

Messrs. **William Abojula, Koquoi and Jesse K. Mulbah** of the City of Monrovia, Liberia APPELLANTS VERSUS **Martha Massoud**, also of the City of Monrovia, Liberia APPELLEE

APPEAL

HEARD: MARCH 1, 2009 DECIDED: July 24, 2009

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

In this matter before us, the appellee, Martha Massoud, plaintiff in an action of ejectment below, complained that she purchased one lot of land from George Victor Outland and Ivy E. Outland in 1975, in the Paynesville area. Her deed acquiring said property was duly probated and registered as required by law. Appellee thereafter constructed a concrete building on said property where she had her uncle and other relatives dwell until she left the country in 1990 due to the civil crisis. Unfortunately, the uncle who was left in charge of her property died during the war. The record certified before us further reveal that upon her return in 2006, appellee visited her home and met it occupied by the appellants. She informed them that the house in which they reside was her home and asked that they vacate the property. Upon the appellants' refusal to vacate, the appellee instituted an action of ejectment in the Sixth Judicial Circuit, Montserrado County, requesting Ninety United States Dollars for the uprooting of her cornerstones.

The appellants on the other hand allege that they are occupying the premises based on the instance of Mr. Jesse Mulbah who had acquired a deed from Emmanuel R. Gibson in 2000; Mr. Gibson is said to have acquired said property in 1978 from one Victor Outland, an individual other than the George Victor Outland from whom the appellee bought her property. Proceedings in this action were held during the September Term of Court A.D. 2007. At the close of the trial, the jury brought a verdict in favor of the plaintiff/appellee, holding the appellants liable to the appellee in the amount of Ninety United States Dollars (US\$90) as special damages (US\$90), and Twenty Five Thousand United States Dollars (US\$25,000) as general damages. The court gave a final judgment upholding the verdict of the jury. The appellants announced an appeal to this Honorable Court and filed a five count Bill of Exceptions. We shall consider counts 1, 2, 4, &5 of the exceptions filed as follows:

"1. That the Judge made a reversible error when, in his charge to the jury, he sua sponte quoted one of the parties as alleging fraud in acquiring the property which gave the impression to the jury that the appellants had acquired the property through fraud; thus influencing the jury's decision in favor of the plaintiff when the plaintiff did not mention fraud in her complaint, reply, theory, or argument to the jury.

2. That the judge, in his charge, stated, "The law says when two persons possess title to a property from different grantors, then of the two parties, the one that holds or may possess the

older deed must be preferred." This was a reversible error when in fact the law says where the parties have the same grantors, the older deed prevails. The parties in the instant case had different grantors, hence, the verdict and the final judgment should have been based on the weight of the evidence adduced at the trial by the plaintiff

4. That it was also a reversible error, when the judge upheld the verdict returned by the jury and denied a motion for new trial in that the verdict was contrary to the weight of the evidence adduced by the plaintiff

5. That it was also a reversible error when, the defendant, in his answer, averred that the metes and bounds of plaintiff 's deed were different and distinct from that of the defendant. This means that the land that defendant was in possession of and claiming title to was not the one and the same land the plaintiff sought to recover. Hence, this issue as raised in defendant's answer was to have been mentioned to the jury during the judge's instruction."

The appellee countered that the appellants failed to except to the Judge's charge to the jury and so appellant can not assign error to said charge or portion thereof. Our Civil Procedure Law provides that an exception shall be noted by a party at the time the judge makes an order, decision, ruling or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it an error on review by the appellate court." 1 LCLR, Section 21.3. Exceptions. From the record before us, there is no evidence that the appellants objected to the judge's charge which portion was made part of the Bill of Exceptions. In *Andrew Doe Wiah vs. Republic of Liberia*, 38LLR, 385, 391 (1997), the appellant in his bill of exceptions stated that the trial judge erred when he failed to instruct the jury as per the prayer of the appellant's counsel. This Court stated that it was obvious that the judge's charge to the jury did not achieve the object of a charge to the jury. However, regrettably, the appellant's counsel failed to except to the judge's charge before the retirement of the jury to consider its verdict. Therefore, as prejudicial and inadequate as the charge may have been, appellant had no legal standing to have included it in his Bill of Exceptions as an error committed by the judge. Further, in the case *Trokon International vs. Judge Reeves and Henrietta Johnson*, 39 LLR, 626, 635, (1999) the petitioner sought to have the judge rescind her ruling made on the law issues, but the judge stated that since no exception was made to her ruling, she could not honor the appellant's motion to rescind. A writ of certiorari was filed and the Justice in Chambers upheld the judge's ruling. On appeal to the Full Bench, this Court confirmed that failure to except to any ruling shall prevent assigning it as an error on review by the appellate court. In line with this settled principle of law in our jurisdiction and seeing no where in the record that appellant excepted to the alleged wrongful statements made by the Judge to the jury, we can not review same on appeal.

The action brought by the appellee was an action of ejectment which alleges that she is rightfully entitled to possession of the property which is being wrongfully held by the appellants. The test of an ejectment is to determine that the property for which an ejectment is brought is one and the same property claimed by the contesting parties, and that one of the parties has the older deed that can be

traced to the state.

The appellee adducing evidence in court, presented evidence tracing her title as far back as 1919 when her grantor, George Victor Outland, acquired thirty one (31) acres of land in 1919 from G.W. Outland and L.A. Outland. She presented evidence of her purchase of the property in 1975; both deeds were duly probated and registered in accordance with law.

Mr. John Kai-Gray, a surveyor, and one of appellee's witnesses stated that upon the appellee's return and noticing that her premises was occupied and her corner stones removed, she contacted him to carry out an investigative survey. He tried to get the appellants to bring their deed for the survey but they failed to do so. He then used the appellee's deed and carried out the survey and the metes and bounds on the appellee's deed corresponded with the ground location of the disputed property.

The appellants on the other hand stated that their title was acquired when they bought the property from one Emmanuel R. Gibson in May 2000. The deed proffered into evidence by the appellants shows that one lot was bought with a building thereon for the amount of Three Thousand and Seven Hundred United States dollars(USD3,700). There is no evidence on file presented by appellants of a deed from one Victor Outland to Emmanuel Gibson beyond the appellants' 2000 deed. The appellants claim that the appellees' deed is distinct and separate from the metes and bounds of the deed issued them, but when the appellee requested for a survey since her cornerstones had been rooted out, the appellants failed to present a deed and the survey carried out by the surveyor showed that the appellee's deed covered the property possessed by the appellants.

In this matter before us, neither the court below nor this Court is convinced that there is a dispute as to the identity of the property. Evidence presented show that the appellee built a house on the property when she purchased it, and it is the identical house occupied by the appellee. The appellants' own deed states that the property was bought with a building thereon. Mr. Jonathan G. Kollin, appellee's second rebuttal witness was brought to rebut the appellants' witness testimony that at the time the property was bought there was only a foundation on the land. His testimony reads as follows:

Q. Mr. Witness, a question was put to witness Yarkpawolo Kollie as to whether or not there was a structure on the land which he surveyed, and he answered: "On the land that I surveyed, there was a foundation on the land." You will please proceed to rebut this statement.

A. There was no foundation, but it was a structure on the land. Madam Martha K Massoud left the structure on the land and went to the States because of the war. In 2000, I saw a group of men surveying on the land, from my spot to her place is a distance. You can stand to my place and see; being a neighbor to her, I went there to inquire, and I said to the man, who owns this property you people are surveying? They said to me, one Mulbah working at the Ministry of Finance. And I said, go and tell Mr. Mulbah that this house on the land is for Judge Martha K

Massoud, so whoever he may have bought it from he must try to do his home work very well. (29th day Jury Sitting, October 19, 2007)

This Court, being convinced that the disputed property is one and the same, it can not uphold the contention of the appellants that the contested property is separate and distinct. It is clear from the evidence the jury considered that the property in contention was one and the same property and that the appellees could not even be considered a "good faith purchaser" since in the appellants' deed, reference is made of the property containing one (1) lot of land with a building and no more. The evidence of two of appellee's witnesses, Mr. Jonathan G. Kollin and Mrs. Mildred Gbegbee, substantiate that the appellants had adequate and constructive notice of an adverse claim. According to Black's Law Dictionary, a good faith purchaser is "*one who buys something for value without notice of another claim to the property and without actual or constructive notice of any defects in, or infirmities, claims, or equities against the seller's title.*" 8th Edition, page 1271. Even the fact that co-appellant Jesse K. Mulbah was charged and did purchase one lot and a building thereon for the amount of Three Thousand and Seven Hundred United States Dollar (US\$3,700) also invokes the principle of "caveat emptor", a doctrine of buyer beware and that purchaser buy at his own risk.

The appellee acquired the property and built a house thereon about fifteen years prior to the appellants' purchase of the identical property. The appellee presented a parent deed showing that her grantor acquired the property in 1919 unlike the appellants who alleged without proffering any document that their grantor acquired the property in 1978. In any case, appellee's grantor would have had superior title since he would have acquired the property fifty nine (59) years after appellee's grantor had acquired his.

It is clear from the evidence presented by the appellee during trial that the appellee's title is superior to that of the appellants and that the appellee has met the requirement of a successful ejectment action. This Court therefore does not find a need to disturb the judgment of the court below.

In view of the evidence provided by the appellee which substantiates her right to the property now occupied by the appellants, we hereby affirm the judgment of the court below. The appellants are ordered ousted and evicted from the property and the appellee put in possession thereof, and the appellant ordered to pay to the appellee Ninety United States Dollars (US\$90.00) as special damages, and Twenty Five Thousand United States Dollars (US\$25,000.00) as general damages.

The Clerk of this Court is ordered to send a mandate to the court below to give effect to this judgment, with costs against the appellants. And it is hereby so ordered.