

The **Intestate Estate of the late Albert K. Aidoo, Sr.** Represented by and thru its Administrators, Kofi Armah, A. K. Abakeh and Albert K. Aidoo, Jr., all of the City of the City of Monrovia, Liberia APPELLANT Versus **Sulaimon Bah** also of the City of Monrovia, Liberia APPELLEE

APPEAL

HEARD: MARCH 28, 2007 DECIDED: AUGUST 10, 2007

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

The certified records in this case show that the Intestate Estate of the late Albert K. Aidoo, Sr. represented by and thru its administrators, Kofi Armah, A. K. Abakeh, and Albert K. Aidoo, Jr. filed an Action of Ejectment against Messrs. Sulaimon Bah and Sulaimon Jalloh, claiming title to one-eighth (1/8) of an acre of land lying and situated in Logan Town, Bushrod Island.

The complaint alleged that the late Albert K. Aidoo, Sr. bought the land in question from his late brother, William Davies, who issued a warranty deed dated July 12, 1952 which was duly probated and registered according to law; that upon the death of William Davies, his son, Kofi Opaateh Arthur Williams sold the identical piece of land to Messrs Sulaimon Bah and Sulaimon Jalloh on October 26, 1994. The Action of Ejectment sought to have Messrs. Bah and Jalloh evicted, ousted and ejected from the premises, rule them to pay costs of the proceeding and award general damages to the complainant to commensurate with the inconveniences and damages caused for wrongfully withholding the property.

Messrs. Bah and Jalloh filed their answer denying that they were wrongfully withholding the premises in question. They claimed that they were the legitimate owners of the property which they purchased from Opaateh Arthur Davies as evidenced by a title deed issued to them. They challenged the complainants' deed on ground that although the name of William Davies was written on the said deed, he (William Davies) never signed the deed. They stated in their answer that Kofi Armah, A. K. Abakeh, and Albert K. Aidoo, Jr. lacked legal capacity to act as administrators for reason that they have no consanguineous relationship either lineal or collateral with the late Albert K. Aidoo, Sr. They also stated in their answer that the late Albert K. Aidoo, Sr. was not a citizen of the Republic of Liberia, therefore, he could not have owned real property in the Republic of Liberia, as to do so would be in violation of Article 22(a) of the 1986 Constitution of Liberia. Messrs. Bah and Jalloh also

stated in their answer that since they purchased the property, they had occupied it for five years without hindrance and molestation until the Action of Ejectment was filed against them.

A reply essentially reaffirming the complaint was filed wherein the complainant reiterated that the late Albert K. Aidoo, Sr. during his lifetime, sold the land in question and parted with title, therefore, his son could not have subsequently sold what no longer belonged to his father. The reply also indicated that the late Albert K. Aidoo was a naturalized citizen of Liberia.

Pleadings rested and after some pretrial applications were disposed of, the case was ruled to trial on its merits by the late Judge Wynston O. Henries on September 20, 2005. On November 15, 2005, the complainant made application to Court to, in effect, drop Sulaimon Jalloh as a party defendant. No resistance was filed and it appears that the trial court granted the application. But, before regular trial could commence on the merits of the case as ruled by Judge Henries, Sulaimon Bah filed a Motion for Summary Judgment praying court to dismiss the Action of Ejectment. We quote the two-count motion:

"1. Because Movants say that the Plaintiffs in the Ejectment Action, that is to say the Administrators as well as the deceased were never citizens of the Republic of Liberia neither by birth or through Citizenship and therefore neither the administrators or the deceased could own land within the Republic of Liberia and therefore they lack the capacity to sue in the instant case in the Action of Ejectment and therefore said action be ordered dismissed in its entirety and this Movants so pray."

"2. Because Movants say that the so-called title deeds which the Administrators rely on are conflicting with respect to the signature of the Grantor who allegedly issued the deed relied on by the Administrators in that the signature appearing on said document are not identical as compared to the regular signature of the grantor of the alleged deed; hence such deed of which Movants request Court to take judicial notice of and marked as Exhibit "A" and "B" respectively be inspected by this Honourable Court to determine the identification and genuineness of the signature appearing on said deed."

The complainant filed resistance to the Motion for Summary Judgment which we also quote in full:

"1. Because Respondents say the basis for Summary Judgment is that there is no genuine issue as to any material fact so as to warrant a trial. In the instant case, Plaintiffs have filed an Action of Ejectment, to which Complaint Defendant has filed his Answer, and pleadings have rested with both Parties claiming title to the real property in dispute."

"2. Further to count one hereof above, Plaintiffs say both parties in an action of ejectment relying on two separate deeds from two different grantors claiming title to one piece of property clearly presents a genuine issue of material facts, which fact must of necessity go to the jury to determine which title is superior to the other. Therefore, Summary Judgment cannot lie and this Motion must be dismissed."

"3. Because as to count one of the Motion, Plaintiffs/Respondents say Defendant has raised the issue of the capacity of Plaintiffs to sue out this Action because Plaintiffs are not citizens of Liberia and as such cannot own land and therefore the Action of Ejectment filed by Plaintiffs should be dismissed. Plaintiffs respond to this in four fold:

a. The issue of capacity is not a proper subject for a Motion for Summary Judgment under Section 11.3 but rather a Motion to Dismiss under Section 11.2(1).

b. Plaintiffs say capacity raises a question of law which must be raised in a Motion to Dismiss at the time of filing the Answer to the Complaint. Plaintiffs say this issue was not raised in the Answer itself nor an accompanying Motion to Dismiss and as such is waived under Section 11.2(6) at 1 LCLR 119. On the other hand, Summary Judgment raises a question of fact which if properly presented, would obviate the need of a trial. In the instant case, Defendant has not shown any material fact which makes it unnecessary for this case to go trial.

c. Plaintiffs say also that Defendant lacks standing to raise the issue of Plaintiffs' citizenship. Still further, an Action of Ejectment is not the proper cause of action for one to challenge the citizenship of another; and then, the Civil Law Court is not the proper forum to raise the issue of Plaintiffs' citizenship.

d. Plaintiffs also say Defendant has not established his own status and ownership of the subject property but has raised the question of Plaintiffs' citizenship as a diversionary tactic with the sole intention of evading the issue and trying to confuse the whole issue of title because of the defect in his title. Therefore, count one of the Motion should be denied and the trial of the case proceeded with.

e. Plaintiffs deny Defendants' assertion that they are not citizens of Liberia, on the contrary Plaintiffs affirm and assert that they are bona fide, lawful and law abiding citizens of the Republic of Liberia and challenge Defendant to prove otherwise. Plaintiffs give notice that during trial they will produce evidence to prove and confirm their citizenship."

"4. And also because as to count two of the Motion, Plaintiffs say the question of a difference in the signature of the Plaintiffs' grantor clearly is a question of fact which must go to the jury. And that is every reason why Summary Judgment cannot and should not be granted so Defendant can establish the variance in signatures on Plaintiffs' documents as complained of in this motion. The genuineness of signatures is a material fact for which trial is a requirement and therefore this motion for Summary Judgment cannot be granted."

"The case must proceed to trial on the merits so both parties can present their evidence of title to the jury to enable the jury to pass on and give credibility to them and determine the superiority of one over the other. Therefore, count two of the motion should be overruled and dismissed."

"5. And also because as to the entire Motion for Summary Judgment, Plaintiffs say same is belated and cannot be granted because when the law issues were disposed of, this Court ruled the case to trial on its merits by jury under the supervision of the Court, in a ruling on September 20, 2005 by Judge Wynston O. Henries. See sheet four, 2 nd day jury sitting, September Term A. D. 2005, Tuesday, September 20, 2005. Plaintiffs say since the case has already been ruled to trial on its merits, the said trial cannot be aborted by way of Summary Judgment. It is Plaintiffs' contention that one Judge having ruled the case to trial, another Judge cannot succeed him and reverse, review or modify his previous ruling. This principle is an age-old concept of our jurisprudence. Therefore, this Motion for Summary Judgment must be denied as a matter of law and Plaintiffs so pray."

"6. Respondents/Plaintiffs deny, refute, disclaim and resist any and all claims, issues, points and contentions raised in the Motion which were not specifically traversed in this Resistance."

His Honour Korboi Nuta, then assigned over the 6 th Judicial Circuit, Civil Law Court, Montserrado County, heard arguments on the Motion for Summary Judgment and its Resistance and ruled on May 20, 2006, granting summary judgment in favour

of Sulaimon Bah, thereby dismissing the Action of Ejectment. The Judge held that the late Albert K. Aidoo, Sr. was not a citizen of the Republic of Liberia therefore he could not have own real property in this country. The complainant, through his Counsel, announced an appeal to this Court for review of the ruling.

Although several issues were raised by both parties, we will consider one basic issue for the determination of this case, and that is, whether or not summary judgment was properly granted by Judge Koboi Nuta in this case. And our answer to this question is No!

The authority of trial courts to grant summary judgment is found in Civil Procedure Law, ILCL, Revised, Section 11.3 (3) which provides:

"The Court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the Party in whose favor judgment is granted is entitled to it as a matter of law. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest on mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be entered against him."

The motion for summary judgment filed by the Appellee/Defendant raised two issues. First, that the administrators of the intestate estate of the late Albert K. Aidoo, Sr. are not citizens of the Republic of Liberia, neither was the late Albert K. Aidoo, Sr. himself a citizen of the Republic of Liberia, thus he could not have owned real property in Liberia. The same contention was raised in the answer filed by Appellee/Defendant challenging the Liberian citizenship of the late Albert K. Aidoo, Sr. to which Appellant/Plaintiff replied that the late Albert K. Aidoo, Sr. was a naturalized citizen of Liberia. In resisting the motion for summary judgment, the Appellant/Plaintiff was even more emphatic on this point; in count 3(d) of its resistance quoted hereinabove, the Appellant/Plaintiff denied that the late Albert Aidoo, Sr. or the administrators of his estate were not citizens of Liberia and challenged Appellee/Defendant to prove otherwise. The Appellant/Plaintiff then gave notice that during the trial of the case, evidence would be adduced to establish that the late Albert K. Aidoo, Sr. was a citizen of Liberia and that all the persons administering his intestate estate are also citizens of Liberia.

On the whole, we see that the Appellant/Plaintiff's response or resistance to the motion for summary judgment did not rest on mere allegations or denial, but set forth specific facts to show that there are genuine issues for trial. We are therefore bewildered, to say the least, that despite the assertions made by Appellant/Plaintiff and the notice given to produce proof of citizenship at the trial, the trial judge granted summary judgment thereby outrightly dismissing the Action of Ejectment.

Summary judgment is granted when there is "no genuine issue as to material fact." But where a party says, as in this case, that material facts are available and would be established at trial, it is not proper to grant summary judgment. In our opinion, the Appellant/Plaintiff should have been permitted to provide proof of citizenship at trial as he said he would do. Were we to confirm the ruling granting summary judgment in this case, we would never know whether or not the late Albert K. Aidoo, Sr. was indeed a citizen of this country and was therefore allowed by law to own real property. We will also not know who the real owner of the property in contention is. It is a settled rule that judges ought never to hasten the disposition of a matter if doing so would be prejudicial to the interest of parties. *Davies vs. Yancy et al.*, 10 LLR 89 text at 96 (1949).

The second issue which the Motion for Summary judgment raised is that the title deeds which the Appellant/Plaintiff relied on are "conflicting" with respect to the signature of the grantor. On this issue, Counsel for Appellant/Plaintiff stated in his resistance to the motion for summary judgment, as well as in his brief argued before us, that objection to one's signature on a deed as not being genuine is a material issue of fact for which trial is a requirement and therefore the motion for summary judgment should not have been granted. We agree. And in consonance with our statute, we hold that in an action to recover real property, a hearing is mandatory, and any question of fact shall be tried by jury. *Civil Procedure Law*, 1 LCL Revised, Section 42.2.

We must now address the question, whether or not it was proper for Judge Koboi Nuta to have granted summary judgment in the matter, when the same matter had already been ruled to trial by his colleague of the same ranking. We hold no. The law in this jurisdiction is, and has always been that a judge of concurrent jurisdiction cannot review the act of his predecessor. In this connection this Court has held that a judge acts wrongly in ruling in a matter which runs contrary to that made by his predecessor. *Flomo & Kankebe Vs. Yancy & Baimba*, 31 LLR 464, text at 470 (1983).

In the case: *Beatrice N. Kpoto Vs. Kerkula B. Kpoto*, 34 LLR 371 text at 382 (1987), this Court was even more direct and specific on the issue when it held that:

"No Circuit Judge has the power to review, modify, or rescind any decision by another Circuit Judge who is of the same official hierarchy on any point already passed upon by him, however, erroneous the act of his colleague may be."

And in the case: *Buchanan-Horton Vs. Belleh, et al.* 39 LLR 169, text at 174 (1998) this court held that:

"The judgment of the lower court can only be reviewed, reversed or modified by a higher judicial forum, namely; the Honourable Supreme Court of Liberia."

Based on the authorities cited above, we hold that Judge Koboï Nuta was wrong to have granted a motion for summary judgment in the same case which had already been ruled to trial by his colleague of the same ranking.

We take note, however, that in the case: *American Life Insurance Vs. Ajami reported in 37 LLR 530, text at 536 (1994)* this Court held as follows:

"The granting of a motion for summary judgment after the case has been ruled to trial by another judge, does not have the effect of reviewing, modifying or rescinding the ruling of a colleague judge who passed upon the law issues and ruled the case to trial, where the court is satisfied that there is no genuine issue as to any material fact and that the party in whose favour judgment is granted is entitled to it as a matter of law." [Emphasis supplied].

In view of our holding in the case now before us, we hereby recall the *American Insurance Company Vs. Ajami* case, and all other opinions of this Court which run contrary to our position herein.

Wherefore, we hold that the ruling of the trial judge be and same is hereby reversed and the case remanded to the court below to resume jurisdiction and proceed with trial on its merits, permitting the Appellant/Plaintiff to produce proof of citizenship which it says it has. Cost to abide final determination. AND IT IS HEREBY SO ORDERED.

Case remanded.