

Madam Saliena Denué, Amos T. Denué, Jr. Co-Administrator of the Intestate Estate of the late Amos T. Denué, Sr., **Martha Denué, Lucy Denué**, and heirs of the late Amos T. Denué, Sr. all of the Township of West Point, Montserrado County, Liberia APPELLANTS/DEFENDANT VERSUS His Honor **Yussif D. Kaba**, Assigned Circuit Judge, 6th Judicial Circuit Court for Montserrado County, and **Jireh International Full Gospel Ministries, Inc.**, represented by Ottis Wallace, all of the City of Monrovia, Liberia APPELLEE /PLAINTIFF.

LRSC 22

APPEAL

HEARD: March 25, 2010 DECIDED: June 29, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This matter on appeal stems from a summary proceeding action filed in March 2004, by appellee, Jireh International Full Gospel Ministries, Inc. in the West Point Magisterial Court against Madam Saliena Denué, one of the appellants. The Magisterial court found the defendant/ appellant liable and ruled to have her evicted. An appeal was taken to the Sixth Judicial Circuit for a trial de novo and the co-appellants, Amos T. Denué, Sr., Martha Denué, and Lucy Denué, filed a motion to intervene on behalf of the defendant Saliena Denué. The matter before the circuit court was heard and a ruling made finding the appellants liable and the co-appellant Saliena Denué ordered evicted from the disputed premises.

The appellants have assigned certain errors to the court below which are culminated in a 4 count bill of exceptions, seeking a review by this Court and a reversal of the judgment made by the court below. These exceptions outlined in their bill of exceptions are as follows:

BILL OF EXCEPTIONS

- 1. "That Your Honor erred when you illegally denied the appellants' consolidated motions to intervene and to dismiss, both in the action of summary proceedings to recover possession of Real Property"*
- 2. "And also because Your Honor erred when you contradicted yourself by granting the appellee's motion for summary judgment, when in fact you earlier ruled on January 7, 2005, that evidence must be heard on both sides before a determination could be made, but instead of taking evidence on both sides, you concluded the case only on law issue."*

3. *"Your Honor also erred when you ordered the eviction of the appellants in the face of an appeal taken by the appellants and granted by court, since the final judgment did not arrived out of the Action of Summary Proceedings to recover possession of real property but out of a motion growing out of the Summary proceeding to recover possession of real property. In that case, the announcement and granting of an appeal should have stayed the enforcement of your illegal judgment."*

4. *"That Your Honor's final Judgment is entirely wrong and prejudicial to the appellants in that you illegally refused to allow the appellants to produce evidence at a trial in defense of their property right in keeping with the 1986, Liberian Constitution."*

The facts advanced by the appellants in this matter are that their late father, Amos T. Denué, Sr., sometime between 1955 and 1957 occupied a piece of property in West Point, Monrovia, and developed it; that he lived on the property without any objection or harassment from anyone until his death in 1990, after which his children obtained Letters of Administration to administer his intestate estate. In 2001, the appellee entered an agreement with the administrators of the property and requested to lease their zinc house in the front portion of the property for the purpose of holding services. The agreement was concluded and an extension made that expired March 31, 2004. In the mean-time, the appellants alleged that the co-appellant Saliena Denué lived in an unfinished concrete structure built by their deceased father at the back of the property. The appellants alleged further that while the appellee was their tenant, the appellee negotiated a purchase agreement with their cousin, Solomon Jah Denué, to buy the concrete building that coappellant Seliena Denué occupied at the back of the property. After the lease period ended, the appellee asked co-appellant Saliena Denué to vacate the concrete building, claiming that appellee had concluded a purchase of the property with Solomon Jah Denué and the property was now appellee's.

Co-appellant Saliena Denué refused to move on grounds that the house that she occupied was built and owned by her late father who had occupied the property more than 30 years and had built the concrete structure before his death. As such, the grantor of the appellee, not being an administrator or even a direct heir of the deceased, had no interest, right, or title to sell the house to the appellee.

The appellee on the other hand maintained that the disputed property is the property of Solomon Jah Denué, nephew of the appellants' father; that while its lease agreement with the appellants was about to expire, the Church sought to relocate from the zinc house in which it held services. Solomon Jah Denué, a nephew of the decedent, appellants' father, negotiated with the church to sell his unfinished building located at the back of the property. Solomon Jah Denué had constructed this building and his

ownership was further acknowledged by the appellants in a written instrument they gave allocating portion of the property to him out-rightly. Appellee proffered a document dated 1st December, 1996, signed by the appellants.

Appellee says further, upon negotiations with Solomon Jah Denué, and in consultation with its lawyer, the church was advised that the land was actually public land, and in order for Mr. Denué to sell them his house, he needed a squatters right from the township since the document by his cousins, the appellants, giving him the land, was legally insufficient. Solomon Jah Denué then went to the Township Commissioner of West Point and obtained a squatters right. Upon obtaining the squatters right, he then conveyed the property to the appellee, who went further to obtain its own squatters right from the Township. Besides, the appellee further pleaded, that Solomon Jah Denué, as a goodwill gesture, gave and the appellants did receive and sign for some of the conveyance fee paid by the appellee. Appellee counters that if the allegation made by the appellants that their father built the unfinished building was true, the Township would not have given squatters rights to Solomon Jah Denué or the Church.

The Instrument on which the appellee relied in purchasing the premises reads:

*"REPUBLIC OF LIBERIA
TOWNSHIP OF WEST POINT
MONTSERRADO COUNTY
MONROVIA*

I, the undersigned Mr. Arthur D. Danue in consultation with my three (3) sisters namely. Martha, Lucy and Sarah Denué all of West point, Montserrado County do hereby give to Mr. Solomon Jah Denué, our Cousin, portion of our late father, Amos T. Denué land situated in West Point, Monrovia. The area referred to is where he (Mr. Solomon Jah Denué) has his concrete building under construction and including the vacant spot behind it all the way to the River (Mesurrado River).

The parcel of land mentioned above is the personal property of Mr. Solomon Jah Denué forever as of today's date, and we stand ready to protect him at all times incase anybody tries to molest him for the said parcel of land.

Given under my hand this 1st day December, A.D. 1996.

Signed:

Arthur D. Denué Witnessed:

Martha T Denué

Lucy Denué

Keseab Johnson"

The appellants have denied making any such conveyance to their cousin Solomon Jah Denué. They allege that the signature to this instrument of conveyance is faked; besides, co-defendant Saliena Denué, a daughter of the deceased is not a signatory to this document.

Proceeding with hearing of this matter before it, the Court called up the two motions filed by the appellants - motion to intervene and to dismiss. The appellee did not object to the motion to intervene by the other co-appellants but resisted the motion to dismiss.

Appellants' motion to dismiss basically states that the appellee had no capacity to sue as it was a tenant of the appellants and could not subsequently rely on another title to dispossess them of their property; that the decedent had acquired and developed the land while living thereon for more than forty years; and as such, he had acquired it adversely from the Republic; by reason of the decedent's adverse possession, title is in issue, so summary proceeding to recover real property will not lie; that the appellee squatters rights were challenged in the magisterial court as fraudulent and having expired but that they had come to the circuit court with an alleged new title without drawing the previous title from the court. The appellee is therefore relying on two different titles from two different grantors, which being conflicting has deprived them of the capacity to sue.

The appellee countered that the disputed premises is different from that which it had previously leased from the appellants; that the church had gained possessory rights from a third party who had squatters right from the Township of West Point; that the appellants were aware of the transfer and had benefited from the consideration paid for the conveyance. They were therefore estopped from contesting said conveyance. Also, the appellants could not claim adverse possession against the state; that in the circuit court the matter was tried de novo and no record of the magisterial court could be used in the trial in the circuit court.

The Judge ruling on the motion to dismiss is as follows:

"... This court says there are several interesting issues raised by the motion and the resistance thereto, such as whether or not the premises in dispute is the identical premises which was leased to the respondent by the movant and whether or not some of the movant benefited from the proceeds of the sale to the respondent, and whether or not indeed and in fact this property was given to the grantor of the respondent by the principal of the movant. But the Court says that these are factual issues and

they cannot be determined purely on the law issues. The capacity to sue is the alleged squatter's rights and others titles relative to instrument proferted by the respondent.

Whether or not these instruments are genuine and legal must be established as an outcome of a trial where evidence will be produced for and against them (emphasis ours).

In passing thus, the Court wish to state that in this jurisdiction, the claim of adverse possession is not operational against the Republic of Liberia. No claim of adverse possession can legally obtained against the Republic of Liberia. The Republic by can not be deprived of property based on adverse possession.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the considered ruling of this Court that the Motion to Dismiss be and the same is hereby denied and the matter ordered proceeded with. AND IT IS HEREBY ORDERED."

After this ruling by the Judge, the appellee filed a six count motion praying the Court for Summary Judgment as follows:

"That movant brought an action of Summary Proceedings to Recover Possession of Real Property in the West Point Magisterial Court in June, 2004, against respondent to recover a plot of land on which Movant Jireh is erecting its edifice."

"That movant Jireh Church obtained the plot by purchase of Arthur Dennis [Solomon Jah Denu] interest in a squatter's right he obtained from the Township of West Point. Copy of the said squatter's right is hereto attached to form a cogent part of this Motion marked Exhibit "M/17

"That respondents Salieta et. al challenged the squatter's right basing their challenge on an allegation that they have adversely possessed the said piece of land from the Republic of Liberia, which challenge was disallowed by the magisterial court., thus, leading to a ruling in movant's church favor and an appeal by respondent Salieta Denu et. al"

"That on appeal, respondents Salieta Denu et. al moved this Honorable Court by a motion to dismiss movant's action, once more alleging that they, respondents, have adversely possessed the house spot in question from the Republic of Liberia."

"That Your Honor ruled against respondent on 7th January, 2005, that, THERE CAN BE NO ADVERSE POSSESSION AGAINST THE REPUBLIC OF LIBERIA."

"That in view of he said ruling of the Court on January 7th, 2005, there is NO GENUINE

ISSUE AS TO ANY MATERIAL FACT, for which reason movant Jireh Church is entitled to judgment as a matter of law."

Despite the interesting issues which the judge referred to in his ruling on the motion to dismiss, and which he said were *factual issues that could not be determined purely on the law issues*, the Judge ruled and made a final determination on the motion for summary proceeding, dismissing the case and ousting the co-appellant Saliena Denué from the said property, stating: *"One cannot adversely possessed a property owned by the Government, see § 2.7 of our Civil Procedure Code which is instructing on this issue. Since the property is owned by Government and the movant herein are occupying the said property by virtue of right conformed by the Government, therefore, and in that case, the movant is entitled to the said property in the absence of the showing of a contrary understanding."*

Considering this matter on appeal, this Court says that the motion to intervene was allowed by the lower court, and that count 3 of the bill of exceptions has no legal bases under the law. We shall therefore look at counts 2 and 4 of the appellants' bill of exceptions which we find worthy of consideration.

Counts 2 of the bill of exceptions highlights the contradiction and disharmony of the Judge's ruling on the motions to dismiss and the summary judgment written herein above.

Title 1 of the Liberia Code of Law Revised §11.3 (3) (1973) provides that, "The court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law." Granting summary judgment then, our courts must be convinced that there is no justifiable issue of fact presented which warrants a trial by the court.

In this case, the judge himself, in his ruling on the appellants' motion to dismiss, stated that there were many disputed facts which needed to be clarified. How else could these clarifications have been made without the taking of evidence?

In the mind of this Court, these questions remain: Who constructed the concrete building now in dispute? Was the document of December 1, 1996, transferring a portion of the squatter's property to Solomon Jah Denué, genuine, and, did co-appellant Saliena Denué acquiesce to the transfer as one of the administrators? Did the appellants receive consideration under the further transfer of their squatter's right as exhibited by a receipt, but yet sought to retain the property? This Court must emphasize that Solomon Jah could not sell the property as it belong to government but

he could transfer his interest in the property subject to future possession by the government.

It is only reasonable to say, where evidence is conflicting, it becomes a question of fact to be tried. In the case, *Momo Koryan vs Korvayan*, 30 LLR, 246, 249 (1982), this Court said, "Where a judge is deciding issues of facts or mixed questions of law and facts in a non-jury case, he can not fairly and justly rule in ignorance of the facts. He must take testimony." Taking of evidence in this case would have enabled the court below to have pronounced with certainty the matter in dispute.

The appellee has argued that mere possession of government land, though open and exclusive and uninterrupted for twenty years creates no impediment to its recovery by the government or by anyone who acquire conveyance from the government.

We do agree that it is a settled law in this jurisdiction that one can not claim adverse possession against the state no matter how long he/she has occupied the property. But can one who has possessed public land without acquiring title, developed it, lived on it openly and exclusively for thirty-five years or more, be ousted from one of his houses by an individual or entity based on a squatter's right given by the township?

Our Public Lands Law provides, that for a citizen to acquire legal title to public land in the County Area, a citizen shall apply to the Land Commissioner of the county in which the land is located, the Land Commissioner if satisfied that the land in question is not privately owned and is unencumbered (emphasis ours) shall issue a certificate to a prospective purchaser to that effect. 1CLR: Title 34, Public Land, Chapter 3, §30, Sales of Public Lands.

There is no dispute that the property in issue is built on public land with title in the Republic. However the township has no right to grant public land. Where the township exercises administrative authority over government property, when granting squatter's right to an individual, the township must limit itself only to unencumbered property. Black's Law dictionary defines encumbrance as "a right, other than an ownership interest, in real property." 8th Edition, Pg. 568.

Where the appellants have alleged that they have openly possessed public property for more than thirty five years, and have built a house thereon, they have all rights to said property against all others, except the state that has ultimate dominion over land. Recognizing the Republic's absolute right to land, especially to public land, however, for the state to take property from an individual who has developed and lived on it over the years, the state will take only in the interest of the general public and not in the

interest of an individual or entity. And where it takes in the interest of the public, it may make just compensation for such taking.

As to count 4 of the bill of exceptions, the appellants have raised the issue of their constitutional right to defense of property in keeping with the 1986 Liberian Constitution. Since our Constitution is not intended to protect the unlawful ownership of property, in order that this provision of the constitution is invoked by the appellants in defense of the possession of their properties, they must show that their claim of ownership is legitimate and is beyond dispute.

This reinforces this Court's position that the Judge should not have ruled solely on the legal issue of adverse possession against the state which does not apply in the instant case as expounded above, but the court should have taken evidence to ascertain who constructed the disputed property and the circumstances surrounding the ownership to the property.

As the Judge has failed to resolve ownership to the disputed property by establishing by factual evidence who is entitled to occupy the property, this Court reverses and remands this case with instructions that the court below takes evidence to establish the factual issues as raised by the parties and stated in the Judge's own ruling on the motion to dismiss, dated January 7, 2005.

WHEREFORE, and in view of the forgoing, the Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and give effect to this judgment. Costs disallowed. And it is hereby so ordered.