Peter S. Derick, **Moses Taudee et al** RESPONDENTS/APPELLANTS VERSUS The **Pentecostal Assemblies of the World**, **Inc.**, by thru its Resident Bishop, Dr. Wilmot D. Sampson, of the City of Monrovia, Liberia. MIOVANT/APPELLEE

SUMMARY JUDGEMENT. RULLING REVERSED; CASE REMANDED FOR NEW TRIAL

HEARD: MAY 16, 2005, DECIDED:

MR. JUSTICE GREAVES DELIVERED THE OPINION OF THE COURT

The facts that are certified before us show that this case is before this Bench) on an appeal from the ruling of His Honour Varnie D. Cooper, Assigned Circuit Judge, Sixth Judicial Circuit court, Montserrado County, granting a Motion for Summary Judgement in favor of the Pentecostal Assemblies of the Worliid, Inc., by and thru its Resident Bishop, Dr. Wilmot D. Sampson, Movant/Appellee, in an action of ejectment instituted . by Movant/Appellee, Plaintiff in the court below hereinafter known and referred to as Appellee, against Peter S. Derick Moses Taudee et al, Respondents/Appellants, and Defendants in the court below, during the June term, A.D. 2000 of said Court, hereinafter known and referred to as Appellants.

Appellee instituted an Action of Ejectment in the Civil Law Court of the Sixth Judicial Circuit Court, Montserrado County, sitting in its June Term, A.D. 2000. In its five count complaint, Appellee claimed ownership of twenty (20) acre of land lying, situated and located in Gardnersville Township, Montserrado county, R.I. It attached to said complaint a Public Land Sale Deed from the Republic of Liberia to the Pentecostal Assemblies of the World, Inc., dated 31 st day of October, A.D. 1963. The complaint further alleged that the Appellants had illegally,, wrongfully and unlawfully entered upon Appellee's Piece of land and constructed houses and other structures thereon) without the will and consent of the Appellee. Further, that 'Appellee had made many demands and requests to the Appellants to vacate its property, both orally and by writing, through its Counsel, but that they had failed and refused to vacate said property, to the injury and damage of Appellee; thus this suit. Appellee prayed the court to eject and oust the Appellants from its property and place it in possession; and award it a sum not less than Two Hundred Fifty Thousand United States Dollars (U.S.$250,000.00) or a sum sufficient to compensate it for all the injuries, damages, pains, ect, it has suffered as a result of the Appellants' illegal occupation of its property.

The Appellants, Defendants in the Court below, filed a fourteen (14) Count Answer to said complaint in which they stated that: The said complaint is a fit subject for dismissal because they had moved and entered upon the land, the subject of these proceedings, in 1977 and not only constructed houses thereon, but have remained on said premises for more than twenty (20) years and therefore, they have acquired title to said property as against the Plaintiff. Appellants then invoked Section 2.12 (2) of the Civil Procedure Law, 1LCLR, page 31, which provides that "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 then twenty (20) years". Appellant also answered that consequently, Appellee is barred by law to institute these proceedings and hence the entire action should be dismissed; that the subject matter of these proceedings were non-permissive; which was and is actual open, notorious, exclusive and adverse to the Appellee for more than the statutory period of twenty (20) years; that Appellants are without knowledge or information sufficient to form a belief as to the truth of the allegations that Appellee is the owner of a piece of land lying, located and situated in Gardnersville Township, Montserrado County, containing twenty (20) acres of land (count 6); that because Appellants have acquired title to said land, the subject matter of these proceedings, they are not illegally and unlawfully withholding any property belonging to the Appellee as alleged by it; therefore, the Appellants have done nothing to cause the Appellee to suffer loss, injury, pain, damages, embarrassment, molestation and frustration or deprived it of its rights, profits, enjoyment, benefits, possession, rent or interest in any property. They then prayed for the dismissal of Appellee's complaint.

The Appellee, Plaintiff in the court below, then filed a three (3) count Reply to Appellants' Answer, stating therein among other things, an admission to the effect that the Appellants entered upon its parcel of land, the subject of these proceedings, in 1977 and are still occupying said land up until the date of the filing of its Reply, but stated that the statute of Limitations and Doctrine of Adverse Possession cannot apply in favor of Appellants due to the fact that it has given noticed to them that said parcel of land belong to Appellee. Proof of said notice is the letter of July 16, 1981 from the Township Commissioner to Bishop Warkie; that in -1985, Appellee (Plaintiff) undertook a re-survey of said parcel of land and one Jivade Kerteku, who is believed to be the Grantor of many of the Appellants in the instant case, complained the Appellee (Plaintiff) to the Township commissioner, Jerimiah s. Wratoe; the said Commissioner invited the said Appellee to a conference through a letter dated June 19, 1985; that a list attached to the Reply as Exhibit "C" shows the names of some of the Appellants called to a conference by Appellee's Counsel in January, 2000, relative to the subject parcel of land in question; that Appellants have

not pleaded the Doctrine of Adverse Possession Affirmatively,, in that they have not admitted to Appellee's title/ownership to the parcel of land in question as is required by law and our statute, instead they have stated that they are without knowledge or information sufficient to form a belief as to Appellee's ownership of the parcel of land in dispute (count six (6) of Appellants' Answer).

The Appellee on the 17 th day of June, A.D. 2000, also filed a six (6) count Motion for Summary Judgment (said Motion was filed along, with its Reply in the Ejectment Action) in which it stated among other things that it instituted an Ejectment /Action against the Appellants on the 29tH day of May, A.D. 2000; that the Appellants appeared and filed a fourteen (14) count Answer to said complaint alleging ownership of said property but perfected no deeds, title or lease agreements for the premises in question; that in Appellants' entire answer, only one legal and factual question was raised, that is, the Doctrine of the Statute of Limitation and/or Adverse, Possession, which is an affirmative pleading, but the Respondents pleaded it negatively; that under our law and practice, title to Real Property is evidenced by a deed duly probated and registered as required by law and linked directly to the Republic; that the Appellants have no basis in law and fact to support their claim to the parcel of land in question; in the same view, the Appellants having pleaded the Statute of Limitation and/or Adverse Possession falsely and negatively, there remains no other factual issues or challenges to the title of Appellants to the parcel of land in question, or the subject of the Ejectment Action. That on the basis of the pleadings filed by the Appellee and Appellants, there is no genuine issues as to any material facts to warrant a trial or jury trial in the case; hence, Appellee is entitled to a judgement as a matter of law.

The Appellants filed a fifteen (15) count Resistence to said Motion stating therein that: No law requires Appellants in an Ejectment Action to admit that Appellee has title before they can claim said land by Adverse Possession; Under the law, a person claiming title to the land must admit that he/she does not have a title deed to the premises, but by virtue of the fact that such person has occupied the premises in question in keeping with Statutory Provision, he/she has acquired title to said premises; that the harassment, molestation, and demands by the Appellee of the Appellants cannot bar their claims to said premises; that Appellee has admitted that Appellants have occupied the subject premises from 1977 until the filing of these Proceedings; Appellants have acquired said land by Adverse Possession and therefore they are entitled to Summary Judgment and not Appellee; that the right to relief accrued to Appellee in 1977 and that it had up to December, 1997 to have brought this action; therefore, she is barred by law from instituting said action at this time

(section 2.31 and 2.32 of the Civil Procedure Law, page 36, 1LCLR); and that Appellee has not stated any disabilities to toll the statute; that the Statute of Limitations which bars the institution of action to recover Possession of Real Property having expired in this case, the Appellants are entitled to Summary Judgment; and that under the law, the person who claims land by Adverse Possession has the burden of proving that he has occupied the premises openly, notoriously, exclusively and adversely to the would-be claimer; that in the instant case, the Appellee having admitted to the occupation and possession of the premises, the subject -matter of these Proceedings, openly, notoriously, exclusive' and adversely by the Appellants to the Appellee, there is no genuine issue as to any !material facts to be presented to the jury, consequently, the .Appellants are entitled to Summary Judgment as a matter of Law (count 9).

The Trial Judge ruled granting Appellee's Motion for Summary Judgment stating in said ruling among other things, that Adverse Possession, as claimed by the Appellants, will not hold:, since the Appellee had constantly harassed, molested, interrupted and informed them that said land belonged to it in 1981, 1985 and 2000 A.D. The Trial court further held that Appellants even admitted in count nine (9) of their Resistance to Appellee's Motion for Summary Judgment and by way of cross Motion for Summary Judgment that there is no material issue of fact to be presented to the jury and therefore also demanded Judgment in their favor. The Appellants, thereupon excepted to said Ruling and announced an appeal to this Court, which was granted; hence this Appeal.

The Appellants filed a five-count Bill of Exceptions on the 1st day of March, A.D. 2001, which was duly approved by the Trial Judge. We deem counts 3, 4 and 5 relevant to the disposition of this matter, so we therefore quote said counts below:

"3. That the Movant/Appellee not having stated any disabilities to toll the statute, and that the Statute of Limitation which bars the institution of Action to Recover Possession of Property having run, lapsed and expired, the Respondents/Appellants were entitled to Summary Judgment as a matter of law since there were no material issues of facts in dispute. Nevertheless, Your Honour denied Respondents/Appellants' Cross-Motion for Summary Judgment; for which error of Your Honour Respondents/Appellants Except".

"4. The issue of whether a party has been on a property to entitled such person to acquire said land is an issue of fact to be determine by the jury. In this instant case, Movant/Appellee admits that Respondents/Appellants entered upon the land, the

subject matter of these proceedings, in 1977. The Movant/Appellee did not state or plead any disability which prevented it from instituting this action until May 29, 2000, a period of twenty three (23) years after the right of relief accrued to Movant/Appellee. Nevertheless, Your Honour elected to invade the province of the jury and to erroneously pass on factual issues already admitted by the Movant/Appellee to the effect that the Respondents/Appellants have been on the premises, the subject matter of this case for more than twenty (20) years prior to the institution of said action; 'for which error of Your Honour, Respondents/Appellants Except."

"5. That Your Honour erred when you concluded in the absence of evidence that the Appellee/Movant in 1981, 1985 and 2000 reminded the Respondents/Appellants about the Movant/Appellee claim to said parcel of land and demanded to vacate same. Respondents/Appellants submit that assuming without admitting that the Movant/Appellee reminded the Respondents/Appellants as alleged by Your Honour, same does not toll the statute, as the occupation of the premises, the subject matter of these proceedings was hostile and against the claim of the Movant/Appellees. Hence Your Honour erred when Your Honour denied Respondents/Appellants Motion for Summary Judgment and granted Movant/Appellee's Motion for Summary Judgment for which Respondents/Appellants Excepts".

We are inclined to consider a single issue which we deem to be germane to a determination of this case; and it is: whether or not the ruling of the Trial Judge granting a Motion for Summary Judgment in Appellee's favor was proper and lawful.

CHAPTER 2, Section 2.12 (2) Page 31 1LCL Revised, states that "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 (20) years. Further in the case: Morris et al versus Keita, 39 LLR 710 (1999) text at page 718-719: "Summary Judgement can be granted by a Trial Court if it is satisfied that there is no genuine issue as to any material fact and the party in whose favor judgement is granted is entitled to it as a matter of law." See also Chapter 11, Section 11.3 (3), page 119-120 Motion For summary Judgment.

Appellants contend in count four (4) of their Bill of Exceptions that the Judge evaded the province or the jury b passing on the issue of the period they have been on the s aid parcel of and which is an issue of fact to be determined by the jury. Appellants further contend that Appellee admitted that Appellants have been on its land from 1977 until the filing of these proceedings in the court below, but averred

that Appellants have not acquired said property by Adverse Possession since they have been molested, harassed, demands made by Appellee and notice given to them in 1981, 1985 and 2000 that the said property is Appellee's. The Appellants themselves admitted in count nine (9) of their Resistence to Appellee's Motion for Summary Judgment that "there is no genuine issue as to any material facts to be presented to the jury; consequently, they themselves are entitled to Summary Judgment as a matter of law". However we do agree with Appellants that Summary Judgement should not have been granted to Appellee on its contention that the statute tolled due to notice and demands made by it to Appellants to vacate the property in question; it 'was a reversible error on the part of the Judge to hold the view that the statute had tolled on these grounds in the absence of a formal court Proceedings instituted by Appellee.

Chapter 2, Sub-Chapter D. Tolling Of The Statute, 1 LCL Revised Page 39-45, lists the ways in which the statute of Limitation may toll in an action affecting real property. The statute names infancy', insanity, imprisonment, death, absence from the Republic, war and commencement of an action (Court Action) as being the ways in which the statute is tolled in this jurisdiction. This Court has thoroughly done some research to find legal support for the ruling of the Trial Judge to the effect that molestation, harassment, demands, notices, ect, absent court action, can prevent the statute of Limitations from running ; but did not come across any.

As we have said earlier, the statute will not toll in the absence of a formal action commenced in a Court of Law in the instant case as mentioned supra and that the reason given by the Trial Judge is untenable. The Appellant did occupy the premises for more than 20 years, but the question is, did they occupy same under a color of right in keeping with the cases;_ Page *versus Harland 1LLR 463 464 (1906); THORNE versus Thompson, 3LLR (1930), Williams-BAGLIRI versus COOPER, 14LLR 101 (1960) SOKO versus Johnson 15LLR 320 (1963)* and *DASUSEA et a! Versus Coleman 36LLR 102 (1989)?* The records before us is devoid of such evidence and the trial Judge did not pass on this crucial issue. Also Ejectment cases involve mixed issues of law and facts which, under our laws, must be tried by a jury under the direction of the court DAUSEA ET AL versus COLEMAN 36 LLR 107 Test at 134 (1989). It was therefore an error on the part of the trial Judge to have passed on the issue of the period of occupancy of the said property by Appellant without the assistance of a trial jury.

In the case THORNE et al versus Thomas 3 LLR 193, (1930) this Court held that "title to land by adverse enjoyment owes its origin to and is predicated upon the

Statute of limitations ; and although the state does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied, the premises under a color of right peaceably and quietly for-the period prescribed by law".

As to the issue of damages, the Appellee is not entitled to damages in the absence of proof of such damages, and further that the issue is one of fact, which must be decided by a Trial Jury not summary Judgment Proceedings *Morris et al versus Keita, 39LLR 710 (1999), Text at 719. See also DASUSEA et al Versus COLEMAN, 36 LLR 102. Text at Page 137 (198'9).*

WHEREFORE, AND IN VIEW OF THE FOREGOING, it is the opinion of this Court that the Judgment of the Trial Judge should be, and the same is hereby reversed and the matter/case is hereby remanded to the Court below for the purpose of conducting a jury trial to ascertain the facts as to whether or not the Appellants had occupied the property in question from 1977 to 2 000 adversely under a color of right and to determine the issue of damages which can only he determine by a trial jury in keeping with our laws. The Clerk of this Court is hereby Ordered to send a Mandate to the Court below informing the Judge Presiding therein to resume jurisdiction and give effect to this Opinion. COSTS DISALLOWED. AND IT IS HEREBY SO ORDERED.
JUDGEMENT REVERSED.

COUNSELLOR J. JOHNNY MOMOH, OF SHERMAN & SHERMAN, INC. APPEARED FOR APPELLANTS.

COUNSELLOR MOLLY N. GRAY OF JONES & JONES LAW FIRM APPEARED FOR APPELLEE.