarcation or boundary lines, or any improvement or development made by him or his grantor.

On the 7th day of August, A. D. 1989, His Honour Varnie D. Cooper, assigned circuit judge presiding over the Sixth Judicial Circuit, rendered a final decree upon a notice of assignment confirming and affirming the majority report of the board of arbitration. The trial judge ordered the clerk of the court to prepare a writ of possession in accordance with the metes and bounds of the arbitrators' report and map to place appellee in possession of his land as indicated in said report. Appellant excepted to the decree and appealed to this Court upon a bill of exceptions.

In count one of the bill of exceptions, appellant contended that at the trial, the judge illegally dismissed the ejectment action upon hearing the board of arbitration's report on August 7, 1989, on ground that both parties in this case signed a notice of assignment for the hearing of this case on August 4, 1989. Appellant alleged that her counsel appeared on the 4<sup>th</sup> day of August, A. D. 1989, but that the trial judge was not present, and, therefore, she had expected a subsequent notice of assignment to be issued and served on her. Hence, appellant contended that the trial judge erred in denying her of her day in court. Appellant argued before this court that the notice of assignment issued on July 29, 1989, for hearing of the case was changed from the 4<sup>th</sup> to the 7<sup>th</sup> day of August by writing over "e", but that the date the sheriff was ordered

to make his returns remained the 4<sup>th</sup> day of August, A. D. 1989. Thus, the hearing of the case could not have been on the 7<sup>th</sup> day of August, A. D. 1989, when the sheriff was ordered to make his official returns on or before the said 4<sup>th</sup> day of August, A. D. 1989. Appellant stressed that it was impossible for a notice of assignment requiring the parties to appear before court at 10:00 a.m. for hearing to be served on the same day of the hearing, as alleged by the sheriff.

Appellant further asserted that the trial judge erred when he erroneously affirmed and confirmed the majority report and illegally dismissed the minority report without a trial by jury and in the absence of the appellant and the surveyor, Henry K. Sieh who had prepared the minority report. As such, she said, the findings and final ruling of the trial judge was contrary to the statute and laws governing arbitration.

Appellant also strongly contended that the majority report of the board of arbitration upon which the trial court based its ruling, did not render any award to the appellee, plaintiff in the court below, for which the appellee was ordered placed in possession of the premises. Appellant therefore prayed this Honourable Court to remand the case for retrial to resolve the issue of ownership to the disputed property.

In counter argument, appellee contended that the trial judge did not err when he upheld the decision of the majority report, as against the minority report, on ground that both parties agreed and submitted their respective claims to a board of arbitration for its investigation, and that both the majority report and the minority report confirmed that the land occupied by the appellant was the same land claimed by appellee.

Appellee asserted that the failure of intervenor to show his chain of title was a legal defect for which the decision of the trial court should be enforced and appellant's appeal denied. In short, appellee argued that the intervenor bought two lots from Jung Gray, but failed to show by evidence the person from whom his grantor came in possession of said property. Hence, he said, the trial court acted prudently in dismissing the ejectment suit as there were no issues to be traversed or valid evidence to prove a better title had by the appellant and intervenor, as against the legitimate title of appellee. As to the issue of the notice of assignment, appellee argued that the minority report was only designed to frustrate justice, deny appellee his legitimate right to possession of his property, and delay the relief duly granted by the trial court.

Appellee vehemently contended that he had superior title to the disputed property as against the intervenor; and that as such, appellant's illegal construction on the

premises was not a sufficient basis for denying him his rights to the unmolested access to his property. Appellee therefore prayed this Court to affirm the decision of the trial court and to order the enforcement of that court's decision.

The paramount issues for the determination of this case are:

1. Whether or not the report of the majority members of the board of arbitration is valid and enforceable by the trial court; and
2. Was the appellant and her surveyor given a notice of assignment for hearing of the report of the board of arbitration?

These issues will be decided in the reverse order. As to the issue of the notice to the appellant and her surveyor, this Court observes from the records that a notice of assignment was duly issued on July 29, 1989, notifying the parties, the board of arbitration and the counsel of both parties to appear before the trial court on the 4th day of August, A. D. 1989. The notice was acknowledged by counsel for both parties. On the face of the notice is shown that Kempson Murray and Ara R. Kamara, chairman and member of the board of arbitration, signed said notice on August 2, 1989. Surveyor Henry K. Sieh, the other member of said board, did not sign the notice. However, "August 7, 1989" was written against his name, perhaps indicating as the date of service of said notice. We also observe the appearance date, August 4, 1989, was changed to the 7<sup>th</sup> day of August, 1989, by pen. The reason for such change is not disclosed by the records in the case. The sheriff's returns of August 7, 1989, further shows that Bailiff George Sherman served the notice of assignment on both counsel for the parties and on the three members of the board on the 7<sup>th</sup> day of August, A. D. 1989, the day for the hearing of this case.

A careful perusal of the notice and the sheriff's returns clearly supports the contention of appellant that a subsequent notice of assignment ought to have been issued and served on all the interesting parties for hearing of this case on the 7<sup>th</sup> day of August, A. D. 1989. We observe that the majority of the board of arbitration signed the notice on the 2<sup>nd</sup> day of August, A. D. 1989, but the sheriff's returns showed that said notice was served on all the parties on the 7<sup>th</sup> day of August, A. D. 1989. This indeed is a clear indication that the majority members of the board signed the notice prior to its service by Bailiff George Sherman. The sheriff's returns are therefore faulty and vague as to the manner of service of said notice. A notice is a fundamental requirement in all litigations which is intended to afford a party litigant an opportunity to appear and be heard. As such, it should be served in keeping with

law and the returns as to the manner of its service by a ministerial officer should be clear and without any impropriety, *Barbour-Tarpeh et al. v. Dennis et al.*, 25 LLR 468 (1977).

The trial judge therefore committed a reversible error when, he heard this case without a subsequent notice of assignment being issued and served on the appellant. However, we observe that this case has been pending before this Court since 1989, almost nine (9) years without redress. In this regard, we shall decide this case in a fair and impartial manner in bringing this litigation to an end as the lower court ought to have rendered.

The second and final issue in this case is: Whether or not the report of the majority members of the board of arbitration was valid and therefore enforceable by the trial court.

A recourse to the parties' application to the trial court praying for a board of arbitration reveals, and clause one (1) thereof provides: "That in order to speed up the final determination of this matter, counsel for both parties have mutually agreed to submit their respective claims to a board of arbitration for its investigation."

The parties herein through their counsel, submitted their respective claims to the board of arbitration for its investigation so as to speed up the final determination of the ejectment suit now on appeal. Clause four (4) of said application also authorizes the arbitrators to "conduct a survey" to determine the superior title vested in either of the parties. Finally, clause five (5) of the aforesaid application further authorizes the arbitration board to hear and determine the controversy upon evidence produce, notwithstanding the failure of a party duly notified to appear at the hearing. The mutual agreement of the parties to submit their respective claims to the board of arbitrators for the speedy determination of such claims is valid and binding on them and therefore enforceable by the trial court granting said application. A careful perusal of our statute governing arbitration proceeding provides that:

"A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justifiable character of the controversy, irrevocable except upon such grounds as exist for the revocation of any contract." Civil Procedure Law, Rev. Code 1: 64.1, viz: *Validity, enforceability, and irrevocability of arbitration agreements.*

The records before us are devoid of any evidence showing that either of the parties herein ever 'revoked the written agreement to submit to arbitration their dispute and respective claims. Thus, it was but legal for the trial judge to hear the arbitration reports without a trial by jury. The appellant therefore waived her right of a trial by jury predicated upon the mutual written agreement praying the trial court for arbitration proceeding to determine their respective claims inexpensively and expeditiously. Hence, the trial judge's confirmation of the majority report in accordance with statute. Civil Procedure Law, Rev. Code 1: 64.5(f) and 64.10.

The majority report of the board confirmed by the trial court reminded said court to "focus its attention to the ages of all the deeds including the mother deeds" as shown on page 2 of the report. The mother deeds investigated by the board of arbitration and reported by its majority members included one original and one public land sale deed in favor of Williette Berrian, grantor of Appellee Tate, the former being probated on the 1<sup>st</sup> day of November 1966, and registered in volume 88m, at pages 319-32, showing one (1) lot, and the latter (a certified photocopy public land sale deed from the Republic of Liberia to Francis T. Grimes, principal of Gray), showing 22.8 acres, probated on September 28, 1942, and registered in volume 91-m, at pages 267-268, as shown on page 1 of said report. The majority report also observed that the land in dispute was in the same area and that the metes and bounds of the deeds carry the same description, with the exception of Matthew T. Weah's deed which carried the dimension of 82.5 X 264 making it 2 lots. Finally, the majority report observed that neither a transfer deed nor a letter of authorization had been issued from Francis T. Grimes to O. J. Kai Gray to write a deed in his name, and therefore recommended that Mr. Gray should present to the trial court a supporting document authorizing him to write a transfer deed for two lots to Matthew T. Weah.

We observe that the public land sale deed of Francis Tarr Grimes, as acknowledged by the board, was probated and registered in 1942, and contained 22.8 acres of land located and lying in the same area stated in Appellee Tate's public land sale deed of 1966, and which contained one lot. Thus, the deed of Mr. Grimes is older than the deed of Mr. Tate. The two lots allegedly sold by Mr. Gray, agent of Francis Tarr Grimes, without title vested in him, remain the lawful property of his principal, Francis Tan Grimes. In other words, the fact that the agent does not have a transfer deed or an authority from his principal to dispose of a portion of his property does not extinguish his principal's lawful title to the disputed property located in the same area and bearing the identical metes and bounds. It is also important to remark that appellee's grantor, Williette Berrian, and Gray's principal, Francis Tan Grimes, have the same grantor, the Republic of Liberia. In this regard, the trial court having

confirmed the majority report, ought to have focused its attention on the two mother deeds from the Republic of Liberia, as recommended by the majority of the board in ascertaining whether appellee's one lot is not a portion of Francis Tarr Grimes 22.8 acres of land.

This Court therefore holds that appellee should only be placed in possession of the subject property, after the trial court further ascertains that his one (1) lot of land in the vicinity is exclusive of the 22.8 acres of land of Francis Tarr Grimes in the same area. This modification of the trial court's judgment is necessary and proper to bring this long outstanding matter to an end and to avoid further litigation.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the court below should be, and the same is hereby confirmed with modification that appellee should be placed in possession of the disputed property, provided that his one (1) lot of land in the vicinity is exclusive of the 22.8 acres of land of Francis Tarr Grimes, located in the same area. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

*Judgment affirmed with modification.*