AUGUSTUS F. CAINE, SEKU FREEMAN, et al., Appellants, v. **MOMOLU LAMIE FAHNBULLEH, A. KINI FREEMAN,** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Heard: May 23, 1983. Decided: July 8, 1983.

1. Ejectment action which involves a multitude of people and diverse interests should not be heard in the absence of the defendants who have presented a valid excuse for their absence and requested postponement of the trial.

2. The appointment of a cabinet or executive committee to investigate a matter pending before a court of competent jurisdiction does not divest the court of its jurisdiction, but where the court had notice of such appointment, a request for postponement based on the functions of said committee on a given date should be granted.

3. In an action of ejectment, paper title to land without proof of occupancy is insufficient to dispossess an industrious occupant.

4. A plaintiff in an ejectment action must recover unaided by any defect or mistake of the defendant; and proof of the plaintiff's title must be beyond question.

5. A point of law not raised in the bill of exceptions will not be answered by the Supreme Court.

6. 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.

The appellants appealed to the Supreme Court, growing out of a challenge to the validity of a deed in possession of the appellees. An inspection of the records revealed that the purported deed of the appellees had been ordered canceled by a previous decision of the Chambers Justice. In the lower court, however, the jury returned a verdict in favor of the appellees, and the court, acting thereon, rendered a final judgment that appellants were liable and should be evicted from the premises. On appeal to the Supreme Court, the judgment was reversed, the Court holding that the mere possession of paper title without proof of occupancy was insufficient to dispossess an industrious occupant, especially where the occupancy by the industrious person has been for a period of more than twenty years. The Court also held that the trial judge had erred in proceeding with the trial of the case after he had received a letter from the appellants' counsel praying that the case be postponed.

Nelson W. Broderick appeared for appellants. M Fahnbulleh Jones appeared for appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal was announced from a judgment entered against the appellants in the ejectment action instituted by the Apelles in the Fifth Judicial Circuit Court, Grand Cape Mount County. The following is a synopsis of the facts as disclosed by the trial records certified to this Court.

The appellees, Momolu Lamie Fahnbulleh, A. Kini Freeman and the people of Mani Town, Gawula Chiefdom, Gawula District, Grand Cape Mount County, by virtue of a tribal land certificate issued to them by Clan Chief Armah Kiazolu, of Kiazolu Clan, and attested by the Paramount Chief of the aforesaid Chiefdom, approved by the then Superintendent Gray of Grand Cape Mount County, on August 17, 1961, undertook to survey a parcel of land containing 2,324.75 acres of land, which survey is alleged to have taken in a greater portion of land within the Fahnbulleh Clan in Garwula Chiefdom aforesaid, of which the appellants are elders, tribal authorities and trustees.

Upon hearing that the appellees had obtained a title deed for the land signed by the President of Liberia, the late Dr. William V. S. Tubman, appellants engaged the services of Attorney George Caine to file objection to the probation and registration of appellees' said deed, if offered. Attorney Caine thereupon filed a caveat before the Fifth Judicial Circuit Court, notifying the court of the intention of appellants to file a formal objection against the probation and registration of any deed which may be offered by the people of Mani Town, appellees herein.

During the August Term, 1965, of the Fifth Judicial Circuit Court, presided over by His Honor Lewis K. Free, Attorney Frank Skinner, for the appellees, on the 12t h day of August, 1965, offered the public land sale deed for 2,324.75 acres from the Republic of Liberia to the appellees for probation and registration. The court did not notify the caveator, appellants herein, of the offering of the appellees' deed so as to have filed a formal objection within ten days after such notice as required by law; instead, on the 16th day of August, 1965, the judge presiding in probate admitted they said public land sale deed and ordered it registered.

Because Judge Free admitted the appellees' deed into probate and ordered it registered without notifying the caveator, appellants herein, the appellants applied to the Supreme Court for a writ of error, which was resisted and heard by the Court. In an opinion delivered by Mr. Justice Simpson for the Court, reported in 18 LLR 238, the decree of Judge Free admitting the appellees' deed into probate was nullified by the Supreme Court and the lower court was ordered to allow the appellants to file formal objection to the probation and registration of the said public land sale deed within ten days of the reading of the Supreme Court's mandate in keeping with the caveat filed for the appellants by Attorney George Caine, and thereafter conduct a hearing thereon. The decree of Judge Free aforesaid having thus been nullified, the appellants filed their formal objection to the probation and registration of the deed, and pleadings rested with the objectors' reply.

During the February, 1977 Term of the Fifth Judicial Circuit Court, presided over by His Honour J. Jeremiah Z. Reeves, now of sainted memory, the legal issues raised in the pleadings were heard and Judge Reeves ruled dismissing the objection for not having been filed within the ten days period, and admitted the deed into probate and ordered it registered without indicating his signature and the date of probation on the face of the deed, and so only the signature of Judge Free and the date of probation and registration in 1965 remained on the back of the deed. The probate records of Judge Reeves were not proferted with the complaint or the reply in the ejectment suit.

Counsel for appellants argued before us that only God spoke and it was done that way, but not man; in that, Judge Reeves should have probated the appellees' deed and ordered it registered, evident by his signature at the back of the deed as provided by law. Consequently, the appellants again petitioned the Supreme Court for a writ of error against the ruling of Judge Reeves for review of his said ruling.

On the 21' day of February, 1979, Mr. Justice Roland Barnes, presiding in Chambers, heard and denied the petition because accrued costs were not paid by the petitioners and, consequently, commanded the judge presiding in the Fifth Judicial Circuit Court to resume jurisdiction over the probate matter and admit the subject deed into probate nunc pro tunc. During the February Term of the court, 1979, His Honour Judge Brathwaite received and read the mandate from the Chambers of Justice Barnes, and it is also alleged that the judge ordered the said deed admitted into probate and registered nunc pro tunc in keeping with the mandate of Justice Barnes. But here again there is no evidence of the judge's signature and the face of the deed still shows that it was probated and ordered registered by Judge Lewis K. Free on August 16, 1965.

On the 5th day of June, 1981, the appellees filed an ejectment suit against the appellants, alleging substantially that appellees are the owners of a parcel of land containing 2,324.75 acres in Kiazolu Clan and that the land borders the towns of Jundu, Tee, Madina and See, where appellants are residing; and that without any color of right and legal justification, the appellants have entered upon the said land through the areas bordering their towns and made farms thereon without the knowledge, will and consent of the appellees, and have detained the parcel of land for about sixteen (16) years.

The defendants, appellants herein, filed an answer praying the court to dismiss the complaint, substantially alleging that the deed relied upon by the appellees is not valid, because it has not been legally probated and registered; that the decree of Judge Free admitting the deed into probate had been declared null and void by the Supreme Court on the 18t h day of January, 1968, and therefore the appellees have no legal title to the land as alleged; that the land certificate and the surveyors' certificate relied upon by the appellees are fictitious documents; that the land on which appellants live was occupied by their ancestors

from time immemorial and were in fact buried thereon; that it was on this land that appellants were all born; and that appellants' rights to the land is in keeping with law and tradition recognized by government, and, therefore, no one could have obtained the land in question without a certificate from the appellants; that the land for which a deed is secured must be unencumbered.

The pleadings rested with the reply, in which appellees contended that Justice Barnes ordered the deed probated nunc pro tunc with costs against the appellants, to which ruling no appeal was announced, and therefore Judge Brathwaite probated the appellees' deed nunc pro tunc. However, this allegation is not supported by the deed itself; for, there is no indication on its face that it was ever probated nunc pro tunc and ordered registered by Judge Brathwaite, or any other judge for that matter, except that the deed still carries on its face the name of Judge Free and the registration date of 1965, which had been nullified by the Supreme Court. There are also no probate records showing that appellees' deed was admitted into probate and ordered registered by any judge nunc pro tunc. It is observed, however, that Justice Barnes, according to his ruling in Chambers, given on February 21, 1979, denied the petition of the appellants for a writ of error because of nonpayment of accrued costs as prerequisite to the granting of an alternative writ of error, and not on the merits.

During the August, 1981, Term of the Fifth Judicial Circuit Court, presided over by Judge Galima D. Baysah, the legal issues raised in the pleadings were heard and the judge ruled count one of the complaint and count one of the answer together with the reply to trial by jury. Count one of the complaint alleged ownership of the parcel of land in the plaintiffs by virtue of the public land sale deed. Count one of the answer was in reference to the Supreme Court nullifying the probation of the appellees' deed by Judge Free in 1965. The reply was in respect to the probation of the deed nunc pro tunc subsequent to its probation in 1965 by Judge Free, which the Supreme Court had nullified. The defendants, appellants herein, noted exception to Judge Baysah's ruling on the law issues.

During the February, 1982 Term of the trial court, presided over by His Honour M. Fulton W. Yancy, Jr., the case came on for jury trial and ended with a verdict finding for the plaintiffs/ appellee; final judgment was rendered by the court affirming the verdict. Appellants excepted to the verdict and the court's final judgment and announced an appeal to this Forum of last review by a four-count bill of exceptions, which we quote hereunder for the benefit of this opinion.

"1. Because Your Honour erred in your ruling on the law issues delivered on the 17 th day of August, A. D. 1981, for the reasons stated in the ruling to which defendant excepted.

2. And also because Your Honour proceeded with the trial of the said action in the absence of defendants and their counsel, notwithstanding the letter from co-defendant Augustus F.

Caine for the postponement of the trial together with a motion for continuance filed by defendants' counsel, all of which Your Honour ignored and denied and to which defendants excepted.

3. And also because of the absence of defendants and their counsel from the trial, they had no opportunity to have excepted to the verdict of the trial jury, and Your Honour erred in not designating a lawyer to take the verdict of the jury for the purpose of excepting thereto.

4. And also because Your Honour erred in your court's final judgment affirming and confirming the verdict of the jury entitling plaintiffs to recover and awarding damages in the sum of $10,000.00 with costs to which final judgment defendants excepted."

The first point in appellants' brief and which their counsel strongly argued is that, a single Justice presiding in Chambers has no authority to hear and decide error proceedings, his only authority being to order the issuance of the writ and the proceeding docketed for hearing by the Full Bench; hence, Justice Barnes had no authority to conduct a hearing of the proceeding and to subsequently order probation of the appellees' deed nunc pro tunc.

Because this issue is not part of the bill of exceptions, and also because appellants did not appeal from the ruling of Justice Barnes to afford this Court an opportunity to pass upon the issue, we refuse to give any cognizance to said argument. For reliance, see Flood v. Alpha, 15 LLR 331 (1963), and Cooper v. Republic, 13 LLR 528 (1960). In these cases, this Court held that a point of law not raised in appellant's bill of exceptions will not be considered by the Supreme Court.

The second and fourth points argued in the brief by counsel for appellants are the same, and are all in connection with the invalidity of the appellees' title deed by reason of its irregular probation by Judge Free, which the Supreme Court had declared null and void in 1968, and which deed has not since been regularly admitted into probate and registered according to law, as directed by the Supreme Court up to the filing of the ejectment action.

We shall proceed firstly to discuss the third issue raised and argued by counsel for the appellants in his brief and thereafter discuss the point of the validity or invalidity of the appellees' deed as raised in the second and fourth counts of appellants' brief.

Appellants' third point of contention was that the trial judge disregarded their motion for continuance and the letter from Coappellant Augustus F. Caine requesting for the postponement of the trial and proceeded to hear the ejectment case in the absence of the appellants. For the benefit of this opinion, we quote here under the said letter from Co-appellant Augustus F. Caine, dated February 15, 1982, addressed to the trial judge, His Honour M. Fulton W. Yancy, acknowledging receipt by the appellants of the notice of assignment for the hearing of the case on February 22, 1982, as follows:

"Dear Judge Yancy:

I have received the assignment of the case Momo Larmie, A. Kini Freeman, etc. and Augustus F. Caine et al., in the case 'action of ejectment' for February 22, 1982.

Your Honor, because tricks of the law were used by plaintiffs and their counsel to subvert Liberian law by denying us our right to object to their title deed, we appealed to Government for an investigation of their title and the Government has agreed. The Head of State has set up a Cabinet Committee comprising the Minister of Local Government as Chairman, the Minister of Justice, the Minister of Lands, Mines & Energy, and the Superintendent of Cape Mount.

Because of delays in calling the case, a delegation from our side called on the Minister of Local Government a week ago with the request that the case be called up and he set Tuesday, February 16 as the date we should return to see him about a possible date.

Under the circumstances, I am asking that you kindly excuse our side, the defendants, from appearing before your court on February 22. We make this application with every respect for you. Over 3,000 acres of land is just too much for one selfish man to seize from the people of two clans, even though he attached the names of a few people in his town to give the impression that they joined him in this grand scheme of land-grabbing.

I am sending a copy of this letter to the Minister of Local Government. Respectfully yours, Sgd.: Augustus F. Caine For and on behalf of Seku Freeman, Alhaji Ware and other defendants.

cc: The Minister of Local Government."

At the call of the case in the court below on February 22, 1982, Counsellor M. Fahnbulleh Jones announced representation for the plaintiffs and no one appeared for the defendants. The court thereupon took recourse to the sheriffs returns to the notice of assignment, which reads thus:

"I, Thomas E. Jackson, sheriff for the People's Fifth Judicial Circuit Court, Grand Cape Mount County, R. L., do hereby deputize Daniel Gio, bailiff for the People's Fifth Judicial Circuit Court, Grand Cape Mount County, R.L., to serve the within notice of assignment issued on the 12, day of February A. D. 1982. He has duly served said notice of assignment on the within named parties, namely: Attorney Varney D. Cooper, counsel for plaintiffs, and Augustus F. Caine, on behalf of the defendants, on the 15 th day of February, A. D. 1982, to appear before this Honourable Court on the 22' day of February, A. D. 1982, at the precise hour of 10 o'clock a.m. And copies of said notice of assignment were (sic) given to each of them in person and they received same by the said Bailiff Daniel Gio. Attached a letter addressed to said Judge His Honour Fulton W. Yancy, assigned judge by assignment. And now I make my

Official returns to this Honourable Court. Dated this 1st day of February, A. D. 1982.

Sgd. Thomas E. Jackson, SHERIFF, GRAND CAPE MOUNT COUNTY

Served by: Daniel Gio, his x cross, BAILIFF."

Based upon the foregoing returns of the sheriff, the trial judge ordered the trial proceeded with in the absence of the appellants and, in spite of a motion for continuance filed by them. However, during the progress of the case, a motion for continuance dated, February 23, was filed in court on the 24 th day of February, 1982, by the appellants. The trial judge on the 2' day of March, 1982, ruled and denied the motion for continuance, holding that the grounds of "the motion were not supported by law; that the movant did not give notice as to the date they desired the case to be heard, and the court would not submit to a cabinet committee hearing and thereby postpone the hearing of the case."

In our opinion, the trial judge erred when he proceeded to hear the case on February 22, 1982, having already received a letter of that tenor from Co-appellant Augustus F. Caine, without informing the appellants that their request was not granted and thereafter ordering the issuance of another notice of assignment, setting a day on which the case would be heard, especially when this assignment was the first ever to be served for hearing of the case by jury. We therefore hold that an ejectment action which involves a multitude of people of various towns should not have been heard in the absence of the defendants who had presented a valid excuse for their absence and requested postponement of the trial. It is also our holding that the appointment of an executive committee did not divest the court of its jurisdiction to hear the ejectment case, but where the court had such notice of the appointment of a cabinet committee to investigate the matter involving the deed which appellees had obtained and relied upon, the trial judge should have granted the request and postponed the trial until another date. Count two of the bill of exceptions is therefore sustained.

Coming now to the question of validity or invalidity of the appellees' deed as contended and argued by appellants' counsel in his brief, we are of the opinion that if Judge Reeves heard and dismissed the appellants' objection and admitted the deed into probate and ordered it registered, the records to that effect should have accompanied appellees' pleadings in the ejectment action, especially so when the said question was raised in the answer of the appellants. It is also our holding that if the said deed was indeed admitted into probate and ordered registered by Judge Reeves, or any other judge subsequent to the nullification of Judge Free's decree by the Supreme Court, the same should have been substantiated by the signature of such judge, indicated at the back of the deed and the probate record made a cogent part of the appellees' pleadings. But as it is, the public land sale deed from the Republic of Liberia to the appellees does not show on its face that it was probated by any other judge nunc pro tunc as directed by the Supreme Court; rather, the deed still shows on its face that it was probated and ordered registered by Judge Free in 1965, which proceeding

the Supreme Court, in Caine v. Freeman, 18 LLR 238 (1968), had set aside. It must therefore be concluded that the appellees' deed in question has not been regularly and legally probated and registered; hence, the argument of the appellants' counsel in counts two and four of appellants' brief must be sustained.

Our statute relating to probation and registration of instruments provides that:

". . . If the court decides that such instrument is entitled to probate, he shall write thereon the words, 'Let this be Registered', and shall sign his name thereto officially. He shall direct the clerk to enter upon the record the character of the instrument and the date and hour of its probate, and to forward the instrument to the Registrar of Deeds to be registered." Property Law, 1956 Code 29:3. It is also provided in section 2 of the aforesaid statute that:

"All persons acquiring any interest affecting or relating to real property shall appear in person or by attorney-at-law before the probate court for the county in which such real property is situated within four months of the date of execution of the instrument, and have the deeds, mortgage or other instrument affecting or relating to real property publicly probated; provided, however, that this provision shall not apply to real property prior to October 1, 1862." Ibid. 29:2.

Although appellants contended in count one of their answer, which was ruled to trial, that the probation of appellees' deed in 1965 by Judge Free had been declared null and void by the Supreme Court, and the appellees on the other hand contended in their reply that the said deed was subsequently probated and registered nunc pro tunc, yet only one witness, in person of Albert Kini Freeman, one of the appellees herein, testified on behalf of the appellees; after he was examined, appellees rested evidence on the lone testimony of said witness. The court thereafter charged the empanelled jury. The public land sale deed, court's mark "P/4", still carries the signature of Judge Free, and there was no effort made by the appellees to show proof that the said deed was subsequently probated nunc pro tunc.

The appellants also averred in their answer that their ancestors lived on the parcel of land, subject of the ejectment action, for time immemorial, died and were buried thereon. There was no showing at the trial by testimony of any of the tribal authorities of Garwula Chiefdom to the effect that appellants have transcended their boundaries into the territory of Kaizolu Clan and occupied the land for sixteen years. In an action of ejectment, mere paper title to land without proof of occupancy is insufficient to dispossess an industrial occupant. Payne v. Jones, 3 LLR 78, 83 (1929). And 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. Civil Procedure Law, Rev. Code 1: 2.12(2). A plaintiff in ejectment must recover unaided by any defect or mistake of the defendant; and proof of the plaintiffs title must be beyond question. Cooper-King v. Cooper-Scott, 15 LLR 390 (1963). Plaintiff in ejectment must recover upon the strength of

his own title and not upon the weakness of his adversary's title. Savage v. Dennis, 1 LLR 51 (1871).

In view of the foregoing discussions and the facts as disclosed by the records in this case, as well as the legal citations in support of our holding, it is our considered opinion that the judgment of the trial court should be, and the same is hereby, reversed with costs against the appellees. And it is hereby so ordered.

Judgment reversed