EDWARD D. E. HOFF,Appellant, v. **BOIMA SENWAHN , ALHAJI MOMDU SWENWAHN,**and **THE PEOPLE OF TOSO TOWN,**Tombay Chiefdom, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Heard: June 9, 1983. Decided: July 8, 1983.

1. The insertion of two venues in a single affidavit, one before the justice of the peace and the other before the circuit court, does not invalidate the affidavit, but is rather a mere surplusage. It is error, therefore, for a trial judge to dismiss a defendant's answer on that ground.

Growing out of a dispute over a parcel of land situated in Grand Cape Mount County, ownership to which was claimed by the appellant and the appellees, the appellees instituted an action of ejectment against the appellant. Following the filing of the answer in the case by the appellant, the appellees filed a motion to dismiss the answer on the ground that the affidavit attached to same was venued in the circuit court and before the resident circuit judge. The trial judge agreed with the appellees and dismissed the answer. A trial was held in which the appellant claimed that the judge overruled most of the main defenses raised by him, and that he was therefore deprived of his right to due process of law. Following the presentation of the evidence, the jury returned a verdict in favour of the appellees. Judgment was rendered thereon, and an appeal announced by the appellant to the Supreme Court.

The Supreme Court, agreeing with the contention of the appellant that the trial judge had erred in dismissing his answer on the ground that the affidavit attached thereto was defective, and consequently ruling out his main defenses, reversed the judgment of the trial court and remanded the case for a new trial.

The Court held that the fact that appellant's affidavit inserted in one corner that the case was venued before the circuit court and before the resident circuit judge was mere surplusage and could form a basis for invalidating the affidavit and the answer. The Court, having concluded that there was proper basis for reversal of the judgment of the trial court, ordered a new trial beginning with the disposition of the law issues.

M Fahnbulleh Jones appeared for the defendant/appellant. Clarence E. Harmon appeared for the plaintiffs/appellees.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellant appealed from a judgment of the Fifth Judicial Circuit Court, Grand Cape Mount County, rendered in favour of appellees, plaintiffs below, in an action of ejectment instituted by appellees before that court during its February 1979 Term. Predicated upon the aforesaid judgment, from which an appeal was announced, appellant filed, within the time allowed by law, an approved bill of exceptions praying for a reversal of the said judgment. The case is therefore before this Court for review.

An examination of the records certified to this Court concerning the case revealed the following facts: Appellant asserted that he is the owner of the ten acre plot of land claimed by him and that he had been occupying said land notoriously, ostensibly and continuously, and had so enjoyed said land without any molestation or interruption since 1895 or thereabout; and that since then he had made conveyances to either purchasers or interested parties.

Appellees, on the other hand, averred that for more than five generations the people of Toso Township had lived on the disputed land, but without title deed.

Appellees, however, indicated that they were advised to be title conscious and to acquire deeds for the land or lands they occupied at a Tribal Council in Robertsport, Grand Cape Mount County, in 1977. The people of Toso Township thereafter obtained the necessary legal instruments for the acquisition of deeds for the two thousand acres of land they occupied and claimed to own. Other facts showed that the appellees filed an action of ejectment against the appellant for allegedly occupying and withholding ten (10) acres of land illegally and without any justification. An examination of the records also revealed that the ten (10) acres allegedly occupied illegally were part and parcel of appellees' 2,000 acres by virtue of a public land sale deed executed and signed by the late President William R. Tolbert, Jr., on the 12th day of November, 1976, probated on the 27 th day of May, 1977 and registered subsequently. The land in dispute is situated at the eastern side of Lake Piso, northeast of the City of Robertsport in Grand Cape Mount County.

An inspection of the records revealed further that the public survey of the two thousand acres of land was conducted and consideration given prior to the issuance by the government of the public land sale deed to the tribal people of Toso Township and Tombay Chiefdom through their paramount chief.

We also observed from the records that subsequent to the execution of the public land sale deed by the late President on the 12th day of November 1976, a caveat was filed by one A. Dondo Ware, Sr., on the 27th of November, 1976, against the probation of the said deed in his dual capacity as a title holder and counsel for the caveator, among whom was the appellant in these proceedings.

Appellant contended that the caveators were not informed when the deed was presented to enable them to file objections. The records, however, showed that the deed was probated and registered six months thereafter. The records further showed that between the time of probation and the time of filing this case the appellant succeeded in negotiating the sale of the ten acres of land, allegedly belonging to him in fee simple from his great ancestors, to the Government of Liberia for the construction of a government hospital in consideration of which the appellant received $10,000.00 (Ten thousand Dollars).

This purported sale of the ten (10) acres of land by the appellant sparked off a bitter animosity and protests from the people of Toso Township and Tombay Chiefdom. It was in consequence of the foregoing transaction that this action of ejectment was filed to oust and evict the appellant from that portion of land constituting the ten acres, apparently lying within the two thousand acres, a portion of which the appellees claimed to be part and parcel of their 2,000 acres.

The issue in this case is which of the parties have a paramount title deed to the land under dispute. This issue will be disposed of eventually. The synopsis of appellant's seventeen-count bill of exceptions is that he did not have his day in court as he should have, or as required by law. He claimed that certain vital aspects of his main arguments were overruled by the trial court judge, which deprived him of the right to appropriately defend himself. He also asserted and the records also revealed that judgment was rendered in favour of the appellees without their having properly introduced sufficient evidence to substantiate their claim.

The summary of the several controverted issues of mixed law and facts disclosed by the records in this case cannot be properly resolved because of the abatement of the entire answer of the appellant by the trial court. We have therefore focused our attention only on the ruling on the motion to dismiss.

The appellees raised the issue of defective affidavit because on the right of it, the affidavit was shown to be venued in the Fifth Judicial Circuit, Grand Cape Mount County, before the resident circuit judge.

On the left corner of the same affidavit, it was shown to be venued in Grand Cape Mount County, and it was sworn and subscribed to before a justice of the peace, Samuel K. Massallay, who was commissioned as such for the said County.

The unique controversial issue to be decided is what is the legal effect of the venue of the affidavit in the Fifth Judicial Circuit Court before a resident judge of that court. It is clear on the face of the affidavit that on the left corner of the said document, it is shown to be venued in Grand Cape Mount County, and that it is signed by a justice of the peace of that County. The affidavit also contained the exact title of the case. Given these factors, it is our opinion that the insertion of the venue in the Fifth Judicial Circuit Court for Grand Cape Mount County and before the resident circuit judge, are mere surplusage and do not invalidate the affidavit. Brown et al. v. Allen et al., 2 LLR 113 (1913); BLACK'S LAW DICTIONARY 1612.

The ruling of the trial judge overruling the answer of the appellant, being erroneous, the same is hereby reversed. The case is remanded to the court of origin for proper disposition of the issues of law raised in the pleadings in conformity with this opinion.

The Clerk of this Court is therefore ordered to instruct the judge presiding over the Fifth Judicial Circuit to resume jurisdiction and proceed with the case in accordance with this opinion. Costs to abide final determination of the case. And it is hereby so ordered.

Judgment reversed; case remanded.