

The **Heirs of the late A. Klay Yuoh**, Represented by and thru Sie-A-Nyene Yuoh,  
Counsellor-at-Law of the City of Monrovia, Liberia APPELLANTS VERSUS **Sadou**  
**Sow** also of the City of Monrovia, Liberia APPELLEE

APPEAL

HEARD: MAY 4, 2005 DECIDED: AUGUST 16, 2005

MR. CHIEF JUSTICE COOPER DELIVERED THE OPINION OF THE  
COURT

This is a suit in equity brought by the Petitioner (Appellee) to remove cloud and quiet title to a parcel of land located at Mamba Point, Monrovia, Liberia, that Petitioner purchased in 19.89 from Catherine Johnson Thomas. A principal question on appeal is whether the Judge of the trial court correctly ruled in ordering the issuance of the Writ of Possession in favor of Appellee and the enforcement of same against Appellants/Respondents.

The facts of the matter are as follows: In September 2000, the Appellee sued in equity in the Civil Law Court, 6th Judicial Circuit, Montserrado County, to remove cloud and quiet title to the parcel of land in question. Attached to the Petition is copy of a deed executed on May 10, 1989, and duly probated and registered, transferring to Appellee the parcel of land comprising "0.8 lot of land and no more". A Surveyor's diagram on the back of the Deed showed the land of Appellee to be adjacent to an exact parcel of land owned by A. K. Youh, now deceased.

The records show that by Deed executed by Danielette Johnson Ajavon on November 28, 1955, the late A. K. Youh had acquired by purchased the adjoining 0.8 lot of land on which he constructed a residence and lived therein with his family during his lifetime.

The records also show that both Catherine Johnson Thomas and Danielette Johnson Ajavon had acquired the two adjoining parcels of land in question from the same source property of the heirs of the late F.E.R. Johnson which had been divided amongst the heirs and subsequently sold by the two grantors herein to Appellee Sow and the late A.K. Youh; respectively. The records further show that a mistake had been made in the numbering of the parcel of land on the Deed of Appellee, which mistake had been ordered corrected by the Circuit Court, so that at the time of the filing of the suit, Appellee's corrected deed was for lot #88 A/5,, and the A.K.

Youh's deed was for lot # 88 B/4, Mamba Point, Monrovia, Liberia. It is not disputed that both deeds are for adjoining parcels of land in the old F.E.R. Johnson estate, Mamba Point, Monrovia, Liberia.

Appellee alleged that the heirs and legal representative of the late A.K. Youh obstructed him from operating on his' land by the intervention of private lawyers as well as the Ministry of Justice; that a concrete fence constructed by him on his property was demolished by one of the heirs of the late A.K. Youh (and a barrier is claimed to have been later put at the entrance to the property by the Youhs); and that his invitation sent through his lawyer to the other party to join in conducting a joint survey of the property was ignored. Appellee averred that he then had conducted a public survey sanctioned by the Ministry of Land, Mines and Energy but that Appellants as owner of the adjoining property did not show up at the time of the survey with relevant document(s) of ownership; that the Surveyor completed his work and made a report. Attached to the Petition is copy of the surveyor's report of May 12, 2000, which concluded that Lot No. 88B/4 and lot No. 88B/5 are adjoining parcels of land with a common boundary; that Lot No. 88 B/4 was developed, but lot No. 88 B/5, purchased by Appellee, was free of other claims, except that the Appellants had stopped Appellee from continuing to construct a fence thereon.

The surveyor's report noted that the survey was authorized by the proper governmental authorities and that required notices had been published in the newspapers and read over the radio, one of such notices being hand-delivered to one of Intervenors, but that no one with any opposing claim to the property had shown up for the survey, which had to begin late because of waiting for any opposing party to show up. The report also noted that "claims were put in to the adjudication section of Lands, Mines, and Energy [Ministry] in 1982 by the late A. Klay Youh for only lot No. 88B/4 and not lot No. 88B/5, that lot No. 88B/5 is still not developed except for the fence Mr. Sow was erecting and that which Counsellor Youh elected to debar Mr. Sow from entering his property." The report concluded that there was "no serious claimant to lot No. 88B/5 as far as the above observations are concerned." (The obvious inference is that the late Mr. Youh, who died in 1998, may not have been claiming ownership of any property outside the Mamba Point property that he had purchased, at least up to 1982, since the surveyor's report referred to application of the Registered Land Law of 1974, under which land owners in adjudication cases were required to register all claims with the Ministry of Lands, Mine and Energy, for land adjudication purpose.)

According to the records, Counselor Youh had unsuccessfully written a letter to the

Ministry of Lands, Mines and Energy to stop this survey initiated by Mr. Sow.

The records also show that Appellants then initiated a Ministry of Justice intervention against the Appellee on a charge of Criminal Mischief. Appellee alleged in his Petition that he was arrested and detained in prison without any prior investigation and had had to be freed by his lawyer. It was for the above mentioned reasons that Appellee asked the trial court to remove the cloud from over his title to the land he purchased, in order to facilitate his improvement of the same.

The records further show that a Writ of Summons was duly served on one of the heirs of the late A.K. Youh who allegedly refused to accept same, according to the Sheriff's Return; but that Counsellor Sie —A. Nyene Youh, the heir in question, wrote a letter to the trial court Judge, dated October 30, 2000, the day on which the case was assigned for hearing, referring to the case and requesting a postponement for one week in order to consult her lawyer, due to alleged lateness in receiving the assignment. A Clerk's Certificate shows that the heirs of the late A.K. Youh had not filed any Returns to the Petition.

When the case was called for hearing on November 14, 2001, Counsel for Appellants announced a special appearance to challenge the jurisdiction of the court on ground that the summons as well as the notice of assignment had not been served on his clients. After argument pro and con, the trial Judge decided that the summons and assignment had in fact and law been properly served. He therefore ruled Appellants, who had failed to file Returns, to a bare denial, to which ruling Counsel for Appellants duly excepted and gave notice that he would "take due advantage of the principle of law in such case made and provided." No appeal was pursued.

On January 3, 2001, Annie A. Youh, Widow, Watchen Youh, Toh Youh and Tayu Youh, Administrators of the Intestate Estate of the late A.K. Youh, filed a motion to intervene in the case as party respondents, together with Intervenors' Returns/Answer. The records show that Letters of Administration attached to the Motion had been granted by the Probate Court for Montserrado County on November 18, 1998, and that Counsellor Sie- A-Nyene Youh was one of the Administrators of the estate. Counsel for Appellee resisted the Motion to Intervene. In their Returns/Answer, Appellants' main response was that "the subject of the said proceedings before this Honourable Court is a piece of land known and referred to as Block No. 88/84, which said land is part and parcel of the Intestate Estate of the late A. Klay Youh...." They further claimed that their late father had developed his one lot and owned same openly and notoriously, and without any molestation from

anyone, for about forty years up to the time of his death in 1998; that they had had to take the matter to the `Ministry of Justice in order to "avoid a trespass on the property. . . by an impostor or stranger as in the case of the Petitioner who without any color of right tried to encroach on the said property." ( Emphasis added). Appellants also stated that the piece of property in question could not be any property of Appellee in view of the Warranty Deed granting the same to the late A. Klay Youh. It was not until the end of the said pleading that Appellants, in counts 16, 17 and 18 raised what Appellants now term to be a pleading of a claim or defense in the alternative, as follows:

"16. As to count 17 of the petition, Intervenors say that they deny the legal sufficiency of the averments therein contained to warrant any recovery of the subject piece of property by the Petitioner. Intervenors submit that in order to succeed in the Bill of Equity to Remove Cloud, the Petitioner must be legally possessed of the subject of litigation for Bill in Equity to Remove Cloud and to Quiet Title to a piece of Real property can not be successfully maintained by a Plaintiff/Petitioner where the subject is a bonafide and legal property of the Defendants/Respondents. The subject count should therefore be over-ruled and the entire proceedings vacated."

"17. As to count 18 of the petition, Intervenors submit and maintain that assuming without admission that the subject land in question was duly acquired by the grantor of the Petitioner who in turn sold it to Petitioner, thus giving title to Petitioner, the Petitioner is now forever barred from asserting any claim to the said piece of land since by his own willful neglect, and failure to attend to the said property, Intervenors further submit that A. Kley Youh lived on and possessed the said piece of land for over forty (40) consecutive years, notoriously and openly and that the said possession was hostile to the interest of all including the Petitioner and his grantor."

"18. Further to count 16 herein above, Intervenors say that under the doctrine of adverse possession, no court, either in equity or at law can divest A. Kley Youh now the Intestate Estate of the Late A. Kley Yuoh of the subject property which he developed, possessed openly for over forty (40) years without any molestation. Because of this fact, Respondents/Intervenors say that the entire Petition and all the counts thereof should be vacated."

In Reply to the Returns filed by Appellants, Appellee alleged, in response to counts 17 and 18 of the Returns, "that Movant/Intervenors are in absolute legal error for simultaneously pleading fee simple title and adverse possession, when each rights accrues upon a party in a completely different manner, way and situation and within

completely different periods of time. Therefore, Appellee is left in a legal wilderness as to the legal merit and consistency of the plea of fee simple possession, adverse possession and statute of limitation. Petitioner therefore prays for the dismissal of counts 17 and 18 of the Returns and along with it the entire Returns/Answer, with cost against Movant." He also reaffirmed all allegations contained in his Petition.

After a hearing during which both parties were present and argued their case, on July.31, 2001, Judge Metzger granted the Motion to Intervene, concluding his Ruling in the following words:

"A careful inspection of the records in this case revealed that the Sheriff's :Re confirmed the refusal of Cllr. Sie-A-Nyene Yuoh to accept the writ of summons served by Bailiff Joseph J. Jallah. However, Cllr. Yuoh not being the only Administratrix for the said Intestate Estate, and the others not [having] been served, to the mind of this court that can not be sufficient grounds to deny Movants the opportunity to intervene in these proceedings."

"Accordingly, it is the ruling of this court that the Movants' Motion to intervene be and the same is hereby granted; Movants are hereby therefore joined as party Respondents to Petitioner's Petition in these proceedings; and that each party is hereby ordered to present a qualified Surveyor which will be Chaired by a Surveyor from Lands, Mines & Energy to constitute a team of Arbitration in, redemarcating the disputed parcels of land in question on Monday, the 6th day of August A.D. 2001. The Clerk of this court is ordered to communicate with the Minister of Lands, Mines and Energy to provide us a Surveyor for this purpose."

Counsel for Appellee excepted to the Ruling. Counsel for Appellants was present, as noted above, but noted no exception to the said ruling or any action or order of the Judge.

On August 1, 2001, in keeping with the Judge's Ruling, the Assistant Clerk of Court wrote the Director, Bureau of Lands and Survey, Ministry of Lands, Mines and Energy, to designate a "licensed surveyor on Monday, August 6, 2001, at the hour of 2:00 p.m., to serve as Chairman of the Board of Arbitrators..." set up by the Judge, sending copies of said letter to all of the parties.

On August 7, 2001, when Judge Metzger, in the presence of Counsel for both parties, proceeded to constitute the Board of Arbitrators, the records show that Counsel for Intervenors asked for a postponement of the proceedings, alleging that due to his

illness, he had not been able to conclude arrangements with his clients/Intervenors to appoint one arbitrator to the Board of Arbitrators. Over resistance by Counsel for Petitioner, the Judge postponed the hearing. On August 10, 2001, when in the presence of counsels for both parties the Judge again attempted to set up the Arbitration Board, Counsel for Intervenors made the following submission: "Movants/Intervenors respectfully informs court that they have an answer and return to the Petitioner's Petition in which they have indicated that the property in question whether lot No. 88-B or 88-B-4 has been part of the Intestate Estate of the late A.A. Youh about 30 years. Therefore, any claim by Petitioner/Respondent whether the facts are true and correct come too late. Movant asks court to take judicial notice of the answer filed."

"In view of the foregoing, Movants say that they waive the right to nominate any surveyor because any result therein will not alter their position as laid down in the answer. And respectfully submit."

Counsel for Appellee then noted that Appellants had not excepted to the Judges Ruling to set up a Board of Arbitrators and requested the Court to disregard the submission of Counsel for Appellants. The Court being in agreement with Counsel for Appellee, Judge Metzger duly set up the Board of Arbitrators and charged said Board to do its work and report to Court by August 16, 2001.

The Board of Arbitrators proceeded with the survey in the absence of the Appellants or their representative and submitted to the court its findings by Report dated August 16, 2001, as follows:

##### "5. FINDINGS

During the survey, the following points were observed:

- a) The property of the late A. Klay Yuoh i.e. Lot No. 88 B/4 on which Counsellor Sie Nyene Youh is presently residing is fenced;
- b) Lot No. 88 B/5 lies adjacent to and completely outside of the property of the late A. Klay Yuoh. The metes and bounds of the deed bearing the name Sadou Sow did correspond with this area.
- c) Portion of the fence previously erected by Mr. Sow on Lot No. 88 B/5 sometime ago was destroyed. Moreover, a mini basket ball court and a small fence have been constructed on the identical property without Mr. Sow's knowledge. (See attached site

plan).

d) The late A. Klay Yuoh filed claim for only one parcel of land, Lot No. 88 B/4 whose deed bears his name, with the Adjudication Division of the Bureau of Lands and Surveys, Ministry of Lands, Mines and Energy. There is no record of claim for Lot No. 88 B/5 in the said Office in favour of A. Klay Yuoh.

e) Danielette Ajavon, grantor of Lot No. 88 B/4 to A. Klay Yuoh and Catherine Johnson Thomas, grantor of Lot No. 88 B/5 to Sadou Sow are both heirs of the late G.M. Johnson who was the proprietor of the aggregate land area from which these parcels were extracted.

f) As indicated on the diagram carried by the deed, bearing Lot No. 88 B/5, (attached) a portion of G.M. Johnson's aggregate land area was sub-divided among his heirs.

g) Catherine Johnson Thomas sold her portion which was quit-claimed to her by the other Johnson heirs to Mr. Sadou Sow.

h) The two parcels of land, Lot No. 88 B/4 owned by A. Klay Yuoh and Lot No. 88 B/5 owned by Sadou Sow are separate and distinct.

i) A portion of a concrete building at the rear of the disputed land encroaches on same."

The Board concluded the Report by expressing its "Technical Opinion", portion of which we quote as follows: " The actual ground location was found to be in consonance with the quitclaim deed for Lot No. 88 B/5 in favour of Catherine Johnson. This means that the land conveyed to Mr. Sadou Sow by Catherine Johnson Thomas is the identical parcel of land being disputed." It should be noted that according to the Report, they conducted a survey of the property in question according to law and upon prior notice to all possible claimants, but "no one turned up for the survey" during the Board's field work. The Board felt that it should continue with its work and did so, noting that Counsellor Youh had waived "her right to survey representation."

The records show that on August 27, 2001, the Board's Report was presented to the Court presided over by Resident Judge Wynston Henries, who received it and ordered the Clerk of Court to have copy served on Appellants, who were not present or represented in Court, despite notice. (Counsel for Appellee was present in Court).

The Court also ordered that Appellants should file their reaction to the Report within ten days thereafter.

The records further show that on September 5, 2001, Counsel for Appellants filed Information for and in behalf of Counsellor Youh, protesting to the manner of service of the summons for the reading of the Report; but requesting Court to "discard the report as it is unmeritorious, and rule the case to trial and decide same on the merits of the testimonies to be given...." She informed the Court that the report was "vague and indistinct" in parts and that "the mini Basket Ball Court and the small fence referred to [apparently in the Report] are part of the Intestate estate of the late Klay Youh and were constructed over about 30 years ago."

In its Resistance to the Information, Appellee recounted the facts and proceedings in the case leading up to that time. Appellee submitted that Judge Henries as well as Counsellor ,Youh were estopped from raising or passing on issues concerning the report since to do so would require Judge Henries to entertain and pass upon matter settled before by the preceding Judge Metzger, contrary to law which forbids a Judge from interfering with acts of another Judge of concurrent jurisdiction. He therefore requested the Court to dismiss the Information.

It was not until the March Term 2002, under Judge Yussif Kaba, that assignment were sent out for a hearing on the Information. On March 23, 2002, the appointed day, only Counsel for Appellee was present in Court, although the assignment had been duly served and acknowledged by counsels for both parties.

Judge Kaba proceeded with the hearing and, agreeing with contentions on the service raised by the Informant, he gave new order to the Court to again sent the Board's Report out for reactions to be received by court within ten (10) days.

On April 5, 2002, Counsel for Appellants filed their reactions. Appellants stated that (1) they confirm and affirm their Answer>Returns in the main case pointing out that the Youhs "having enjoyed the said property notoriously without any molestation..., the said property, as a matter of law, is their property from which they can not be ousted or ejected;" (2) that the Board's report "is immaterial and irrelevant to their claim in that said report does not state or suggest that Intervenors have not lived on the premises in a hostile manner and notoriously for over 30 years or thereabout;" and (3) for the reason stated they requested the Court to set aside the said report and render judgment in their favour.



The Appellee filed a twelve-count resistance, raising basically the doctrine of estoppel, and also contesting the jurisdiction of one Judge to review the act of his colleague Judge of concurrent jurisdiction. i.e. Judge Metzger, who had previously set up the Board of Arbitrators. It was reasoned that since Appellants were present and had not noted any exception to the ruling/action of Judge Metzger, they should be barred from raising any question concerning the Board's report which was clear enough that Appellants owned one lot only and that Petitioner owned the adjacent lot, and that the two lots so owned by the parties were separate and distinct from each other. He requested Court to disregard the reactions of Appellants, confirm the Board's report and act to remove cloud and quiet title of Appellee.

The trial Judge sustained the contention of the Appellee and ruled that he could not review the Ruling of his colleague Judge of concurrent jurisdiction, and in the same Ruling on May 22, 2002, Judge Kaba ruled on the Technical Report stating, among other things, "[t]hat the two Blocks 88-B-4 and 88 B-5, are separately and distinctly owned by Sie-A-Nyene Youh and the Petitioner. That both parcels of land had a common origin, that is, from the Estate of the late G.M. Johnson, whose heirs Catherine Johnson, sold her portion to the Petitioner and other heir Danielette, sold her share to A. Klay Youh. That the two parcels of land Block No 88-B-4 and No. 88-B-5, share a common boundary and by this facts mistaken in encroachment has been made into each other portion of land. A diagram of the area which is submitted along with the report clearly shows that the two pieces of property/ies are separate and distinct." The court further held, confirming and affirming the "Technical Report" submitted to it by the Board of Arbitration, and ruled that the claim of Appellants to Block No. 88-B-4 is genuine but such claim does not extent to nor include any portion of Block No-88-5; that Block No. 88 B/5 is the property of Appellee as covered by his Warranty Deed from Grantor Catherine Johnson. The court concluded by ordering that the cloud over the property of the Appellee, Block No. 88B/5, be removed and that Appellee be placed in possession of said property. To this ruling the Appellants excepted and appealed to this Court.

The Appellants filed a nine-counts Bill of Exceptions raising, among other things, the following points: that the trial Judge committed a reversible error when he refused, neglected and failed, in violation of the law to submit the facts in the case to a Jury, but instead, had rendered his decision purely on the basis of what is described as the "Technical Report;" that Appellants possessed the disputed property adversely for a period over thirty years and that Adverse Possession usually raises a mixed question of law and fact; and that he further erred when he, and not a jury, determined an issue involving mixed question of law and facts. The Appellants also averred that the

trial Judge committed a reversible error when he refused to take evidence to establish whether they have adversely withheld said property for over thirty years, as claimed.

On July 22nd, 2002, the Appellants completed the filing of their Appeal before this Court by filing Notice of Completion of an Appeal in the court below, thereby placing the matter squarely under our jurisdiction. The case was accordingly docketed and taken up for this Term of Court and the parties were requested to file their briefs.

Both in their brief and during arguments before this Court, Counsel for Appellants contended, that Judge Metzger did not pass on the issues raised in the Returns/Answer but heard and determined only the Motion to Intervene; that the Resistance/Answer and the Petition or Bill in Equity to Remove Cloud and Quiet Title and all the attending pleadings were to be passed upon in the trial of the main suit. According to the Appellants, this was never done due to the fact that Judge Metzger ran out of Term time. They contended that Judge Kaba, the succeeding Judge, committed a reversible error when he held that his predecessor had passed upon the Answer/Return of Appellants.

Appellants further argued that since they alternately pleaded matters relating to the statute of limitations and the principle of adverse possession which are usually issues of mixed law and facts, a jury determination of such issues was required before any final decision could be made to remove cloud and quiet title. They concluded on this point by saying that the trial court was duty bound to ascertain whether or not the Yuohs had been in possession of the subject property for the number of years claimed, and they therefore prayed this Court to reverse the Final Judgment of the trial court and order as follow:

"a. A New Trial be had so that the claim of Adverse Possession and enjoyment put forward by the Applicants can be established; or

b. In the alternative rule affirming Yuoh's Title and Possession."

In counter arguments to the issue regarding the statute of limitations, the Appellee contended that the statute of limitations will not lie because the properties and claims are separate and distinct; and that the matter before this Court is the removal of the cloud over his property, in order to put an end to the constant harassment and detention of his property and to allow him the opportunity to develop his property without molestation and harassment from the administrators and administratrixes of

the late A. Klay Yuoh. Appellee stated that he would have proceeded to file an Ejectment action if the matter were one regarding encroachment on his property. The Appellee also contended that he purchased his parcel of land from Catherine Johnson Thomas in 1989; that at the time of purchase in 1989 when a survey of said parcel of land was duly conducted, there was no encumbrance nor any claim on the property by anyone, including the Intervenors. Appellee further contended that he is justifiably ignorant of the claim of Intervenors that they have openly, notoriously, and in a hostile manner occupied the property for more than thirty years, since at the commencement of the lawsuit he had only been in possession of the property for a period of just eleven years, and therefore could not suffer laches in defending a plead of statute of limitations. The Appellee concluded by praying Court to dismiss the appeal and affirm the ruling of the trial court.

We acknowledge that our reporting of the facts and prior proceedings in this matter has been copious. We have done so because of our belief that our courts should proceed with particular care in handling matters relating to land.

Based on the records and the arguments presented in this case, although there are several important issues raised, we are of the view that the following issues are essential in the determination of this case.

1. Whether or not an assigned Circuit Judge can review acts of his predecessor judge, who had concurrent jurisdiction; and
2. Whether or not the trial court passed on the law issues raised by the parties, and if not, whether or not this case can be decided by us without that step in the trial court having been taken.

We shall traverse the first issue, which is whether or not an assigned Circuit Judge can review any acts of his predecessor Judge, who had concurrent jurisdiction. As shown in the records, on at least two occasions Appellants had asked the lower court to set aside or disregard the report of the Board of Arbitrators, rule the case to trial and decide the same on th merits of the testimony given; that Appellee objected to such a course of action since to do so, according to, Appellee, the Judge would have to consider and pass on a matter that the preceding Judge had settled, contrary to law; and the trial Judge sustained this contention on ground that Judge is forbidden to interfere with acts of another Judge of concurrent jurisdiction. We agree with the Appellee's contention regarding a Judge not having the authority to review the acts of another Judge of concurrent jurisdiction. It is a settled rule that a Judge lacks the

power to interfere with the Ruling or Judgment of another Judge of concurrent jurisdiction. This Court has long since decided so in a long line of cases. Republic v. Aggrev, 13 LLR 469 (1960); Kanawa 14 LLR 241 (1960); Bracewell v. Coleman, 6 LLR 176-181 (1938), Gage v. Pratt, -6 LLR 246-251, (1938).

The second issue that we will discuss is whether or not the trial court passed:0A, issues raised by the parties, and if not, whether or not this case can be decided without that ste the trial court having been taken.

The facts appear to suggest that the Appellants may be abandoning any claim that the late A.K. Youh purchased the disputed land, but are only relying on their claim possession.

A perusal of the pleadings in the court below shows that although Appellants' Returns/Answer clearly raised issues concerning the doctrine of adverse possession and the statute of limitations, Judge Metzger never passed on these crucial issues, but proceeded only to grant the motion to intervene and then set up a Board of Arbitrators to demarcate the boundaries of the property as shown on the deeds, that Appellants subsequently requested court to pass on the two issues, which issues, according to Appellants, involved mixed issues of law and facts, requiring the taking of evidence and trial before a jury, and the court never passed on these , crucial issues. Appellee raised the issue of laches, and it also does not appear that this-issue was determined. We wonder how the lower court could have finally ruled to remove cloud and-quiet title in this case without first passing on the law issues raised in the pleading determination of Appellants' claim,, based on evidence taken during trial, that they, hold title to the premises in dispute under the doctrine of adverse possession.

In our opinion, adverse possession is a mixture of statutory law and case law. It is a method of acquiring title to real property by possession for a statutory period under certain conditions. Adverse possession is predicated upon the statute of limitation (Page-v Harland, 1 LLR 463, 468 (1906). Although the Liberian statute of limitations, Section 2.12(2) of the Civil Procedure Law, 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 than twenty years," this Court has decided that a person who seeks to assert title to land under the doctrine of adverse possession is required to prove, by a preponderance of evidence, that his use and occupation of the land has been continuous, exclusive, hostile, open, and notorious, as well as under a color of right. (Emphasis added) Id.

It was settled rule and case law in this jurisdiction that a trial judge is required to "pass upon all of the legal issues in the pleadings filed, and a failure to do so is a breach which constitute an error disfavored by this Court, since .it is in derogation of the law as interpreted by this Court..." *Porte v. Porte*, 9 LLR 279, 283 (1947); *Reeves v. Knowlden*, 11 LLR 199 (1952). Whist a judge may not interfere with acts of his colleague judge of concurrent jurisdiction, under the old rule, he would have had a duty to pass on all law issues raised in the pleadings which none of the two judges before him had taken up and pass upon. We observe, however, that in some recent cases, this Court ruled that "a trial court is not required to specifically rule on all issues in a pleading, if the failure to rule on these issues does not materially affect the substantive right of the parties, especially where the issue can not be determined without reference to a factual matter." *Cheng and American International Underwriters (AIU), v. Tokpa*, 29 LLR 22 (1981), at pages 32 and 33. The Court in the just cited case made reference to articles published in 21 *Columbia Law Review*, 416 (1921), and 55 *Harvard Law Review* 1303, 1314, when it stated that "Classifications of issues of law and fact should obviously not be determined by mere logic but must be settled according to notions of judicial fairness and the need to preserve the substantive rights of the parties." In this light, it does appear to us that the substantive right of the parties will be affected if the issues raised in the pleadings of both parties are not passed upon by the court. A trial court will therefore have to decide whether Appellee may have lost any right to his property under the doctrine of adverse possession, since the lower court has not properly determined this issue, and the other issues raised must also be considered and determined. All of this does not disregard strong and clear facts in the records that Petitioner appears to actually have fee simple title to his adjoining lot, which had been acquired by honorable purchase in 1989.

In view of the above, it is our opinion that the Judge erred when he did not hear and determine the issues of law raised in the pleadings, since indeed there is no showing on the records that his predecessor Colleague ever did so; and we also conclude that since adverse possession must be proved by a preponderance of evidence, the court erred when it ordered removal of cloud, quieting of title, and that the writ of possession be granted in favor of Appellee, without first hearing any proof from Appellants of their alleged title by adverse possession. .

We deem it necessary to point out that in special proceedings such as this case, Section 16.10, Trial, of the Civil Procedure Law would appear to be applicable in respect to Appellants' plea that a jury trial was necessary, so that a jury may or may not be necessary in this case, depending on whether trial by jury was timely requested

as required by law or as the trial court may rule.

Wherefore and in view of the foregoing, the judgment of the court appealed from is hereby reversed and the case remanded. The Clerk of this Court is hereby directed to send a mandate to the court below informing said court to resume jurisdiction, pass on the law issues raised in the pleadings, and have a new trial during which evidence will be received by court in keeping with the request of Appellants and in keeping with law. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

COUNSELLORS FREDRICK D. CHERUE AND NORWU COOPER OF DUGBOR LAW FIRM APPEARED FOR THE APPELLANTS. COUNSELLOR EMMANUEL S. KOROMA APPEARED FOR THE APPELLEE