

MRS. HELEN JAPPAH TWE et al., Appellants, v. **HELENA TWE-PAYE** and
DESTON D. TWE, Appellees.

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

Heard: March 17,1999. Decided: June 3,1999.

1. An individual who desires to change his or her name should file a petition to the circuit court of the county where he or she resides.
2. An order granting a petition for change in name shall be filed within ten days thereafter in the office of the Registrar of Deeds of the county where the petitioner resides.
3. Extrinsic evidence is permissible to identify the person or persons intended to be designated by the name used for the grantee in a deed provided such extrinsic evidence is merely explanatory of the designation contained in the instrument and will not in effect add new terms thereto.
4. Extrinsic evidence is permissible to show who was intended as the grantee where two or more persons have the same name.
5. A plaintiff in an action of ejectment can only recover on the strength of his own title, and not upon the weakness of the defendant's title.

These proceedings emanate from the final judgment in an action of ejectment instituted by Elizabeth Twe Paye, using the name Helena Twe Paye, and Deston D. Twe, against Helena Jappah Twe, former wife of Deston D. Twe. The records in the case showed that during the course of their common law marriage, Deston D. Twe and Helena Jappah Twe acquired a parcel of land containing 1.5 town lots in 1980, the deed to which was probated and registered in keeping with law. Subsequently, Deston D. Twe and Helena Twe solemnized their common law marriage, but the married couple separated and a divorce proceeding was pending undetermined. During the separation, the two houses that were constructed on the aforesaid property was in the possession and control of Elizabeth Paye, sister of Deston D. Twe by virtue of two letters of authority from her brother. Subsequently, Helena Jappah Twe and her son moved on the aforesaid property, claimed ownership to it, and refused to leave in spite of repeated demands by Elizabeth Paye. Hence Elizabeth instituted an action of summary proceedings to recover possession of the property.

While the action of summary proceedings was pending undetermined in the Civil Law Court, the defendant, Mrs. Helena Jappah Twe leased the property to Paul Nah Toe for a period of three (3) years. As a result, Helena Tweh Paye and Deston D. Twe instituted an action of ejectment against Helena Jappah Tweh and her lessees, Paul Nah Toe et al.

Plaintiffs claimed joint ownership of the property and that the name Helena Twe shown on the deed was Deston D. Twe's sister who was unmarried at the time of the purchase of the land, and not the married name of Co-defendant Helena Jappah Twe. The plaintiffs further contended that Helena Jappah Twe had unlawfully leased the property. The defendants filed their answer contending that Co-defendant Helena Jappah Twe and her husband, Deston D. Twe, jointly owned the subject property prior to marriage; and that she had every right to lease the property in the absence of her husband. Finally, Co-defendant Helena Jappah Twe alleged that she had no sister-in-law by the name of Helena Twe Paye, but rather Elizabeth Twe Paye.

After a regular trial, the trial judge returned a verdict for plaintiffs, which was confirmed by the trial judge, ordering the defendants evicted from the property. Defendants excepted to this judgment and appealed to the Supreme Court.

The Supreme Court upon review of the records found that the judgment of the trial court was contrary to the weight of the evidence adduced at trial and that there was no evidence that Elizabeth Twe Paye had ever changed her name to Helena Twe Paye in the manner required by law. The Court also noted that Elizabeth L. Paye had not acquired title to the subject property, in that, in the first summary proceeding to recover possession of real property against Helena Jappah Twe, she had filed for and on behalf of her brother, Deston D. Twe, the husband of Helena Jappah Twe, and she admitted in her pleading in that case that she was not claiming any ownership of the property, but rather possessory right thereto by virtue of her letters of authority received from her brother, Deston D. Twe. The Court wondered how a person who had sued in a representative capacity in a previous suit pending undetermined could claim title in a subsequent action to the very property. Accordingly, the Supreme Court reversed the judgment of the trial court and declared appellant Helena Jappah Twe as the co-grantee as mentioned in the deed of the disputed property.

Nyenati Tuan of the Tuan Wreh Law Firm appeared for appellants. *James Zotaa* of the Liberty Law Firm appeared for appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on appeal from the judgement of the Sixth Judicial Circuit Court for Montserrado County in an action of ejectment during its June Term, A. D. 1998 presided over by His Honour Wynston O. Henries, Resident Circuit Judge.

We observed from the records of this case that Deston D. Twe and Helena Jappah Twe met and lived together as husband and wife in 1969. Their common law marriage was blessed with three children, who were born on January 10, 1971, August 29, 1975, and November 9, 1977, respectively. The records also show that Deston D. Twe and Helena Twe acquired a parcel of land containing 1.5 town lots in 1980 from Mr. Paye Berrian lying and situated in the Township of Gardnersville, Montserrado County. This deed was probated and registered in keeping with law. Deston D. Twe and Helena Twe solemnized their common law marriage on the 27th Day of February A. D. 1984. It is also further observed from the records that the married couple separated and that a divorce proceeding had been filed by Mrs. Helena Twe at the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, which is pending undetermined.

Co-appellee, Elizabeth Paye, by and thru her legal counsel, Attorney Frank A. Songor, instituted an action of summary proceeding to recover possession of real property on the 12th day of October A. D. 1995, against Helena Jappah and one Wollo in the Civil Law Court, Sixth Judicial Circuit for Montserrado

County, during its September Term A. D. 1995, presided over by His Honour Sebron J. Hall, then assigned circuit judge. Plaintiff Elizabeth Paye alleged among other things, that she was in possession of a parcel of land containing two houses in June 1995 owned by her brother Deston D. Twe. She alleged specifically in count 2 of her complaint, that she held legal rights of possession or possessory title to her brother's property in Barnersville by virtue of two letters of authority which she attached thereto as exhibits 'A' and B.

She contended in count 3 of the complaint that Helena Jappah approached her in May, 1995 requesting her for a room to stay therein for three months which request she granted notwithstanding her brother's disagreement. She alleged that Helena Jappah refused and neglected to leave the subject property after repeated demands, on grounds that she and her son were the owners of the property. Plaintiff Elizabeth Paye further alleged in count 3 of her complaint that she was not claiming ownership of the property and was not challenging the ownership of anyone, but her legal right of possession of said property pursuant to the letters of authority executed to her by

her brother. Plaintiff prayed the trial court for general damages against the defendants for wrongfully withholding the subject property. On the 22nd day of October A. D. 1995, defendants filed a six-count answer alleging among other things that co-defendant, Helena Jappah Twe, and Deston D. Twe acquired and jointly constructed the building on the subject property as husband and wife, and that her husband did not have the authority to singularly give an authority to his sister to administer the said property. Codefendant, Helena Jappah Twe, further alleged that she and her husband were still married and that the summary proceeding could not lie since title was at issue.

In response to the answer, plaintiff Elizabeth Paye filed a five-count reply, in count 2 of which she contended that Helena Jappah Twe's separation from her husband and subsequent institution of divorce proceedings against her husband divested her of her interest and possession in the property. In count 4 of the reply, plaintiff claimed no ownership but a legal possession of the subject property. This case between Elizabeth Paye, now Helena Twe Paye, and Helena Jappah Twe and Wollo is still pending before the Civil Law Court undecided as evidenced by a clerk's certificate dated the 6th day of May, A. D. 1998, under the signature of Joe Albert Junius, Clerk of the Civil Law Court.

On the 1st day of June A. D. 1997, Mrs. Helena Twe, leased the subject property, containing 3-bedrooms, to Paul Nah Toe for a period of three years certain commencing from the 1st day of June A. D. 1997 up to including the 31st day of May A. D. 2000 for the annual rental of L\$18,000.00 (Eighteen Thousand Dollars) with the optional period of two years.

On the 17th day of April, A. D. 1998, Elizabeth L. Paye and Deston D. Twe instituted an action of summary proceeding to recover possession of real property against Paul Nah Toe, Selina Russell and Roseline Gould at the Gardnersville Magistrate Court alleging that the defendants illegally withheld the premises. A writ of summons was accordingly issued on the same day and date commanding the defendants to appear in the said court on the 18th day of April A. D. 1998 at the hour of 10:00 a.m. for hearing. On the 27th day of April A. D. 1998, plaintiffs' complaint was withdrawn with the right to refile by and thru their legal counsel, Counsellor James Zotaa.

On the 27th day of April A. D. 1998, Helena Twe Paye and Deston D. Twe instituted an action of ejectment against Mrs. Helena Jappah Twe, Nah Toe, Shelley Toe, Selena Russell, Roseline Gould in the Sixth Judicial Circuit Court for Montserrado County, during its June Term A. D. 1998, presided over by His Honour Wynston O. Henries,

resident circuit judge. Plaintiff claimed joint ownership of the disputed property and alleged that they jointly constructed the building thereon. Plaintiff alleged that the name Helena Twe as shown on the deed is the name of Deston D. Twe's sister who was unmarried at the time of the purchase of the land. They alleged that said name was not the married name of co-defendant Helena Jappah Twe, and as such, Helena Jappah Twe unlawfully leased the property to the lessee. Plaintiff contended substantially in count eight of the complaint that a married woman has vested title to her husband's property either acquired prior to, or during marriage, but can not claim any right thereto jointly held by her husband and other relatives of the husband.

A writ of summons was duly issued on the 27 day of May A. D. 1998, and defendants appeared and filed a twelve-count answer to the complaint contending *inter alia* that co-defendant Helena Jappah Twe and her husband Deston D. Twe jointly owned the property prior to their marriage on February 27, 1984. At such, she has every right to dispose of the property by a lease agreement in the absence of her husband. Defendants contended that co-plaintiff Elizabeth Twe Paye had filed a summary proceeding to recover possession of real property for and on behalf of Deston D. Twe in a representative capacity before the Civil Law Court during its September Term A. D. 1995. Codefendant Helena Jappah Twe alleged that she has no sister-in-law by name of Helena Twe Paye rather than Elizabeth Twe Paye. The Plaintiff filed their reply and the pleadings rested.

The trial judge, His Honour Wynston O. Henries, disposed of the law issues and ruled this case to trial on the 12th day of June A. D. 1998. The jury, subsequent to a regular trial, rendered a verdict on the 2nd day of July, A. D. 1998, holding the defendants liable and placing the plaintiff in possession of the property. A motion for new trial was filed by the defendants, resisted and denied by the trial judge. The trial judge rendered his final judgement on the 18th day of August, A. D. 1998, confirming the verdict of the jury and ordering the defendant ousted, evicted and ejected from the subject property. The defendants excepted to this judgment and announced an appeal to this court upon a four-count bill of exceptions.

Appellants alleged in their bill of exceptions and contended before this court that the trial judge erred when he sustained coappellees' objection with respect to the names Elizabeth L. Paye and Deston D. Twe as plaintiffs in the summary proceeding to recover possession of real property before Associate Magistrate Wellington J. Saye on April 17, 1998. Appellants also averred that the verdict of the empaneled jury is not supported by the evidence adduced at the trial, in that, Co-plaintiff Helena Twe Paye answered questions in the affirmative during trial that her name is Elizabeth Munah

Louise Paye. At such, appellants contended that co-plaintiff Elizabeth Munah Louise Paye misled the court to believe that her name is Helena Twe Paye to deprive co-appellant Helena Jappah Twe of her property. In other words, appellants maintained that the production of Elizabeth Munah Louise Paye's marriage certificate submitted into evidence substantiates this fact. It is contended by the appellants that coplaintiff Helena Twe Paye has never produced a petition for the change of name from Elizabeth Twe Paye to Helena Twe Paye as required by statute, and that she also failed to produce any substantial evidence that convinced the jury in rendering a verdict in favor of the plaintiffs in the court below. Appellants request this court to reverse the judgement of the lower court.

Appellees in their brief contended that Deston Twe and his sister acquired the land in question in 1980 and are therefore joint tenants governed by the doctrine of survivorship. In this regard, the appellees contended that Helena Jappah Twe who subsequently married to Deston Twe cannot claim ownership of the property jointly owned by them prior to the marriage. Appellees strongly contended that Helena Jappah Twe has no title and legal authority to execute a valid lease agreement to the other co-appellants. They argued that Helena Jappah Twe claimed that she and Co-appellee Deston D. Twe jointly acquired the property from the Paye Berrain family, but she failed to produce her deed and that of her grantor. Appellees therefore prayed this Honourable Court to confirm the judgment of the lower court.

The issues to be resolved by this court for the final determination of this case are:

1. Whether or not the verdict of the jury confirmed by the judgment of the trial judge is supported by the evidence adduced at the trial.
2. Is there any decree for change of name establishing that Elizabeth Twe Paye ever changed her name to Helena Twe-Paye?

We shall decide these issues in the reverse order. As to the issue of change of name, the records in this case reveal that coappellee Helena Twe-Paye's claims that she is the grantee on the deed as Helena Twe prior to her marriage. Helena Jappah-Twe also claims that she is the grantee of the very property as Helena Twe prior to her marriage to Deston Twe in 1984. The records also disclose that Helena Twe-Paye, in answering a court's question regarding her name, affirmed her name to be Elizabeth Paye. She also answered in the affirmative, under cross-examination, that her name is Elizabeth Munah Paye. See minutes of the 9th day's Jury Session, June Term, A. D. 1998, Wednesday, June 24, 1998, sheets three and five. We further observed from the

records in this case that Elizabeth Paye sued Co-appellant Helena Jappah-Twe in an action of summary proceedings to recover possession of real property in the trial court on October 12, 1995 in a representative capacity involving the very property. This action is pending. Further, Elizabeth L. Paye and Deston D. Twe also instituted the very cause of action on April 17, 1998 before the Gardnersville Magisterial Court against Nah Toe *et al.* for the subject property, which was later withdrawn reserving the right to refile. Helena Twe-Paye and Deston D. Twe brought an action of ejectment on April 27, 1998 against Helena Jasper-Twe et al. for the same property.

The crux of this matter is the name of the co-grantee of the subject property. Our statute provides the procedure by which one can change his or her name in our jurisdiction. The statute provides that such an individual should file a petition to the circuit court of the county where he resides so as to assume another name. This petition shall be in writing, signed, and verified by the petitioner in the same manner as a pleading in a court of record. Such petition shall also specify the reasons of the application, the name of the applicant and his residence as well as the name he so proposes to assume among other things. Civil Procedure Law, Rev. Code 1: 67.1 and 67.2.

The court shall make an order in the absence of a reasonable objection to the change of name proposed, authorizing the petitioner to assume the name on a specific day not less than seven days after entry of the order. The papers on which said order is granted shall be filed within ten days thereafter in the office of the registrar of deeds of the county where the petitioner resides. The order shall direct the publication within twenty days in a designated newspaper at least twice after its entry. Ibid 1: 67.4. This procedure is the exclusive method by which the person can officially change his or her name as a Liberian citizen in contemplation of the law. Ibid 1: 67.5.

The records subscribed and forwarded to this court are devoid of any evidence establishing that co-appellee ever changed her name from Elizabeth L. Paye to Helena Twe Paye. Thus, this Court holds that in view of co-appellee's failure to change her name from Elizabeth Twe to Helena Twe in compliance with the statute relating to the change of name of an individual, she cannot be known as Helena Twe; and her claim is therefore defeated in the absence of such decree of change of her name as aforesaid herein. We are further in full agreement with appellants' assertion that appellee changed her name from Elizabeth L. Paye to Helena Twe-Paye in the ejectment suit so as to deprive co-appellant, Helena Jappah-Twe, of the property.

As to the issue whether or not the verdict confirmed by the judgment of the lower court is supported by the evidence adduced at trial, this court observes from the records in this case that co-appellee Elizabeth L. Paye instituted summary proceeding to recover possession of real property in 1995 against Helena Jappah-Twe at the Sixth Judicial Circuit Court for Montserrat County in a representative capacity. She claimed no title in herself and did not challenge Co-appellant Helena Twe's ownership of the property, but claimed possessory title and possession of the very property by virtue of two letters of authority received from her brother, Deston D. Twe. The trial records clearly show that Co-appellee Helena Twe-Paye confirmed her name as Elizabeth Munah Louise Paye. She alleged that Helena Twe Paye is her baptism name and Elizabeth L. Paye is her confirmation name at the Catholic Church. However, she failed to produce into evidence records from her church to substantiate her allegations. Yet, the empaneled jury brought a verdict holding the appellants liable, and the trial judge confirmed the aforesaid verdict thereby ordering the appellants ousted, evicted, and ejected from the property. We wonder, how the trial judge arrived at the conclusion in the face of the clear evidence that Elizabeth L. Paye is not Helena Twe. The co-appellee's own admission of her name as Elizabeth L. Paye during the trial is a clear evidence which requires no further extrinsic evidence to establish the designation of the grantee of the property. Law writers have held that "extrinsic evidence is permissible to identify the person or persons intended to be designated by the name used for the grantee in a deed provided such extrinsic evidence is merely explanatory of the designation contained in the instrument and will not in effect add new terms thereto. Extrinsic evidence is permissible to show who was intended as the grantee where two or more persons have the same name." 23 AM. JUR. 2d, *Deeds*, § 54.

In the instant case, one of the parties claiming as Helena Twe in deed admitted during trial as being Elizabeth L. Paye. Thus, an extrinsic evidence is no longer required wherein it is established by such confirmation that Helena and Elizabeth are two separate and distinct first names. We are taken aback for the trial judge to confirm the verdict of the jury notwithstanding Elizabeth L. Paye's failure to produce records from the church confirming her names as Helena Twe Paye and Elizabeth L. Paye as requested by the very judge. We perceive no conclusive evidence upon which the trial jury and the trial judge awarded the property to the co-appellee. It is a well established principle of law in our jurisdiction that a plaintiff in an action of ejectment can only recover on the strength of his own title and not upon the weakness of the defendant. *Karunaii-et al. v. Sarfloh*, 26 LLR 3 (1977).

We are convinced that Co-appellee Elizabeth L. Paye has not acquired title to the subject property, in that, she instituted a summary proceeding to recover possession of real property against Helena Jappah Twe for and on behalf of her brother, Deston D. Twe, the husband of Helena Jappah Twe. She admitted in her pleading in 1995 presently pending before the trial court that she was not claiming any ownership of the property, but possessory right of said property by virtue of her letters of authority received from her brother, Deston D. Twe. In 1998, she and her brother, Deston D. Twe, instituted an action of ejectment against Helena Jappah Twe wherein she claimed that she and her brother jointly acquired the very property in 1980 prior to her marriage. The question is, how can a person who sued in a representative capacity in a previous suit pending undetermined claim title in a subsequent action of the very property. This court will not allow any improper behavior of any party litigant which has the propensity to deprive the property rights of another party. We therefore warn our judges of subordinate courts as well as lawyers practicing before our courts, to zealously and cautiously guard against the alienation of the property rights of party litigants. The judgment of the lower court is contrary to the weight of the evidence adduced at the trial. At such, the trial judge committed a reversible error when he confirmed and affirmed the verdict of the empaneled jury.

Wherefore, in view of the foregoing, it is the holding of this Court that the judgment of the lower court is reversed and Helena Jappah Twe is considered as the co-grantee in the deed of the subject property and has every right to execute a valid lease agreement in the absence of her lawful husband. The Clerk of this Court is hereby ordered to send a Mandate to the Court below commanding the judge therein to resume jurisdiction and give effect to this opinion. Costs against the appellees. And it is hereby so ordered.

Judgment reversed.