

Ciapha S. Gbollie of the City of Monrovia, Liberia APPELLANT VERSUS
William Flyn and **Betty Chea** also of the City of Monrovia, Liberia APPELLEES

PETITION FOR SUMMARY PROCEEDING TO RECOVER POSSESSION OF
REAL PROPERTY. JUDGMENT CONFIRMED.

LRSC 5

Heard: October 26, 2009 Decided:

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The appeal before us grew out of a summary proceeding to recover possession of real property. But because the property, subject of the summary proceeding is part of an intestacy, we deem it necessary to review the records, not only from the Civil Law Court but from the Monthly and probate Court of Montserrado County which initially exercised jurisdiction over the entire intestate estate.

The deceased, Bayou Chea, a resident of Monrovia, Liberia, died (date not stated) intestate. Two of his children, Betty Chea, a non-literate woman, and his literate son, Borbor Chea, who were administering the estate entered into a lease agreement in 1982 with one Joseph Fayiah Gbollie for one of the two estate buildings located on Center Street, Monrovia, for 25 years certain.

Borbor Chea died subsequently. His Honor John Greaves, the Probate Judge during that period, issued letters of administration in October 1997 to Betty Chea, the non-literate daughter of the deceased and Cleopatra Bruce Davies, the literate granddaughter of the deceased. While the 1997 letters of administration issued to Betty Chea and Cleopatra Bruce Davies was still in force and Betty Chea not incapacitated or dead, the same Judge Greaves who issued the letters of administration to the daughter and granddaughter, without any explanation on the records, issued yet another letters of administration on November 14, 2001 to the granddaughter, Cleopatra Bruce Davies to administer the estate of her grandfather.

When the family members of Bayou Chea found out that Cleopatra had obtained another letters of administration alone, apart from the joint letters of administration already in existence, they filed a petition for coadministration in the name of Betty Chea which was granted on September 15, 2004 by Judge Amymusu Jones thereby correcting Betty Chea's unexplained elimination from the previous joint administration letters granted by Judge Greaves. There was now only one valid letters of administration, the one issued by Judge Amymusu Jones on September 15, 2004 to

Betty Chea, to co-administer the estate along with Cleopatra Bruce Davies.

As demonstrated above by the chain of events, strange occurrences have been the characteristic of the Probate Court's handling of this estate matter. And so it followed that the same judge who had on September 14, 2004 appointed Betty Chea co-administratrix of her father's estate, heard a petition for a decree of sale and granted same to Cleopatra Bruce Davies to the exclusion of the co-administratrix Betty Chea, one month twelve days subsequent, that is, October 26, 2004, to sell the building located on Center Street, subject of this matter. The records show that a day after granting the decree of sale, Judge Jones declared the estate closed on October 27, 2004. There is no petition on file on the basis of which Judge Jones closed the estate the day after she authorized the sale of two pieces of the estate properties, one in Stephen Tolbert estate and the other on Center Street, Monrovia subject of these proceedings. There is however, surprisingly again, a petition for closure of the estate filed on October 13, 2005 before Judge Vinton Holder by the same petitioner Cleopatra Bruce Davies, nearly a year subsequent to the closure of the estate by Judge Jones. The records do not show that subsequent to the closure of the estate by Judge Jones in 2004, the said estate was reopened. Why then did the said administratrix apply for closure before another judge a year after the first closure of the estate? The records provide no explanation.

There are yet aspects of this estate matter that are baffling. Cleopatra Bruce Davies on whose instigation(the estate was declared closed on October 27, 2004 one day after she obtained a decree to sell two pieces of estate property, the self same Cleopatra Bruce Davies, entered into an agreement of sale with the appellant herein on November 30 th, 2004, thirty four (34) days after the estate had been closed, posing as the administratrix of the intestate estate of Bayou Chea. As we noted earlier in the chronology of the events surrounding this estate matter, although Judge Amymusu Jones had joined Betty Chea to administer the estate along with Cleopatra Bruce Davies, the same judge authorized only Cleopatra Bruce Davies by a decree of sale to sell the property in issue. Therefore she, the Cleopatra Bruce Davies relying on the letters of administration granted her by Judge John Greaves in 2001 and the decree of sale granted her in 2004 by Judge Jones, unilaterally entered into the sale agreement with the appellant without the participation of coadministratrix Betty Chea, daughter of the deceased and executed an administrator deed on April 28, 2005 to Ciapha S. Gbolle for a portion of lot #35 located on Center Street, part and parcel of the intestate estate of Bayou Chea. The deed signed by Cleopatra Bruce Davies as administratrix was witnessed by four persons who had also witnessed the sale agreement, but none of whom was Betty Chea, daughter of the deceased and co-administratrix of the estate as

per the last letters of administration that issued out of the Monthly and Probate Court of Montserrado County for the administration of the Bayou Chea estate. We did not fail to observe that the notary certificate that was intended to buttress the authenticity of the agreement of sale was signed by the notary public, Simpson, of Montserrado County, on March 30, 2004, while the agreement of sale was executed by the parties on November 30, 2004, meaning that the execution of the notary certificate preceded that of the sale agreement.

It must be noted that the buyer of this estate property from Cleopatra Bruce Davies in her alleged position as representative of the Bayou Chea family, Mr. Ciapha S. Gbollie, appellant, is the brother of Joseph Saa Gbollie lessee of the said building, part of lot #35 situated on Center Street Monrovia. The sale price of US\$50,000.00 was paid by appellant to Cleopatra Bruce Davies, granddaughter of the deceased.

Appellant, having paid for the property and received an administrator deed in 2005, proceeded to take possession of his premises. By then Betty Chea, co-administratrix and daughter of the deceased, and William Flynn, her son were occupying the building. He gave them several notices to vacate but to no avail. He resorted to a summary proceeding to recover possession of real property which was filed in the Sixth Judicial Circuit. Plaintiff/Appellant made profert of his administrator deed, the sale agreement and letter of authorization to take possession of the building allegedly written to him by his grantor, Cleopatra Bruce Davies and also the letters of administration that was granted to Cleopatra Bruce Davies in November 2001 by Judge John Greaves and inadvertently the letters of administration granted to Betty Chea to co-administer the estate.

On July 24, 2006 the defendants, Betty Chea and her son William Flynn filed their answer. We shall recite counts 2, 4, 7 and 8 of defendants' answer:

2. "Further to count one of the petitioner's purported petition, respondents aver and say that the premises subject of these proceedings belongs to the heirs of the late Bayou Chea which was leased as far back in 1982 and that petitioner's grantor, Cleopatra Bruce Davis clandestinely petitioned the Monthly and Probate Court for Montserrado County, Temple of Justice and obtained letters of administration on November 14, 2001 whereas the said Cleopatra Bruce Davis and co-respondent, Betty Tarlo Chea had already been granted letters of administration as is shown by Exhibit R/1 hereinabove without any legal reasons whatsoever and as such, the conveyance to petitioner in these proceeding on the strength of the November 14, 2001 letters of administration is void. Attached hereto is a photocopy of said letters of administration, marked as Exhibit R/2 and notice is given that during trial, petitioner's grantor,

Cleopatra Bruce Davis will be subpoenaed to produce the original thereof.

4. "Further as to count two of the petitioner's petition and three hereinabove, respondents contend that the premises is part of the intestate estate of the late Bayou Chea, father of co-respondent, Betty Tarlo Chea and grandfather of petitioner's purported conveyor, Cleopatra Bruce Davis as well as co-respondent William Flynn and that under the statutes extant in this jurisdiction regarding decedents estates, an administrator can only convey portion of an intestate estate upon the granting of a Decree of Sale from the Monthly and Probate Court in Montserrado County as in the instant case which was not abided by in the conveyance of the premises, subject of these proceedings and court is requested to take judicial cognizance of petitioner's purported title deed, part of petitioner's Exhibit P/1 in bulk.

7. "Also as to the petitioner's petition in its entirety, respondents aver that also under the decedents estates law, one cannot petition a court for another letters of administration where that person along with another who were jointly granted letters of administration when one of the two is not dead, senile or not physically fit to administer the intestate estate as was done by petitioner's purported grantor Cleopatra Bruce Davis and evidenced by her letters of administration of November 14, 2001.

8. "That also, to substantiate that petitioner's purported grantor, Cleopatra Bruce Davis is a thief, after her aunt was granted letters of administration to co-administer the intestate which was a result of her conveyance of a house same being a portion of the said intestate estate of the late Bayou Chea. She had knowledge of the letters of administration issued her aunt yet she petitioned the Monthly and Probate Court for Montserrado County by and thru her counsel, Wright and Associates Law Firm on September 13, 2005 to close the intestate estate. Prior to the petition of September 13, 2005, the Monthly and Probate Court then presided over by Her Honour Amy Musu K. Jones on October 27, 2004 issued a court decree declaring the said estate closed as can be shown by a photocopy of said decree and the petition for closure of the intestate estate of September 13, 2005 hereto attached and marked as Exhibit R/4 in bulk to also form a cogent part of this returns. Therefore, the conveyance by Cleopatra Bruce Davis who was co-administratrix of the estate without the consent of co-respondent, Betty Chea is illegal and proves the criminal act of Cleopatra Bruce Davis to dispose of the premises and the respondents herein cannot be deprived of the premises subject of the proceedings. Moreover several arrest orders were issued for the arrest of petitioner's purported grantor, Cleopatra Bruce Davis for her criminal acts concerning the intestate estate and notice is hereby given that during trial, the clerk of this Monthly and Probate Court for Montserrado Count will be subpoenaed to produce the writs

In his 14 count reply to the plaintiff/appellee's answer, plaintiff/appellant traversed the issues raised in the answer. We shall however quote only the following counts: 1, 2, 6, 9, 10 and 12.

1. Because as to count one (1) of the returns, petitioner says that Corespondent Betty Chea's R/1 is a product of fraud and therefore should be ignored and denied. Respondent submits that if Exhibit "R/1" was true, the family would not have fraudulently written the Monthly and Probate Court in September 2004 which prompted the secret issuance of the Co-Letters of Administration as can be morefully shown by a copy each of the letter and the Court's Degree hereto attached and marked "P/R/1 in bulk" to form a cogent part of petitioner's reply.

2. Further to count one(1) above, petitioner says that his grantor had no knowledge of the purported letter and Court's Degree prior to the sale of the premises as her signature was forged. Your Honor is respectfully requested to take judicial notice of the letter dated September 20, 2004, which is part of petitioner's Exhibit "PR/1 in bulk.

6. And also because as to count two (2) of the returns, petitioner denies that his grantor ever engaged in any clandestine activities. Count (2) of the returns is a fit subject for dismissal and petitioner so prays.

8. And also because as to count (6) of the returns, petitioner says that he maintains that the heirs were aware and benefited from the sale of the property. Petitioner respectfully requests your Honor to take judicial notice of petitioner's Exhibit "P/1" in bulk which is part of the records in these proceedings.

9. Further to count (8) above, petitioner denies that his grantor is a thief. Petitioner submits that it is respondents who undertook fraudulent act to secure a Court's Degree of Letters of Administration by forging petitioner's grantor's signature. Your Honor is respectfully requested to take judicial notice of the records in these proceedings.

10. And also because as to count (7) of the returns, petitioner says that same is applicable to respondents especially, Co-respondent Betty T. Chea who alleged that she was Co-Administratrix in 1997 and yet obtained a "Co-Letters of Administration" in 2004. Again Your Honor is respectfully requested to take judicial notice of the records in these proceedings.

12. And also because as to count (9) of the returns, petitioner says that under our laws

where title is not in issue, Summary Proceedings to Recover Possession of Real Property will lie. In the instant case, petitioner submits that respondents and petitioner's grantor having sold the premises and benefited from the proceed have no legal and moral authority to claim title to the subject premises. Count (9) of the returns should be ignored, denied and the entire returns dismissed and petitioner so prays.

The parties having rested pleadings, and counsels for the parties having conceded that there were no issues of law, only mixed issues of law and fact, the judge ruled the case to trial on the merits.

The Petitioner/Appellant's first witness was himself, Ciapha Gbollie, who testified and said in essence as follows: (the witness said earlier on that he had known and interacted with the Chea family for more than 25 years, his brother Joseph Gbollie having been their tenant since 1982.) He began saying that sometime in 2004, he met with Betty Chea and Cleopatra Bruce Davies and expressed interest in purchasing the building in issue herein. After a few days of negotiation, he sent the first US\$10,000.00 initial payment to Betty Chea and Cleopatra Bruce Davies by one Mr. Karna which payment was acknowledged by receipt signed by Cleopatra Bruce Davies and Betty Chea. He thereafter made the second payment and a receipt was again issued by the both of them.

After he had made these two US\$10,000.00 payments, Cleopatra Bruce Davies and Betty Chea went to him and presented letters of administration and informed him that Cleopatra Bruce Davies was the administratrix of the estate. A few days later, the same two ladies presented a court's degree of sale from the Monthly and Probate Court of Montserrado County authorizing the administratrix to sell the building. Knowing very well that the building belonged to them, Plaintiff/appellant paid the balance US\$30,000.00 and a final receipt in support of the payment of the full price in the amount of US\$50,000.00 was issued on November 30, 2004 signed by Cleopatra Davies, administratrix/seller, witnessed by Mac Chea, Emmanuel Malachi, Joe Matadie and Nathaniel Chea.

The administratrix, Cleopatra Davies, executed an Administrator Deed, and an authorization note to appellant to take over the building, all of which documents were executed by Cleopatra Davies. Appellant/Plaintiff moved in the building and purchased office equipment worth thousands of US dollars to set up an office. After they had left the office between 12:30A.M. to 1:00A.M. the following morning Betty Chea and her son William Flyn moved into their building and have been living there up to the present despite all efforts to have them vacate the premises. The witness identified all the documents he had made reference to and they were marked by court.

On the cross examination the following questions were posed to the witness:

Q. Mr. Witness, you testified and identified two receipts, authorization note and cash receipts...you told this court that Betty Chea was not the administratrix of the estate, but the receipts identified by you say that the money was received by Cleopatra B. Davies and Betty Chea. Please reconcile the two statements just made.

Ans. We have told this court that the money paid from me through Karnga to the Chea family was paid to Betty Chea and Cleopatra Davies. The reason for which it was paid to the both of them was because we respect Betty. She is the senior member of this family and so with the receipt, the receipt confirmed Betty Chea and Cleopatra Davies receiving the money from Mr. Karnga.

Q. Mr. Witness, you told this court in your expose that you know Betty Chea as a senior member of the Chea family and the amount paid for the premises, all of the money was paid to Cleopatra B. Davies and Betty Chea. Do you confirm and affirm those statements?

Ans. At no time did we tell this court that amount paid was paid only to Betty Chea and Cleopatra B. Davies. If that was the case, then we would not have had the receipt with all of the members names thereon. But we have said we paid the money to the family, and the family issued us notice of confirmation that indeed Ciapha Gbollie has paid the money. The Counsellor hosted several conferences. The money was paid to the family.

Ques. Mr. Witness, in your reply to the answer in these proceedings, there was an instrument from the Probate Court, captioned the petition of Betty Chea praying this honorable court for letters of administration to administer the estate of the late Bayou Chea, dated 15 Th day of September, 2004 under the signature of Judge Amy Musu Jones. Mr. Witness, your purported deed was signed on April 28,2005. Do you confirm and affirm that?

Ans. I have told this court from my own God-fearing mind this is the family that we have dealt with over 25 years. They had an administrator by the name of Borbor Chea who died in the 1990s. He was the one we used to deal with. When he died, we saw Betty Chea surfaced without any letters of administration. Then we started to deal with her at the time we were leasing the particular building and I told this court that all monies that were given to her we always prepared receipt for her. But in 2001, she came

and brought an administrator, Cleopatra B. Davies and introduced her and said that we now deal with her as the administratrix. And so the purchasing of this building and respecting Betty as an aunt of this family, so she was involved into the selling of the property. (Emphasis ours).

Petitioner/Appellant's second witness testified in essence as follows:

Ques. Mr. Witness, please state your name and place of residence.

Ans. My name is Counsellor Augustine G. Fayiah and I live in the United Nations Building, Central Monrovia.

He was directed to state all he knew within his certain knowledge concerning the case.

Ans. "The early part of 2004 Mr. Gbolie and Cleopatra Davies went to my law offices and Mrs. Davies brought along with her a sale agreement drawn by her lawyer for the sale of the property in issue. The property is located near the Police Station on Center Street. She stated to me that she was an administratrix of the said estate and showed me letters of administration as well as Court's Degree of Sale for the said property. She also said to me that she has received from Mr. Ciapha gbollie the sum of US\$41,000.00, the balance US\$9,000.00 to be paid to her. Mrs. Davies requested that I prepare stipulation covering the period the balance US\$9,000.00 would be paid to her and she requested me to witness it. Thereafter she issued the deed and brought it to me to be probated. Later on communication came from Watch Law Chambers, Inc. that some beneficiaries were raising issue with respect to the sale of the subject property. We went for a meeting and to my knowledge, many of the people acknowledge receipt of the money, but only one lady claimed she did not know for what purpose Mr. Gbollie paid the money. Mrs. Davies said in the meeting that she had explained to all concerned about the purpose for which the money was paid and that in fact they had series of meetings leading to the payment of the money.

Later, Mr. Gbollie informed me that one man broke into the building and moved in and also told me that he had entered a lawsuit against the person in the Monrovia City court." He identified the documents he had made reference to.

On the cross examination he was asked as follows:

Ques. Mr. Witness, referenced the meeting at the restaurant, was it not to be known that Mr. Gbollie was interested in leasing the house next to the one he is now occupying?

Ans. No.

Ques. Mr. Witness, at the meeting which you referred to, was it proven that the grantor of Mr. Gbollie was not the only administratrix of the said intestate estate?

Ans. Not to my knowledge.

Ques. Mr. Witness, as a Christian and legal practitioner, is it not a fact at this meeting in my office I brought out the issue of Mr. Gbollie grantor misleading Mr. Gbollie by showing him letters of administration when she knew the said estate had two administratrixes?

Ans. You did inform me as lawyer for the defendant before the conference that Mr. Gbollie was dealing with the wrong person a few minutes before the meeting could start and in the presence of all parties.

Ques. Mr. Witness, please refresh your memory and say if you ever prepared an agreement of lease between Cleopatra B. Davies, Elizabeth Chea, Oretha Chea Oretha Bryant and Madam Betty Chea as lessors, and Ciapha Gbollie for the premises lying and situated on Center Street, Monrovia, Liberia?

Ans. As a lawyer I prepared series of agreements for many people in Monrovia, so the agreement you are referring to, until I see same, I cannot say that I prepared it because of the passage of time.

The third and final witness for the Petitioner/appellant took the stand and testified as follows: His name was Mr. Karnga and lived on Robertsfield Highway and was employed at the Liberia Mining Corporation. That on September 26, 2004, Mr. Ciapha Gbollie introduced him to Cleopatra Davies and oldlady Betty Chea on Center Street and said that he was negotiating with them to buy a house on Center Street which was by then housing his political party, LDP Party headquarters, and that since he was about to travel to the United States he wanted him to process and make the initial payment on his behalf. So on October 2, 2004, he met with Cleopatra Davies and Betty Chea at Cleopatra's shop on Center Street to discuss about the payment. He said that Cleopatra Davies told him that the family would hold a meeting on Sunday October 3, 2004 to conclude about the sale of the property. On October 4, 2004 Cleopatra called him by phone and said to him that the family had decided to sell the house to Mr. Ciapha Gbollie. He should therefore proceed to make the initial payment which he did on

October 6, 2004 in the amount of US\$10,000.00 and then again US\$10,000.00 paid on October 13, 2004. He hand delivered the two receipts signed by Cleopatra Davies and Betty Chea, to Mr. Gbollie upon his return from the United States.

On the cross examination the witness was asked whether he was certain that Betty Chea signed the receipt.

Ans. When I made the payments in the presence of Cleopatra Davies and Betty Chea on the two separate dates, I was told that Betty Chea could not write. So the receipts were made by Cleopatra Davies with Betty Chea touching the pen as a sign of attesting to both receipts.

Ques. Mr. Witness, you want to convince this court that if an individual holds a pen that presupposes that he signs the receipt?

Ans. Well, I am not legally minded but I was told by my parents that those are signs of attesting to any agreement in any proceeding. So I therefore accepted it.

Ques. Mr. Witness so in other words, will I be correct to say Cleopatra Davies signed for the two payments made?

Ans. To be specific, when I made both payments Mother Betty Chea was the one that received the money and counted it, while Cleopatra Davies made the receipts.

Plaintiff/appellee rested with the production of both oral and documentary evidence. Defendant's (Betty Chea and Will flyn) counsel had their witnesses qualified. The first witness was William Flynn testifying in their behalf. This is a summary of his testimony. The house in dispute was built by his (maternal) grandfather, Bayou Chea. When he died his mother Betty Chea and her brother (son of Bayou Chea) Borbor Chea took over the administration of the property. They entered into a lease agreement with one Mr. Joseph Gbollie in 1980 for the house, now in dispute. Mr. Gbollie paid his rental for few years and then left for the United States where he stayed for a long time. He came back in 1997 for the general elections. The Chea family confronted him about the payment but he quickly left after the elections and went back to the United States. Borbor Chea died that same year. So his sister Betty Chea decided in the same year, 1997 to bring in her niece Cleopatra Davies to join her in her late brother's place to administer the estate. Sometime in 1997 Mr. Gbollie sent the family word that he would be coming to make the rent payments due. When he came in 2003 to participate in the elections, he refused to pay the rent. So they sued him in the Debt Court and won. He

was evicted from the house. After a few months Cleopatra Davies, co-administratrix, went to Johnsonville and informed the family that someone was interested in leasing the building and that the man was in the United States but that he had a middle man in Monrovia. A few weeks thereafter Cleopatra went back to the family in Johnsonville and informed them that the man in the United States had sent \$3000,00 and would pay the balance when he come to Liberia.

Cleopatra began renovation work on the building. When the family found out and asked she said the man would soon be coming from the United States to settle everything. It turned out there was no other man coming from the United States but Mr. Ciapha Gbollie, whose brother Joseph Saah Gbollie had earlier been evicted from the premises. The Chea family felt betrayed by the coadministratrix Cleopatra Davies. Mr. Ciapha Gbollie was by then already in the building. When asked how he got in the building, he said they should ask their administratrix Cleopatra Davies. At first he begged the family to let him stay after the eviction of his brother Joseph Gbollie. But they refused. They told him to bill them for the renovation and that they would pay. To their surprise he showed them documents to prove his ownership to the property allegedly through a sale agreement, letters of a administration, administrator deed, all executed by and between him and Cleopatra Davies. While the family was living in the house Mr. Gbollie went upstairs and demanded that they vacate because the building was now his through a legal purchase. He put a sign outside, flying sheets stating that he Ciapha Gbollie was the owner of the building. The family refused to move and told him to go to court. "Why Mr. Gbollie, you have known this family for the past 20 years, why did you not go to the old people if you wanted to do business with them but you instead decided to do business with Cleopatra Davies. So go to her for your money because this property belongs to 75 children, grand children, and great grand children." The witness Betty Chea asked and he got vexed and went to the police station. The police commander asked him to show proof of his claim. He showed the documents Cleopatra Davies executed to him. The witness referred to the documents as fake and forged.

The witness went further. He said that Cleopatra Davies was his cousin, that she and his mother Betty Chea were administering his grandfather estate located on Center Street but that Cleopatra Davies went unknown to the rest of the family and obtained letters of administration in 2001 to administer the estate alone even though the co-administratrix, his mother Betty Chea, was alive and well. He said that while he was inspecting the documents of Mr. Gbollie attached to his petition for summary proceeding to recover possession of real property, he saw a copy of the letters of administration that was granted to his mother, Betty Chea. The presence of that

document as one of Mr. Gbollie's exhibits to prove his claim to the building was proof that Mr. Gbollie was aware of the fact that Betty Chea was co-administratrix but that he chose to do business with Cleopatra Davies only. The witness concluded that Mr. Gbollie and Cleopatra Davies went into the family files and extracted documents and that was wrong. The witness identified all the documents he had testified to.

The only questions of substance in the cross examination were the following:

Ques. Mr. Witness, it is my understanding that when the dispute over the property began there were four separate and distinct meetings had, all of which you attended in resolving this house matter?

Ans. I do not know where this counsel is reading from my testimony saying that I told this court that we had four separate meetings in resolving the dispute. I said, if I can recall, in my testimony that Cleopatra Davies came to Johnsonville for a meeting with the family, to tell the family that a man from the United States of America wanted to lease the building. Another incident I can recall was the meeting held in counsellor Abdulai's office with CIIr. Augustine Fayiah, Frederick Taylor and some members of the family. So I don't know where he took his court's minutes from.

Ques. Mr. Witness please tell this court exactly the purpose of the meeting you attended with Atty. Frederick Taylor, CIIr. Fayiah, and CIIr. Abdulai.

Ans. At CIIr. Abdulai's Office Cleopatra Davies was present, my mother Betty Chea was present and the other family heads were present. In that meeting Madam Davies explained her individual interaction with Mr. Gbollie and she definitely stated in the meeting that the family was not aware of the transaction and all the family members agreed that Mr. Gbollie should go and bring his document and his receipts from the other building so that the family can find a way out to get him out of the building.

Another witness for the defendants was Jennie Davies, daughter of the defendant Betty Chea. Her testimony collaborated the testimony in chief of William Flyn the co-defendant. She however said that she knew the petitioner/appellant, Mr. Ciapha Gbollie when he was living with his older brother Joseph Gbollie, when he was their tenant on Center Street. She said that in 1982, her mother Betty Chea and her brother Borbor Chea while administering her grandfather Bayou Chea's estate, they entered into a lease agreement for 25 years with Mr. Joseph Gbolli, brother of Ciapha Gbollie. Mr. Joseph Gbollie left for the United States. By then he had paid duly two years rent. In 1996 her uncle Borbor Chea, co-administrator, died. Her mother Betty Chea brought

in her niece Cleopatra to co-administer the estate. When Mr. Joseph Gbollie returned to Liberia, the family took him to court in an action of debt. They won the case and Mr. Joseph Gbollie was evicted and the building turned over to the family. By then Mr. Ciapha Gbollie was using the building as his party headquarters and was begging the family not to drive him out. Not long after the debt case Cleopatra went to the family in Mount Barclay, Johnsonville and told them about a man in America who was interested in leasing the other house. Later she told them the man in America had sent US\$3000.00 through his middleman in Liberia and that the family should start thinking about how much the lease amount would be and that upon the arrival in Monrovia he would settle with them. But then the family noticed that Cleopatra was renovating the house. She said the renovation was necessary because the man from America would be arriving soon. It turned out there was no man coming from America, it was the same Mr. Ciapha Gbollie whose brother Mr. Joseph Gbollie had been evicted from the other house, who was begging the family to allow him to stay. When the family saw him in their house, the co-administratrix Betty Chea went to him and asked how he got in their building. He said she should ask their administratrix, Cleopatra Davies. Three weeks after Mr. Ciapha Gbollie the petitioner/appellant moved in the building, he started operating his business. His lawyer CIIr. Fayiah cited the family to a meeting the outcome of which meeting was that Mr. Ciapha Gbollie should move out of their building and that whatever money he spent for renovation would be refunded. Thereafter, the building, subject of the debt action, which had been turned over to the family and some family members were occupying, became a topic for discussion and conflict. Petitioner/appellant Mr. Ciapha Gbollie went upstairs one day and told the occupants, defendants/appellees herein to leave his building; that he bought it from the administratrix, Cleopatra Davies. He posted leaflets as notice to the effect that he was the owner of the building. The witness testified and said, "she, that is Betty Chea, told him that as far as we are concerned this building is owned by four (4) family heads. Cleopatra Davies alone cannot sell this building." A few days later he took my mother Betty Chea and my brother William Flyn to the police station but the police did not back him. So he filed this case against my mother and brother to put us out of the building. When we saw the papers from the court, Mr. Gbollie had attached, his administrator deed but not copy of any letter he claimed he had written to my mother and brother asking them to move from his house. My mother Betty Chea, my brother William Flyn and I decided to check the estate files to see if there were any letters or payment receipts. Surprisingly to us there was the letters of administration issued to Cleopatra Davies alone, apart from the letters of administration issued in their joint names Betty Chea and Cleopatra Davies. We also saw two (2) decrees of sale issued by the Probate Court; one for the Bayou Chea property in the Stephen Talbert Estate and the other for the Center Street property." The witness identified and confirmed the

documents mentioned in her testimony.

On the cross examination counsel for appellant prevailed on the witness to admit that some of the facts she testified to were not of her own certain knowledge but were told by her mother. He then followed up by posing this question:

Ques. Madam Witness, by that answer, that is, that you said "yes" to, everything spread on the records was disclosed to you by your mother for which you are in court to say exactly what your mother told you about the property now in dispute, am I correct?

Ans. No.

Ques. Madam Witness, before this matter ever came to court, in which you confirmed that the family raised eye brow for the plaintiff taking over the property, by that confirmation, please tell this court if you can remember whether there was any meeting that you attended prior to the matter coming to court?

Ans. Yes.

Ques. Madam Witness, by that answer please say if you can remember the purpose of the meeting and your role, if any, in the meeting.

Ans. We had several meetings. The first meeting that was called by his lawyer, Ciapha Gbolli's counsel, Cllr. Augustine Fayiah where he said that Ciapha Gbolli should remain in the building and the family said no. the second meeting was in Mount Barclay, Johnsonville, where Cleopatra Davies told the family that a gentleman from the United States of America had interest in leasing the other building.

Ques. Madam Witness, please tell this court who all were present at the first meeting

Ans. His lawyer, Augustine Fayiah, Ciapha Gbolli himself and his followers whose names I did not know but I know their faces, my mother Betty Chea, my cousin Cleopatra Davies, my brother William Flyn, my cousin Newel Brown my cousin Mark Chea and my cousin Joe.

Ques. Madam Witness you testified and identified and confirmed documents before this court, had spread on the minutes of this court about a lease agreement that you know of. Please tell this court if you can remember, how much money, that is to say, what percent of the total lease payment that you know of, was paid in your presence

or that you heard of?

Ans. The lease I made mention of in my testimony, I said that Cleopatra Davies called a meeting in Mount Barclay and told the family that a man in the States had interest in leasing one of the buildings. Later on, she came to the family and said that the man had sent US\$3000.00 through a middle man. That was the money Cleopatra took to the family in Mount Barclay

The other witness for the defendants Cleopatra Davies, the Centerpiece For all that transpired in this case was subpoenaed by the defendants to produce the original copies of all the documents marked and admitted and to testify. When she took the stand she said that she could not find the originals but thought they might be in the Probate Court. Below is her testimony in chief:

"Ans. As far as I know I have known Ciapha Gbollie and his brother as tenants in our house. It was 2005, August, 2005, I cannot remember the date but I can remember the month and the year, when Ciapha Gbollie came to me and expressed his desire of buying one of our houses and when he contacted me I also told him to meet the four heads of the family. We are four heads that own the property, which Mr. Ciapha Gbollie know. After expressing his interest I told my brothers about Ciapha Gbollie intention, they also in return told me to contact the other people, family members because we are four (4) different groups that own the property. He then told me that he will do it thru me since I was one of the administrators. When I contacted my Aunt, she told me no, that she will not agree, she can only lease the house and I came back to Ciapha Gbollie, but Mr. Gbollie said I could use my influence because I was one of the important persons in the family. He then contacted his lawyer, Counsellor Faiyah and Faiyah came to me to inquire about the property, CIIr. Faiyah asked me three (3) questions: how many administrators are controlling this property. In the presence of Ciapha Gbollie I told him we were two persons as administrators. Then he asked how many persons own this property and I said we are four (4) groups of persons own this property. He said have you met the other people? Ciapha Gbollie then intercepted and he told his lawyer that he has been knowing the family over 25 years ago. The lawyer went on to say because of the length of time, that Ciapha Gbollie and the family have been transacting he has not been involved in the transaction. In that same August, Ciapha Gbollie sent the amount of US\$10,000.00 by Mr. Karnga. When Mr. Karnga brought the money at the house on Center Street, Mr. Karnga met my brother and me. He then told me Ciapha Gbollie has sent the first face of the money and he asked my brother to get outside of the room, where we were. It was Mr. Karnga and myself that remained in the room. He said in making the receipt you should please sign for you and your

aunty and which I did. I made the receipt in the name of my aunty and myself, she was nowhere around at the time. Then, in September he also sent Mr. Karnga and gave him the amount of US\$5,000.00 at the offices of LIMINCO where I went to collect the money. It was then, Mr. Ciapha Gbollie was in the United States of America, he was only present in Liberia when the first money was paid. Then when he came back from the United States of America, I cannot remember the month, he continued the transaction but Mr. Karnga was no longer in the business again. At the final payment of the money which amounted to the US\$50,000.00, the selling price of the building, the balance amount of money was US\$7,000.00 paid at CIIr. Faiyah's office, at which time my brother and I signed the documents. As far as this is what I know."

On the cross-examination some pertinent questions put to the witness and the answers thereto were the following:

Ques: Madam Witness, you told this court that Mr. Gbollie approached you and expressed his interest in buying the house. You went and consulted your aunty Betty Chea who said "no" to purchase or sale but could have agreed to a lease agreement. If your intent of executing the so-called deed was to rob the rest of the family, why did you have to consult about your aunty's interest to purchase the subject property?

Ans: Again I say and I continue to say that at no time my aunty was consulted as to the property.

Ques: Madam witness, please tell this court if you can name some of family members who were involved in your admitted tricks and fraud.

There was objections raised to this question: a. incriminative, b. merely asked to the entrap the witness. But the Judge overruled the objections.

Ans: Again I said in my testimony, we are four (4) family heads on the property, it was me and my brother signed all the documents that we gave to Mr. Gbollie. My brother and myself are one group of people.

Ques: Madam witness, please state the name(s) of your brother or brothers who was or were involved in this transaction with you.

Ans: Mr. Neweh Brown, Joe Martala, Suku Matala, Mac Chea. Secondly according to our family structure each head is represented by one. The heads are Cleopatra Davies, Betty Chea, Evelina Chea and Oretha Chea according to the paper we got from the

probate court.

Ques: Before taking the stand you kissed the Bible and took oath that you will tell the truth and nothing but the truth. Do you still want God to help you for the testimony you are giving today?

Ans: God being all of us helper, I am saying the truth and nothing but the truth and so help me God.

On the re-cross-The witness was directed to clarify this portion of an answer.

Ques: "" Your Honor I want to make some clarification. My aunty Betty Chea and William Flyn and Mr. Ciapha Gbollie deed deprive rest of the family. There was no Ciapha Gbollie met any of the family members." Madam witness, what you meant to say with respect to the ending portion, that is to say deprive other family.

Ans: In my testimony I said Ciapha Gbollie told me that we should go ahead with the "deed" or "deal" because I was one of the administratrixes; that there would be no problem and because of that I did (not) consult any family members. I think this was what I meant.

After the arguments pro and con, the parties submitted the case to the trial judge for ruling. On November 12, 2008 Judge Yussif D. Kaba ruled in favor of the defendants and denied the petition for summary proceeding to recover possession of real property. To this ruling appellant/petitioner noted exceptions and announced an appeal to this court of last resort on a seven (7) count bill of exceptions.

In count one of the bill of exceptions counsel contended that the trial judge made contradictory statements in his ruling. For example that in one paragraph of the same ruling the judge said, "that there was no evidence showing that during payment of some of the proceeds for the building, Betty Chea was present, neither is her thumb print on the instrument (receipts) since she is an illiterate nor was there any witness produced to testify to prove that she was present." At the same time the judge said in another part of the ruling this, "According to the evidence produced by the petitioner, subsequent payments were made by his agent Garmodeh Karnga to the administrator and Betty Chea, and receipts were also issued in acknowledgement of those payment." In our opinion the judge by so ruling meant that besides the person who made the payments, there was no one else to prove that she Betty Chea was present when the alleged payments were made, considering the fact that Cleopatra Davies who wrote the

receipt, in her sworn testimony said that her aunty Betty Chea was nowhere when the receipts were signed. There was no contradiction and therefore exception is not sustained.

In count two of the bill of exceptions, appellants excepted to the judge's statement that, "Neither is her thumb print placed on the instrument since she cannot read..." even though the issue was never raised by respondent." According to the case file the issue about Betty Chea been an illiterate was raised in several ways by both the respondent and petitioner/appellant. Betty Chea's illiteracy was an undisputed fact in this case. It was common knowledge that needed not to be ignored by the judge. Appellant himself said that he had known the Chea family for many years; he and his big brother Joseph Gbollie dealt with Betty Chea after the death of her brother and that when they did business with her they themselves prepared the receipts because she could not write. Also the witness for plaintiff, Mr. Karnga said that when he paid the US\$10,000.00 Cleopatra Davies wrote the receipt while Betty Chea touched the pen as a symbol of her acknowledgement or approval. Judge Kaba in his ruling was saying what is the practice in this jurisdiction, that for a document to be legally executed by an illiterate person, his or her thumb print must be marked where the signature should be and not by his or her touching a pen while somebody else does the writing. The necessity for the thumb print is obviously, to prevent fraud. Judges must take cognizance of the law. There was no error committed by the trial judge noticing that the thumb print of Betty Chea who was alleged to sign the two receipts was even present and when her name was written on the receipts by Cleopatra Davies.

In count three of the bill of exceptions appellant assigned as error when the judge stated the following; "The court also takes judicial notice of the records most especially the exhibits before this court. This court is left to wonder on the date this sale agreement for this property was executed. On the Notary certificate the date thereon is March 30, 2004. It was probated by the same judge acting in the Probate Court on the 3rd day of April 2004, but yet the said agreement was signed on the 30th day of November, 2004 (not 2005 as mistakenly stated in the quotation), more than four (4) months it was probated and registered," when neither of the parties raised this issue. First of all we did not expect appellant to raise that issue, it been damaging to the legality of the sale agreement. The adage which says that judges do not raise issue, they pass on issues raised because courts do not do for parties what they ought to do for themselves is all too familiar. However, when a judge sits both as judge and jury deciding issues of law, and facts, finding the facts such as in this case of summary proceeding to recover possession of real property, the kind of case that is heard and decided by the court without the participation of a jury, the judge has a responsibility

to take judicial cognizance of not only the law but the facts presented in the case. In the case at bar the parties exhibited documentary evidence in support of their allegations. Had this been an ejectment suit all the documentary evidence admitted would have been submitted to the jury for examination in their fact finding effort. And because in this case the judge is also a fact finder he must examine all the documentary evidence proffered for his judicial notice in order that he may arrive at a just and legal conclusion. Now during his inspection if he discovers a notary certificate that is attached to a document that was intended to authenticate the execution of the document to which it is attached, flawed, such as the Notary Certificate herein, must the judge ignore, Passover, dismiss or cover up flaws in documents presented for his determination on ground or fear of breaking the rule that judges do not raise issue? We hold that when a judge sits in summary he/she assumes a dual personality, a judge, to decide law issues and as a jury to find the facts. In the case at bar the judge in inspecting the documentary evidence that were presented and admitted into evidence to be used in his fact finding process, found that the Notary Certificate had been executed months before the agreement of sale was executed. It is a requirement under our law and sue in many other jurisdictions that all legal documents factually based and executed between parties be notarized by a competent notary public. The notary certificate attached to the executed document is the proof that the requirement has been met, meaning that the attached document is authentic. When a notary public issues the notary certificate he/she is certifying that the parties sign their signatures of approval in his/her presence thereby confirming that the document; subject of the certification, is their voluntary act or undertaking.

"A notary public is a person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures..." Black's Law Dictionary, Eight ED. P. 1087.

The affordsaid been the law and practice, how could the judge in this case who was clothed with the authority to find the facts in this case not examine the very agreement of sale the appellant proffered in support of his claim that the property was his by lawful purchase and that the defendants were withholding it wrongfully? Also, how could the judge accept the agreement of sale as a legally executed document without inspecting the accompanying notary certificate which alone is by law required as proof of the authenticity of the sale agreement? By inspecting said notary certificate the judge discovered that the notary public had the parties swear to the authenticity of the document four months before the parties affixed their signatures to the agreement of sale. Such a major flaw, a flaw that rendered the sale agreement not legally executed could not have passed unnoticed by any serious fact finder.

Appellant, who obviously did not expect the judge to have noticed or to be so meticulous, now says the judge should have remained silent since the appellee did not notice or noticed but did not care to raise the issue. But could the judge have ruled that the parties had a valid sale agreement and by so ruling award plaintiff/appellant the real property on the ground that defendants/appellees did not raise the issue? We hold no. the judge by observing the flaw proved how diligent and fastidious he was in his fact finding task. He deserve better than the error assigned; for if the said judge had kept silent and allowed the notary certificate serve as legal support for the authenticity of the agreement of sale he would have been censured in this Opinion. In our opinion, no judge, who is worth his salt should ignore the law and by so doing lend aid to the crucifixion or miscarriage of justice. A judge must take cognizance of the law in the interest of justice when the parties carelessly or deliberately falter or slumber. Said count of the bill of exceptions is overruled.

In count four (4) of the bill of exceptions appellant took exception to the judge's ruling in which he said that appellant should have negotiated the sale of the property with the four (4) family heads. Under the decedent estates law, counsel for appellant argued, appellant negotiated with the administrator duly appointed, by the Probate Court, and not the family heads. That argument is true but it contradicts appellant's incessant contention that all the family member's were aware of the sale, they all shared the money, Betty Chea signed the receipts, some family members were called to sign the agreement of sale under a caption:

Also attaching are the beneficiaries of the interstate estate of the late Bayou Chea

NAME

Mac Chea

Emmanuel Matadie

Joe Matadie

Mr. Nathaniel Cheal

Appellant also made sure that the same family members listed supra on the sale agreement were the same who signed the final cash receipt for the full sum of US\$50,000.00 the aim being to prove that the family members were not only informed but participated in the transactions. So for the same appellant to now argue that the decedent estate law does not require him to negotiate with the four (4) heads but only with the administrators, we wonder why then did the appellant involve some of them instead of dealing only with the sole administratrix Cleopatra Davies, and has put so

much emphasis on the fact that Betty Chea signed the receipts? And, who were the administrators duly appointed by the Probate Court? So by allowing Betty Chea to sign the receipts he was admitting that Betty Chea was one of the authorized administratrixes of the estate? And if she was, why then was her name not written on the agreement of sale, not written on the final cash receipt, and not written on the administrator deed? Judge Kaba's question why appellant did not negotiate with the four (4) family heads for the purchase of the property was a legitimate observation, because the dispute now before court was initiated by the other family members that were left out of the negotiations to sell the property. Had he negotiated with all instead of only Cleopatra Davies' branch of the family and obtained their consent and approval for the sale there would have been no need or cause for litigation. The circumstances out of which this sale of the property was consummated triggered the inquiry, why did the appellant obtain the consent or approval of some, and not of all the family members, especially the consent of Betty Chea, one of the children of the deceased? There can be no error assigned to the question that was posed by the judge.

In count five (5) of the bill of exceptions appellant assigned error to the judge's remark, "Another area that attracted the attention of this court, in the file there is a decree for the closure of this estate over the signature of Her Honor Amymusu Jones dated 27th October 2004. Yet the administratrix proceeded to issue a deed in the name of the closed estate on the 28th day of April, 2005. What an anomaly! How can an administrator of a closed estate proceed to act for that estate?" Appellant argued that the issue was never raised by either party to the case. Therefore appellant's exception.

If, as the appellant says, the issue about the closure of the estate and the subsequent execution of appellant's deed in the name of said closed estate was never raised by either party to this dispute, we wonder how the decree for the closure got before the jury, in this case, judge Kaba? The records reveal that appellees/defendants made profert of the decree declaring the estate been closed on October 27, 2004 under the signature of Judge Amymusu Jones and at the instigation of administratrix Cleopatra Davies in count eight (8) of their returns to petitioners petition. The administrator deed, was executed after the estate had been declared closed. These two documents were made profert in support of the parties contentions. Can we now agree with the appellant that the judge for whose persuasion the documents were exhibited in the pleadings ought not to have made the observation during this fact finding process? We hold no as we did when we disposed of count three (3) of the bill of exceptions. The appellees/defendants exhibited the declaration of closure of the estate, the plaintiff/appellant exhibited his title deed executed by Cleopatra Davies referring to herself as the administrator of the Bayou Chea estate, dated April 28, 2005, six (6)

months after the said estate had been closed. We are in agreement with the judge when he declared, "What an anomaly?" The law and procedure in this jurisdiction is that the issuance of administrator deed(s) should precede the closing of an estate and not the other way around. An estate is declared closed when the administrator reports with proof to the Probate Judge that he/she has completed the administration of the estate matters such as payment of all debts, taxes, partition of all real properties, title deeds are executed, as well as division of personal properties of the deceased and that nothing else remains to be done. This been the practice and the law, it was shocking to Judge Kaba when the exhibits presented for his finding of facts to enable him make a sound decision in this case, and this deed on which hangs appellant's claim to the property, was executed after the estate had been closed. If the judge was not authorized by law to pass on the validity of these exhibits, why then were they made proffered, testified to, identified, marked, and admitted into evidence. Would the appellant have objected, if this instrument had been submitted to a jury for instance in an ejectment action, on the ground that the parties did not raise the issue? We hope not. It has been repeatedly stated in many opinions of this court that in a trial by jury under the direction of the court the province of the judge is to decide the issues of law and admit the testimony into evidence. But what weight or credibility is to be given to the evidence so admitted is the province of the jury. We need not support this by listing a litany of citations, same been a matter of common knowledge in this jurisdiction. In the case at bar, the trial judge served both as judge and jury. And as such he was authorized, and rightly found, that the deed submitted was executed after the estate had been declared closed and that was an anomaly in our Probate Court procedure and law.

In count six (6) of the bill of exceptions the appellant assigned this as error: "that the judge denied petitioner's petition on the ground that petitioner failed to produce witnesses to testify that Betty Chea was present during payment of the money for the purchase of the property even though on sheet six of April 29, 2008 and sheet two of April 3, 2008 minutes of this Honorable Court petitioner and Rev. Karnga made two separate payments of ten thousand United States dollars (US\$10,000.00) each without corroborative rebuttal from respondent." The testimony of the petitioner regarding the payment of US\$10,000.00 on two separate occasions and that Betty Chea was present is a narration by the petitioner of what Rev. Karnga told him since in deed and in truth the petitioner was not present at the time the payments were made. The petitioner's testimony therefore has no probative value as far as that issue is concerned. The only other testimony concerning the payment was that of Rev. Karnga who made the payment. What the judge said was that appellant produced no witness to prove that Betty Chea was present, and rightly so because as had earlier been made public in this case, Betty Chea is an illiterate old lady. Her name was written on the receipt by

Cleopatra Davies. Had her thumb print been impressed on the receipt there certainly would have been no successful denial, that Betty Chea was present. But more damaging to this allegation about Betty Chea been present and that she accounted the US\$10,000.00 while Cleopatra Davies wrote the receipt as stated in Rev. Karnga's testimony is the categorical denial of Cleopatra Davies in answering a question on the cross examination. Here is the question and also the answer:

Ques. Madam Witness, on September 29, 2004 plaintiff Ciapha Gbollie met you and your aunty Betty Chea at your shop on Center Street and introduced to you Rev. Karnga as someone to liaise with you and your aunty since he was travelling out of the Town am I correct?

Ans. It is false and misleading. There was no time Ciapha Gbollie introduced Mr. Karnga to us. As I stated in my testimony, Ciapha Gbollie called me on the telephone saying that he was going to sent the money by Karnga, and there was no time Rev. Karnqa met my aunty and myself, if he is fair of what he is saying..." The rest not clear. (Emphasis ours).

So if there was no time that Rev. Karnga met Cleopatra Davies and her aunty Betty Chea, what other proof was offered by appellant to substantiate the allegation that Rev. Karnga met with Cleopatra Davies and Betty Chea and the two women received the money? She being an illiterate, her thumb print was not on the document and there was no indication that at her request someone signed for her. The best evidence to substantiate that Betty Chea was present when Rev. Karnga made the payment would have been produced by Cleopatra Davies who however, categorically denied Rev. Karnga ever meeting with her and her aunty Betty Chea? So how did appellant establish that Betty Chea was present when the two payments were made? He did not. The judge was therefore not in error when he said appellant/petitioner did not produce proof of Betty Chea's presence when the payments were made.

On the issue of the presence of Betty Chea when the two payments were made, we found it necessary to sort out and resolve some issues. First of all why is the presence of Betty Chea unimportant, when the first two payments were made but not an issue when the balance US\$30,000.00 was paid? We observed that the final receipt was signed only by Cleopatra Davies with a listing of a few names who are said to be the family members of the deceased, excluding Betty Chea, the daughter of the deceased. Does the inclusion of Betty Chea's name in some transactions and her exclusion in others signify something? If her name was significant to be seen on the first two receipts why was her name not on the sale agreement and the deed, on the strength of which

documents appellant's claim to the property hinges? Little surprise that Cleopatra Davies, stated in her testimony that the intent was to deprive the other family members, including Betty Chea of their property.

Yet the appellant has put emphasis on this allegation that Betty Chea was present at all meetings and approved of the whole transaction and could no longer deny the fact, because they all shared the money. We saw no proof that they all shared the money.

We wonder why appellant did not procure the testimony of any of those several family members he claimed were aware of every transaction especially some or any of those whose names he listed on the sale agreement and on the deed as witnesses? But more than these why was Cleopatra Davies not called as a material witness since it was she the appellant meanly interacted with every step of the way to the conclusion of the deal? These are some of the unanswered questions this case admit of.

In count seven (7) of the bill of exceptions appellant noted error was committed when Betty chea, one of the defendants in the case, after she had been sworn to testify, walked out of court without doing so and the judge allowed her decision not to testify. In this jurisdiction there is no law or rule that says that a defendant or a witness once qualified as a witness is compelled to testify. The right of a defendant to have his/her day in court is a constitutional right but said right can be waved. A judge in a trial can only compel a witness who is on the stand to answer a question provided it is not incriminating. But he/she cannot compel a defendant to take the witness stand and testify on his/her behalf if he/she decides not to testify. If the appellant needed Betty Chea's testimony to establish or prove his case she could have been subpoenaed. Appellant having failed to take advantage of the remedy provided by law, he cannot assign as error the fact that the judge did not compel the defendant to testify in her own defense.

This case is a classic example of business dealings done in bad faith. It is a case in which the major participants, in their endeavor and design to take advantage of Betty Chea's lack of education, tried to dispossess her of her father's property. The major participants referenced herein are the appellant and the co-administratrix.

In their effort to take advantage of Betty Chea's incompetency because of her illiteracy, and dispossess her and the other family members, of their property, they connived to set her up by adding her name to the receipts to serves as evidence of her involvement in the transactions. But they knew that if they had her to sign, an illiterate person, on the sale agreement and on the deed, her thumb print would have to be the proof of

her participation. And how could they obtain her thumb print since they did not want her to know about the sale of the property? So Cleopatra, now been caught in her tricks which she said Mr. Ciapha Gbollie masterminded, either by some guilt of conscience or act of God, or may be because she was now caught in her tricks and finding no avenue of escaping from the wrath of the betrayed family members, had but one option, to confess that Betty Chea and the other family heads were not involved in her transaction leading to the sale of the disputed property. By that confession, and the fact that the deed itself, by being executed after the estate had been closed, and the sale agreement being unauthenticated and the two documents not been signed by Betty Chea, the co-administratrix, all of these factors rendered the enforcement of petitioner/appellant's petition to recover possession of real property legally, unauthorized. In *Railey and Montgomery v. Clark*, 10LLR331, (1950) this court emphasized "that where a dispute arises over title to real estate, a deed is the best evidence to settle said dispute or to prove in whom title to said property is legally vested. Moreover, hoary with age is the principle that in contests of this nature a party recovers or succeeds upon the strength of his own title and not upon the weakness of his adversary." Appellant in reliance on his agreement of sale and the deed subsequently executed, probated, and registered in the archives, proceeded to evict the defendants. The documents presented in support of his claim to ownership, having been invalid, his title must crumble. There was no other proof sufficient other than the deed which is usually the best evidence of title to property.

The performance of the Probate Court in this estate matter was not only substandard but questionable. It is worth repeating that the Probate Court is the court authorized by law to protect all interests in decedent estates, intestate as well as testate. In this particular estate matter, the Probate Court under both Judge John Greaves and Judge Amymusu Jones, failed to exercise the due care required under the probate statute. In the case of Judge John Greaves he granted letters of administration to Betty Chea and Cleopatra Davies to administer the Bayou Chea estate in 1997. While said letters of administration was in full force and effect, he granted another letters of administration to Cleopatra Davies solely, to administer the said estate without any record of a revocation of the prior document, or that the co-administratrix Betty Chea had died, or was absent from Liberia never to return, or was in any otherwise incapacitated. Courts must take notice of their own records. This the judge did not do.

Similarly, Judge Amymusu Jones upon petition filed that Betty Chea be rejoined with Cleopatra Davies to administer the estate in view of what Judge Greaves had done, Judge Jones granted the petition and appointed Betty Chea to co-administrator the estate along with Cleopatra Davies. But surprisingly, after granting the letters of co-

administration to Betty Chea Judge Jones issued two decrees of sale to Cleopatra Davies alone, without the co-administratrix Betty Chea, to sell two pieces of estate property including the subject of this dispute. But not only that, on the day following the issuance of the two decrees of sale, Judge Jones declared the Bayou Chea estate closed. Months after the closing of the estate Cleopatra Davies executed a sales agreement between herself and appellant, and an administrator deed to the exclusion of her co-administratrix, thereby illegally transferring title to appellant.

Wherefore and in view of all the irregularities and illegalities that attended the acquisition of this property, it is our opinion that the administrator deed on which the appellant relied to support his summary proceeding to recover possession of real property was unlawfully and irregularly executed. Said administrator deed from Cleopatra B. Davies to Mr. Ciapha Gbollie is therefore hereby declared an invalid instrument. We therefore confirm the judgment from which this appeal was taken.

The Clerk of this Court is ordered to instruct the court below to resume jurisdiction and enforce this judgment. This judgment does not however preclude appellant from availing himself of any other legal remedies to restore himself. IT IS HEREBY SO ORDERED.

JUDGMENT CONFIRMED.

Counsellor J. Laveli Supunwood appeared for the Appellants while Counsellor Charles Abdullai of the Watch Law Chambers appeared for the Appellee.