

The **Intestate Estate of the late Christiana O. Smythe** represented by its Administratrixes and Administrators Leitita Ayo Gibson, Margaret Whitfield, Sharon Davis Thomas, and Eddie Smythe all of the City of Monrovia, Liberia **MOVANTS / APPELLANTS** VERSUS **Smythe's Institute of Management and Technology Inc., Inter Vivos Trust of the late Christiana O. Smythe**, Represented by its Board of Trustee, Dr. Ben A. Roberts, Esther Page, Richmond S. Derson, Randy Owusu Bampah et al also of the City of Monrovia, Liberia **RESPONDENTS / APPELLEES**

MOTION FOR SUMMARY JUDGMENT. JUDGMENT AFFIRMED

Heard: November 20, 2008 Decided: January 29, 2009

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

During the life time of Christiana O. Smythe she acquired several pieces of real property in Montserrado County, some of which she built structures on and used for purposes of her choice: she established an orphanage, the Christiana O. Smythe Child Welfare Foundation (COSCFW) and also a school, the Smythe Institute of Management and Technology, Inc. She operated the two establishments until February 3, 2000 when she executed the following document which she referred to as an Inter Vivos Trust. Below is the document, word for word.

INTER VIVOS TRUST

"I, Christiana O. Smythe, a resident of 5th Street, Plunkor, Jallah Town Road, Monrovia, Montserrado County, Republic of Liberia, being of sound mind and conscious without any pressure or duress, do hereby make, publish and declare this as my INTER VIVOS TRUST, in the manner as follows:

I give and convey my properties mentioned in this Document to the SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC. (SIMIT) in honour of my name and for remembrance on earth.

I give and convey fifty (50) acres of land with a Bangalow Structure thereon, located and situated in Block No. s-9 Schfflin, formerly Marshall Territory, and now Margibi bounty, Republic of Liberia, to the SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC., to be used by the said Institution in honour of my name as long as the Institution remains in existence and operational in Liberia

I give and convey half (1/2) Town Lot with a Bangalow in a fence, located and situated on Cheeseman Avenue, 16th Street, Sinkor, Monrovia, Montserrado County, Republic of Liberia, on Lot No. One (1) Block J-16 to the said SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC., and also One (1) Town Lot with a Story-Building thereon in a fence, in the same block J-16 Cheeseman Avenue, 16 th Street, Sinkor, Monrovia, Liberia.

I give and convey One (1) Town Lot with a Story-Building thereon and fenced, located in Block No. H-4, on Russell Avenue, 5 th Street, Sinkor, Monrovia, Montserrado County, Republic of Liberia, housing the CHRISTIANA O. Smythe CHILD WELFARE FOUNDATION (COSCWF), TO BE managed by the SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC., so long the said OPHANAGE HOME (COSCWF) remains in existence and operation in Liberia bearing my name.

And that for smooth management and operation of the above properties by the SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC., I do hereby set up and/or constitute a Board of Trustee consisting of the following persons:

In the event of resignation and/or death, the remaining members of the Board of Trustees shall select and/or appoint a replacement with the approval of all previous Trustees Members.

NAME	POSITION
1. Dr. Isaac Moses	Chairman
2. Dr. Ben A. Roberts	Co-Chairman
3. Mr. Richmond S. Anderson	Secretary
4. Mr. Randy Owusu Bempah	Financial Secretary
5. Mrs. Emilia Ayomana	Treasurer
6. Mrs. Christiana O. Smythe	Advisor
7. Mrs. Esther H. Page	Member
8. Mr. Prince Porte	Member
9. Mr. Herbert Goodlin	Member

In the event of death, the SMYTHE INSTITUTE OF MANAGEMENT AND TECHNOLOGY, INC., shall take full responsibilities and give me an appropriate and decent burial, and shall further pay debt or debts, if any owed by me.

THIS INTER VIVOS TRUST shall take immediate effect upon the signing of this instrument and delivery of the subject properties to the Donee, while the Donor herein is still living.

Issued under my hand and signature, in the City of Monrovia, Montserrado County, Republic of Liberia, this 3rd day of February, A. D. 2000.

Willietee R. Brown

Joseph R. Davis

Christina M. Banks"

Christiana O. Smythe.

DONOR

On August 20 of the same year, A. D. 2000, Christiana O. Smythe died in the City of Monrovia. The Movants/Appellants herein petitioned the Probate Court, claiming to be the next of kin, for letters to administer her estate, including in said petition the properties that formed the res of the Inter Vivos Trust. The Petition for letters of administration was heard and granted. Subsequently some representatives of the trustee board petitioned the Probate Court to revoke the letters of administration on several grounds but mainly that the Court had been misled into appointing the petitioners who were total strangers to the estate and that they used SOD officers and gained entry and removed the registrar of the school, changed the locks, and that they had gone to the sponsor of the orphanage (the Christian Aid Ministries) to enter into an agreement on behalf of the orphanage and that because of uncertainty as to whom the ' sponsor should deal with, the said sponsor is withholding support from the orphanage. They accused the administrators of using SOD officers and some ATU officers to forcibly seize the keys to the food warehouse of the orphanage, causing the beneficiaries hardship.

The administrators/administratrixes in their Returns contended that the Inter Vivos Trust ceased to exist upon the death of the settlor; that the said Trust was devoid of the legal requirements for constitution of a trust.

Before the Probate Court could hear the Petition for Revocation, the Respondents filed a Bill of Information alleging that the trustees had sought police intervention in the pending matter and that the Court should prohibit any agency of government from interfering in the court matter, and that the trustees should be held in contempt of Court. The trustees denied the accusations laid out in the Information and

countered that it was in fact the administrators/administratrixes who had resorted to the use of police power.

The Probate Judge consolidated the Petition for Revocation and the Information and ruled in essence as follows: that the trustees' petition to revoke the letters of administration could not be granted to prevent the Petitioners from administering their deceased relative's other properties that did not form part of the trust; that the trustees' authority was limited to the properties listed in the Inter Vivos Trust document only, and that the issue of the standing of the Petitioners for letters of administration raised in the petition to revoke had earlier been settled in a ruling dated September 28, 2000. Same should not have been again raised in another proceeding involving the same subject matter and the same parties. The Judge ruled further that the fact that both parties accused each other of employing police power in this case, convinced him that each of the parties did engage in the use of police power and warned that they should desist from a repeat of same, else the violator would be held in contempt. There was no appeal announced or processed from this ruling, only an exception was noted by the Petitioners for revocation.

Subsequent to the Probate Judge's ruling on March 13, 2001, the administrators/administratrixes on August 31, 2001 filed a suit in ejectment naming as defendants the board of trustees of the Inter Vivos Trust. In their complaint the plaintiffs listed all the real properties, the res of the living trust, as part of the intestate estate which they claimed fell under their authority as administrators/administratrixes of the estate of the deceased and that the trustees were illegally withholding those pieces of real property; that they should be evicted and made to pay not less than US\$50,000,00 for wrongful withholding. They made profert of the same title deeds listed in the trust instrument and in the complaint. The trustees filed their Answer to the Complaint. We shall quote Counts 5, 6, 7, and 8.

"5. Count three is false and misleading in that the late C. O. Smythe gave and conveyed to the Smythe Institute of Management and Technology, inc. fifty acres of land with the building located on 16th Street and also land located on 5th Street with building was given and conveyed to C. O. Smythe's Child Welfare Foundation to be managed by the Smythe's Institute of Management and Technology, Inc. as long as the institutions remain in existence and operational in Liberia and continue bearing her name. this conveyance was done legally through an Inter Vivos Trust, created February 3rd, 2000 and probated February 22, 2000. See exhibit p/1 to form a cogent part of this proceeding.

6. Count four deserves no legal credence in that the Probate Judge in ruling on the defendants' objection for the letters of administration conditionally granted the letters and demarcated between the Trust properties and that of the intestate estate. This ruling was repeated in his March 13, 2001 ruling when he made reference to that of September 28, 2000. See exhibit p/2 to form a cogent part of the proceeding.

7. As to Count five, defendants say that the Plaintiffs are collecting rent from the deceased's estate that was not made part of the Trust from which income, during her life she used to support the institution all of which the plaintiffs neglect and fail to support and instead they are unjustly enriching themselves and continue to interfere with the Trust created by the late Smythe.

8. That the plaintiffs' continuous interfering with the Trust and failure to support the deceased's institutions are all clear indication of their intention to frustrate and destroy everything the decedent established during her life."

To this Answer the plaintiffs on September 20, 2001, filed a Reply and the parties rested their pleadings. On March 25, 2002, notice of assignment for disposition of law issues in the ejectment action was issued and returned served for April 1, 2002. There is no showing on the records that the law issues were disposed of. According to the records, what happened next was that the administrators/administratrixes filed a Motion for Summary Judgment on the grounds that title was not in dispute because the trustees do not have title; that there was no triable, substantial or real issue of fact to be determined by substantial evidence; that the proposed Trust lacked the elements necessary for the creation of a trust: that there must be a competent settlor, a trustee and ascertainable Trust Res and sufficiently ascertainable beneficiary, and that the trust under discussion herein failed to meet these requirements; that the beneficiary named was vague and indefinite; that where the legal title and the beneficial interest are both in the same person, there is no trust; that there was no conveyance or delivery and acceptance; that on the strength of the four title deeds in the name of the deceased, the plaintiffs' have instituted this action of ejectment. They said further that the phrase enshrined in the trust document, "to be used by the said institution in honor of my name as long as the institution remains in existence and operational in Liberia" clearly indicates that there was no transfer in fee simple of the properties, hence they are part and parcel of the estate of the late Christiana O. Smythe. They said also that the trustees did admit that the properties involved were properties of the deceased, on the basis of that admission, the Plaintiffs as a matter of law are entitled to Summary Judgment.

The defendant/trustees herein filed Resistance to the Motion. The pertinent issues they raised were that the deceased acquired properties and that her intention for the properties was clearly stated in the Trust and that said Trust cannot be revoked except if the conditions contingent therein are violated; that the beneficiaries are the students of the institutions, the property interest is in the management; the trustees; that when the Probate Court demarcated the trust property from the intestate estate, there was no exception noted. Therefore the decision was accepted.

The Trial Judge heard the arguments and ruled that the Trust met the legal requirements: that the properties listed in the trust were certain, that there was conveyance; that the institutions were the beneficiaries that comprise the students and orphans and that the trustees were clearly identified in the trust document; that Summary Judgment would not lie in this case. He therefore dismissed the ejectment action and also the Motion. It is from this ruling the Plaintiffs have appealed and fled to this Court on the following Bill of Exceptions.

Bill of Exceptions:

"1. Under the law, an inter Vivos Trust is a trust created during life time of the settlor, to become effective in the settlor's life time and is in contradistinction to a testamentary trust which takes effect at, or upon the death of the settlor or testator. Also, the law provides that it is fundamental to the law of trusts that certain requirements must exist before an expressed trust can be recognized. Basically, these elements include a competent settler and a trustee, an ascertainable trust res and sufficiently certain beneficiaries. Further, the law provides that a trust cannot be upheld unless it is of such a nature that the beneficiary is capable of enforcing its execution by an equitable proceeding. Thus, a trust will fail whenever designation of the beneficiary named is too vague and indefinite. Your Honour erred, when Your Honour, in ruling on the Motion for Summary Judgment, held, without any evidence, that the Inter Vivos Trust has a named beneficiary and therefore denied Movant/Appellant's Motion for Summary Judgment and along with it Movant/Appellant excepts.

2. The law provides that an express trust, as distinguished from a resulting or a constructive one, involves the separation of the legal and beneficial interests in a thing or "res," as it is called, whereby the legal interests in the trust res are held by a person, the trustee, for the benefit of another, the beneficiary, who has an equitable interest in the res to receive whatever benefits he is entitled to therefrom by the terms of the trust. Accordingly, it is a fundamental essential of a trust that the legal estate

be separated from the equitable estate or beneficial enjoyment; there can exist no trust where the legal title and beneficial interest are both in the same person. As the rule has been expressed, every trust must necessarily involve a legal title encumbered with an equitable duty in favor of an equitable right, or, in other words, involve a legal ownership that is not absolute, but qualified by an equitable interest. Hence, Your Honour erred when Your Honour, without any evidence, concluded that the alleged Inter Vivos Trust has the legal title and beneficiary interest separate from one and the other, and therefore denied and dismissed both Movant/Appellant's Motion for Summary Judgment and its action or ejectment for which error of Your Honour, Movant/Appellant excepts.

3. That the law also provides that where a donor intends to employ a gift as a particular mode of creating a trust, rather than merely to declare a trust without receiving any consideration, delivery, acceptance, and other formal requisites of a gift are as essential as in any other case of a technical gift. Similarly, where a trustor intends to create a trust by a technical conveyance or transfer to the trustee, delivery, acceptance, and other formal requisites are as fully applicable as in other cases of conveyance or transfer. Therefore, Your Honour erred when Your Honour concluded, without any evidence whatsoever, that there was conveyance of the properties, the subject matter of the Action of Ejectment to the Respondent/Appellee and therefore denied and dismissed the Motion for Summary Judgment and the Action of Ejectment, for which error of Your Honour, Movant/Appellant excepts.

4. Also as to count three (3), Movant/Appellant says that the law provides that generally, what constitutes delivery and acceptance in respect of deeds, gifts, sale, and assignments, constitutes delivery and acceptance where one of such mode is employed to create a trust. It has been held that a trust deed must be delivered or it will be deemed ineffectual to pass legal title to the trustee. Therefore, Your Honour erred when Your Honour concluded, without any evidence whatsoever, that there was a conveyance of the properties, the subject matter of the Action of Ejectment to the Respondent/Appellee and therefore denied and dismissed the Motion for Summary Judgment and the Action of Ejectment, for which of Your Honor Movant/Appellant excepts.

5. Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim or counter claim shall be asserted in the responsive pleading thereto, litigant and squarely placed before a court of competent jurisdiction either by way of motion or in the pleading should and ought to be passed upon by a presiding Judge. Further,

the law provides that court cannot raise issues but are bound to decide them only when raised in the pleading. Hence, Your Honour erred when Your Honour raised the issue of lack of capacity on the part of the Movant/Appellant and thereupon passed on said issue of lack of capacity to sue and denied the Motion for Summary Judgment and also dismissed the Action for Ejectment out of which the Motion for Summary Judgment grew, for which error of Your Honour, Movant/Appellant excepts.

6. Under the law in this jurisdiction, ejectment proceedings involve mixed issues of law and facts and it is always tried by a jury under the direction of a court. The law also provides that in ejectment action, trial by jury, is mandatory, irrespective of what was pleaded so long as issue was joined by and between the parties. Hence, Your Honour having determined, in your opinion, that the Movant/Appellant was not entitled to summary judgment as a matter of law, Your Honour should have denied the Motion For Summary Judgment and order the parties to proceed with the disposition of law issues raised in the pleadings and thereafter a trial by jury be heard consistent with law in this jurisdiction. Therefore, Your Honour erred when in Your Honour ruling on the Motion for Summary Judgment you did not only deny the Movant/Appellant's Motion for Summary Judgment, but you also denied and dismissed its Action of Ejectment, for which error of Your Honour Movant/Appellant excepts.

Beginning with count 1 of the Bill of Exceptions we confirm the Trial Judge's ruling that the Inter Vivos Trust document herein meets the required standard for constituting a living trust: there is an identifiable trust res, that is the real properties listed in the document with accompanying title deeds; named beneficiaries are the nowtwo institutions: the students and orphan children ow enrolled and others to be enrolled in the future. The Christiana O. Smythe Institute of Management and Technology and the Christiana O. Smythe Child Welfare Foundation, which Orphanage according to the trust is to be managed by the Institute therein designated. These beneficiaries, we hold, are ascertainable, not vague and indefinite as claimed by the Movants. We also hold that the issue of ascertainable beneficiaries can be clearly established by an examination of the trust instrument. There was therefore no need for any other evidence to substantiate or determine who the beneficiaries of said executed document were beyond the confines of the document itself. It is a rule hoary with age that oral evidence will not explain a written document especially when the evidence sought is clearly written on the face of the document as in this case. It is also an established principle of the rule of evidence that the best evidence must always be produced and it is that evidence that does not pre-suppose the existence of

a better evidence. The best evidence in this instance is the trust document not any other evidence produced at a trial.

In count 2 of the Bill of Exceptions, the Movant argued that the trust did not separate the legal title from the beneficiary interest and that the Judge committed error by not taking evidence, and yet concluded that the alleged Inter Vivos Trust has the legal and equitable interest separated. We hold that the trust instrument herein clearly separates the legal interest which is vested in the board of trustees and the equitable interest which is vested in the beneficiaries. The fact that the Trustor was also a member of the Trustee board was only an effort on her part to administer the Trust along with the members of the board. That participation did not invalidate the Trust. She served in the interest of the beneficiaries, not her own interest. But if even she was one of the beneficiaries, that would not invalidate the trust. A trustor/settlor may setup a trust for his or her own benefit. It is stated in 76 AM. JUR. 2d Section 240, page 298, "Any person to whom the settlor intends to give a beneficial interest is considered a beneficiary." In the case at bar the settlor or trustor, Christiana O. Smythe gave her real properties to an identifiable beneficiary, the Christiana O. Smythe Institute of Management and Technology Inc., a corporation, with a specified purpose and a group of persons as trustees.

As to Count 3, We confirm the Judge's ruling that there was conveyance and acceptance and our reason for so holding is found in the trust document, the best evidence. In paragraph 1 of the document the settlor wrote: "I give and convey my properties mentioned in this Document to the Smythe Institute of Management and Technology, Inc (SIMT) in honor of my name and for remembrance on earth." That paragraph constitutes the conveyance of all the properties the settlor listed in the document which she signed, had it attested to, probated, and registered in the National Archives, Republic of Liberia. The consideration for the conveyance is that her name be perpetuated in remembrance of her on earth, the Christiana O. Smythe Institute of Management and Technology, Inc., The Christiana O. Smythe Child Welfare Foundation. The members of the Trustees Board now and others in the future are bound by that covenant. A departure from that covenant that is, changing the name of the institute, will terminate the trust. This conclusion is culled from the phrase "as long as the institutions remain in existence and operational in Liberia bearing my name. The settlor, having made the perpetuation of her name here on earth as a condition for the life of the trust, a suggestion that the Inter Vivos Trust terminated upon her death is therefore not a logical conclusion. The expression, in remembrance of me here on earth connotes-"after I am no more on earth, after I am dead and gone I want to be remembered." Now if we were to accept the argument

that the trust was terminated the moment she died how would her name be remembered. Additionally, there is no legal support for Appellants unequivocal assertion that the Inter Vivos Trust terminated after the death of the testator. That assertion does not find support in law or in the trust document. In the law of trusts, an Inter Vivos Trust take effect during the life time of the settlor/trustor and it remains in existence until revoked during the life time of the trustor, or until a condition in said trust is broken after her or his death. Whereas a testamentary trust takes effect after the death of the settlor and may be terminated on a condition prescribed in the will. The Inter Vivos Trust herein created, survived the settlor's death and shall remain in full force and effect unless a departure from the conditions set forth therein are violated.

A trust res may be conveyed by deed, and also by writing duly processed according to law. The trust properties under consideration were legally conveyed by writing, legally processed, executed, probated and registered. That conveyance is as good and legal as a conveyance by deed. The settlor conveyed the properties to the institutions, the cestui que trust, comprising of the children or students who will pass through its walls so long it remains in operation in Liberia and in the name of the settlor. She also named the trustees including herself. Count 3 of the Bill of Exception therefore also is not sustained.

"On the issue of acceptance which generally is one of fact, acceptance may also be inferred were the trustee takes action consistent with the position. 76 AM. JUR. 2d Section 220, page 273. In the instant case the trustees accepted by their actions to manage the trust: first of all they did not turn down the position but also they objected to the Petition for the letters of administration, they filed a Petition to have said letters subsequently granted revoked. They appeared and answered to the ejectment suit and they are now the Respondents in the case at bar. They also filed a Bill of Information before court in which they stated that the administrators/administrixes used police power and seized the keys to the instituting and put the school's registrar out of the office, etc. From these activities, easy inference can be drawn that they accepted to serve as trustees of the Trust.

In count 5 Appellant contended that the Judge raised the issue of standing or capacity when not raised by either party; that a Judge only decides issues that are raised in the pleading. We took recourse to the Motion, the Resistance and the Judge's Ruling. In the Motion for Summary Judgment, the administrators/administratrix of the intestate estate of Christiana O. Smythe, after listing all the properties, subject of the Trust, as part and parcel of the intestate estate and that therefore said properties

should be turned over to them for proper administration, they attached the structure of the trust document that it did not meet the requirements to constitute a trust. "To them the alleged trust relied on by the respondents allegedly executed by their own principal, the deceased, was faulty and defective to constitute a proper trust document. They showed their disdain for this trust document throughout the pages of the complaint, Reply and subsequent Motion for Summary Judgment. The Judge in his ruling on the Motion asked a rhetorical question. "In the instrument under review, the trustor and/or settlor stated in no equivocal term that the property therein were given and conveyed to the Trust. This instrument was duly executed by the said trustor and was registered in keeping with law. Can the administrators of this trustor come and challenge the act of the intestator whose estate they are managing?" The Judge went further and said, "with respect to this party the answer to this question may be a little different, but to the mind of this Court the instrument under review for the purposes and intents, qualified as a conveyance and constitute a deliverance of the property under review. To the mind of this Court, this Court says that the administrators lack the capacity to challenge the act of the intestator." By this statement of the Judge, the Movants stated in count 3.16 of their brief and we quote, "In the case at bar Respondent/Appellee did not raise the issue of lack of capacity on the part of Movant/Appellant to institute the instant action. Notwithstanding, the Trial Judge raised said issue and ruled that Movant/Appellant lacks the legal capacity to sue and denied Movant/Appellant's Motion for Summary Judgment." The Supreme Court has handed down numerous opinions on this issue that Courts do not raise issues, they can only pass on issues that are raised by parties. But in the case at bar our opinion is that the Trial Judge, in his ruling, did not rule that the Movant/Appellant did not have the legal capacity to bring this suit. In our opinion, what the judge said was that as administrators of the intestate estate of the deceased he wondered whether they could challenge her acts, meaning that the document was executed by her in which she conveyed some of her real properties to an institution she had set up during her life time. How could they, her administrator's challenge her act by questioning the formulation of the instrument, that it did not meet the standards for constituting a trust? The Judge's rhetorical question and subsequent answer thereto, was an issue of impropriety and not one of lack of capacity to sue. The issue of capacity to sue is a pre-trial issue. It is an issue in bar. It must be squarely raised in a Motion and determined before a case can proceed or not proceed to trial. That issue must be raised by a party who does not wish for a case to be proceeded with. To us there is a difference between the issue of lack of capacity to sue on the basis of which a main case out of which it grows is or is not allowed to proceed to trial, and the lack of capacity to challenge the act of one's principal, the intestator, as was done in this case. We are of the opinion that the Trial judge did not

dismiss the Motion or the main suit on the basis of lack of capacity to sue. The Judge, based on the issues that were raised and argued decided that the Motion could not be granted. Example, the Movants/Appellants in their Motion for Summary Judgment stated that there were no triable issues and therefore they were entitled to summary judgment, The Judge revisited the office of Summary Judgment and said that Summary Judgment presupposes that there is no fact in dispute and therefore as a matter of law, the party filing for same is entitled to the judgment. In light of this principle the Judge framed one issue which was whether or not the Trust Instrument met all the requirements for the establishment of a trust. The Judge took turn and overruled all the contentions of the Movant (1) That a true trust was not constituted because, there was no ascertainable trust res, the Judge said there was. (2) That there were no ascertainable beneficiaries, that too he overruled (3) that the legal title and the equitable interests vested in one and the same person. That contention also he overruled. At the conclusion of this judicious exercise, the Judge ruled denying and dismissing the Motion for Summary Motion and the ejectment suit. Therefore in view of all that transpired leading to the dismissal of the Motion and the ejectment suit, we cannot lend support to the Movants' contention in count 5 of the Bill of Exceptions that the Motion and ejectment suit were dismissed for lack of capacity to sue. When the issue of lack of capacity to sue is properly raised and successfully won, other issues become moot. In this case the Judge heard the Motion and the resistance and passed on all the issues therein raised and decided that the Movants did not prove that they were entitled to Summary Judgment. In the opinion of this Court, the Judge committed no error by so ruling.

In Count 6 of the Bill of Exceptions Movants have contended that ejectment proceedings involve mixed issues of law and fact and it is always tried by a jury under the direction of the Court, that in an ejectment action, trial by jury is mandatory irrespective of what was pleaded so long as issue was joined by and between the parties and that the Judge, after dismissing their Motion for Summary Judgment should have heard the ejectment action which, like all actions of ejectment, contained mixed issues of law and fact. But instead the Judge also dismissed the ejectment suit. We believe the Movants were attempting to confuse this Court. But we refuse to be confused. We are however wondering about the trend of Movants' contention. The fact of the matter is that it was the Movants who, as Plaintiffs in the Trial Court instituted an action of ejectment. In the said action they made a listing of several pieces of real properties which they said were part and parcel of the intestate estate of their deceased relative and that as the administrators/administratrixes of said estate they found the defendants in occupancy and possession, and that despite all efforts exerted by them to take possession and administer said properties, the

defendants have illegally and wrongfully continued to withhold them. They therefore prayed that the Civil Law Court would have them evicted and fined US\$50,000.00 for wrongful detention of the estate properties. The defendants filed an Answer to which the said plaintiffs filed a Reply. But curiously the said plaintiffs decided to file a Motion for Summary Judgment, stating that there were no triable issues of real, or substantial issue to be tried. Their decision to file this Motion for Summary Judgment was based on the statement of the Defendants which the plaintiffs termed as an admission that the properties, subject of the ejectment suit were owned by the deceased. The Movants concluded that by virtue of that admission there was no triable or controversial issue of fact to proceed to hear the ejectment suit. They also argued that the Trust had not been properly constituted. They listed all the requirements they alleged were missing. It must be noted that the properties sought to be recovered through the ejectment action were the same and identical properties that constitute the Trust Res. The Judge having ruled dismissing the Motion and the ejectment suit, the Movants now say, the Judge should have heard the ejectment action because there are always mixed issues of law and fact in an ejectment action and that it is mandatory that an ejectment action is tried by a jury. We wonder whether the Movants are not only trying to confuse the Court but are themselves also confused about something, like wondering whether they should have moved the Court for Summary Judgment in the first place or whether to have instituted the ejectment suit to evict and undo the trust that was setup by the deceased. Must the Court allow the Movants, who after instituting an action of ejectment, and subsequently decided that there was no triable issue of fact, and therefore filed a Motion for Summary Judgment, to now reverse themselves and say that in hindsight there are triable issues because the suit is one in ejectment? We hold no. This Court will not grant aid to a party who after instituting an action in ejectment, decides to seek a summary judgment instead, but when it loses the Motion, to now come back and say it should have been allowed to return to the main suit. For to grant aid would be aiding a party to repudiate his own acts and drag the Court along with it in doing so. We hold that when the plaintiffs filed the Motion for Summary Judgment they tacitly abandoned the ejectment action. More than that, we can not uphold the Movants' contention that the Judge should have returned to the ejectment suit and have same tried by jury, since in deed, the properties listed in the ejectment suit were identical to the properties conveyed under the Trust. The Judge having ruled that said properties were conveyed under a valid trust and that they were not part and parcel of the intestate estate, what sense would it have made for the selfsame Judge to have ruled the same issues to trial again in another suit between the same parties? In the opinion of this Court, the establishment of the Inter Vivos Trust by the property owner designating the said properties to be the res of the trust, removed said

properties from the administration of her intestate estate as long as the trust remains in operation in Liberia for the purpose for which it was established and her name attached thereto in remembrance of her here on earth. The Judge therefore in his judicious wisdom rightly decided that there was no longer an issue of mixed law and fact to warrant a trial by jury. The ejectment suit therefore became a legal nullity.

In view of all the arguments and the conclusions of law in support of the ruling by the Trial Judge, it is our considered opinion that the properties in issue were legally conveyed, and delivered by the settlor; that the beneficiary named in the trust document is the Christiana O. Smythe Institute of Management and Technology Inc. encompassing the Christiana O. Smythe Child Welfare Foundation to be managed by the institute and that the persons named in the trust document as trustees are legally constituted as trustees. Said trustees should therefore be left unmolested by the Movants/Appellants to manage the affairs of the trust.

The Clerk of this Court is to instruct the Court below to resume jurisdiction and proceed according to law. AND IT IS HEREBY SO ORDERED.

JUDGMENT AFFIRMED.

Counsellor J. Johnny Momoh appeared for the Appellant. Counsellor Thompsom N. Jargba appeared for the Respondent