

J. A. KARMO, Gbandi Tribal Chief, for Himself and the Gbandi Community,
Kakata Township, Appellants, v. **JOHN M. YEMGBIE**, Appellee.

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

Argued November 5, 1957. Decided December 20, 1957.

1. A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act.

2. A mortgage agreement must possess the basic requisites of an enforceable contract.

On appeal from a judgment dismissing an action to foreclose a mortgage, judgment *affirmed*.

Joseph F. Dennis for appellants. No appearance for appellees.

MR. CHIEF JUSTICE SHANNON delivered the opinion of the Court.

This appeal is before us on a bill of exceptions containing one count which reads as follows :

"Because when, on December 31, 1956, Your Honor rendered ruling on the law issues dismissing said action, to which ruling the said petitioners then and there excepted and prayed an appeal to the March, 1957 term of the Supreme Court of Liberia."

The pleadings show that the appellee advanced an amount to members of the Gbandi Community of Kakata, Liberia, and issued to them an instrument of the following tenor :

"REPUBLIC OF LIBERIA
MONTSERRADO COUNTY
GBANDI COMMUNITY AGREEMENT
TOWNSHIP OF KAKATA, LIBERIA

"This is to certify that I have this day delivered to the Gbandi Community of Kakata, Liberia, my house in the Community and other properties such as one sugar cane mill and one still as security for the sum of five hundred thirty-seven dollars and fifty cents (\$537.50) to be paid by me on or before the 20th day of July, 1954.

"Upon my failure to pay said amount to the said Community of Kakata at the time signed by me, said Community shall (have) the right to the said sum of money.

"Dated at Kakata, this 10th day of March, 1954

"Witnesses :

[Sgd.] (1) SANA D. GORMA

["] (2) PAYLAY (my cross)

["] (3) GEORGE SALLY

[Sgd.] JOHN YEMGBIE"

Upon his failure to make payment as stipulated in the document quoted above, the Chief of the Gbandi Community, for himself and the said Community, instituted these proceedings in foreclosure of mortgage, claiming the said document or instrument to be a mortgage. The pleadings went as far as the rejoinder. Upon hearing the law issues involved, the trial Judge dismissed the suit with costs against petitioners.

The main points raised in the answer of the respondent are : (1) that the purported Gbandi Community is not a body corporate and politic that may sue by that name; (2) that the instrument purporting to be the mortgage agreement was not registered and probated according to law relating to such instruments, and hence is void or voidable; and (3) that the petitioners chose the wrong form of action, in that they should have brought an action of debt on the instrument, and not sued for foreclosure of mortgage. Replying, the petitioners denied that said answer was sufficient in law to topple the suit, contending that the issues raised were not tenable. The trial Judge, in passing upon those issues, overruled the attack on the capacity of the petitioners as "Gbandi Community of Kakata" to sue, but sustained the second count, which went to the failure to have said instrument probated and registered within four months after execution. Because of this, said Judge did not think it necessary to pass upon the other law issues raised in the pleadings. Consequently the suit was dismissed with costs against petitioners.

It is upon the correctness of the ruling of the said Judge dismissing the suit that we

must pass in this opinion. It would appear from the pleadings of both parties litigant that they conceded that the instrument, the basis of this suit, is a mortgage or possesses the feature of one, and hence should be a subject for admission to probate and registration; and the trial Judge accordingly heard the law pleadings upon this concession ; so that, upon the hypothesis of this concession, we cannot but find ourselves in agreement with the ruling of the said trial judge. What would have struck a death knell to the entire suit is an issue that was not at all raised in the pleadings, but which we deem it necessary to say something about, so as to put pleaders straight hereafter. A mortgage is an agreement or contract and under our statutes:

"A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act." 1841 Digest, pt. II, tit. I, sec. 8; 2 Hub. 1516.

It is obvious, definitely, that the instrument quoted above as the basis of this suit is not an agreement showing the assent of two or more minds, neither does it possess the features of an agreement, and hence cannot be a mortgage agreement.

Added to the above, if we are to accept the hypothesis that the instrument is a mortgage, then land was intended to be involved in the placing of a lien on the house, in which case the consistency or propriety of blending realty with personalty should have been also raised and considered, since there are separate and distinct statutory provisions controlling the mortgage of real property on one hand, and of personal property on the other, as provided in our recent statutes regulating chattel mortgages.

On the whole, there was no merit at all in the suit; and the trial Judge correctly dismissed same ; which ruling is hereby affirmed with costs against the appellants, petitioners below. And it is hereby so ordered.

Affirmed.