

**Yahaya E. Jalingo et. al** of the city of Monrovia, Liberia APPELLANT VERSUS  
His Hon. **Emery Paye** Assigned Circuit Judge and **Baba Mohmoud** of the city of  
Monrovia, Liberia APPELLEE

PETITION FOR THE WRIT OF PROHIBITION

HEARD: April 15, 2008 DECIDED: May 2, 2008

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE  
COURT

This is an appeal from the ruling of our colleague, Mr. Justice Kabineh Ja'neh presiding in Chambers, denying a writ of prohibition. The petitioner had filed for a writ of prohibition alleging that he was brought under the jurisdiction of the Monrovia City Court in the action of summary proceedings to recover possession of real property as party defendant; that when the case was called for trial, petitioner/defendant requested the court to dismiss the cause of action because title was at issue; consequently, the magisterial court lacked jurisdiction over said matter. Petitioner's title relied on is a squatter's rights granted by the Monrovia City Corporation (MCC).

The Magistrate dismissed the application made, disagreeing that the petitioner's squatter's rights was title for which the magisterial court should refuse jurisdiction. The petitioner then filed summary proceedings before the Circuit Court which upheld the ruling of the magisterial court, stating that petitioner's reliance on the squatter's rights did not present an issue of title for which the magisterial court should refuse jurisdiction. The case was remanded by the judge of the circuit court with a mandate to the magisterial court that the appellant/petitioner be evicted from the property.

Based on the circuit court's mandate to have the appellant/defendant evicted, the appellant filed a petition for a writ of prohibition with the Justice in Chambers who ordered a stay and subsequently issued an alternative writ.

In his petition for a writ of prohibition, the petitioner/appellant alleged that the property in question was an alley that was separate and distinct from Co-respondent/appellee Baba Mohmoud's property for which the petitioner has a squatter's rights; that in fact a survey was conducted upon the request of appellee's estate and the result of the survey showed that the property occupied by the

petitioner was not part of the Intestate Estate of the late Harriette Walker-Diggs which the co-respondent Mohmoud represents and for whom he had brought this action; that the assigned circuit judge had based his ruling primarily upon the fact that petitioner had been tenant of the estate for almost two decades; therefore, summary proceedings would lie in the face of the squatter's rights; and though the estate had collected rent from the petitioner, it was done through misrepresentation.

The appellee/respondent countering the appellant's petition stated that this Court has held in many opinions that squatter's rights does not constitute title within the context and definition of title under our laws; that he is the legitimate lessee of the property and has been so for the past twenty three years; that the petitioner has been his tenant for the past 15 years, that is from 1992 to 2005, when he the petitioner leased the property from the original owner and acquired the petitioner/appellant as a tenant. The problem started when the petitioner refused to pay rent as a result of the appellee's proposal to increase the rent. Appellee found it strange that the petitioner would obtain a purported squatter's right in 1996, but waited until 2004 to probate the document and in 2005 assert a claim of title challenging the right of the appellee, his landlord. Appellee said further, that it was also strange and illogical that the petitioner would obtain a squatter's rights to a property in 1996, and wait until 2005 before he relied on a survey to prove that the property is not the legitimate property of Henrietta Walker Diggs, the original owner. Appellee also said that he was not notified or aware of any survey conducted covering the area; that under our laws no survey of a property can be conducted without the knowledge and participation of one who has de-facto physical possession and maintain residency on the property;

The writ of prohibition having been issued and the appellee's returns filed, the Chambers Justice heard the matter and ruled against the appellant/petitioner. He ruled that prohibition is not the proper remedy for the circuit court's determination affirming and confirming the judgment of the Magisterial Court; there were other remedies at law that the petitioner could have taken advantage of; he therefore ordered the alternative writ squashed and the peremptory writ refused.

From the argument before this Bench, two issues are salient to the determination of this case:

*(1) Whether the circuit judge erred when in upholding the ruling of the magistrate he remanded the case to have the appellant evicted?*

*(2) Whether under the facts and circumstances the appellant could challenge the title and rights of his landlord?*

From the facts in this case, the magisterial court had overruled the appellant's motion to dismiss for lack of jurisdiction because title was involved. The magistrate ruled that title was not an issue because the squatter's rights relied on by the appellant had been decided by the Supreme Court in an earlier case as being no title envisaged under the law that bars the magisterial court from asserting jurisdiction over the case. Appellant filed summary proceedings with the circuit court to review this denial by the magisterial court. The judge presiding ruled upholding the ruling of the magisterial court and sent an order mandating the Magistrate to proceed to dispossess the petitioner/appellant, and re-possess the respondent on the premises.

The question is, whether the matter to be decided on by the judge was interlocutory or final?

Our statute holds that summary proceeding to recover real property is a special proceeding. The courts shall make summary determination upon the pleadings, papers, and admissions to the extent that no triable issues of facts are raised. **ILCLR, Sections 16.9(2); 62.21 (1973).**

The facts in this case are that the appellee alleges that he is the lessee of the late Harriette Diggs Walker property. When he took possession of the property in 1991, the appellant was a tenant of the property and reverted to him as his tenant; that upon leasing the property from the estate in 1991, it was agreed that only minimum rent would be charged the appellee as he had promise to carry out renovation of the property which is essentially a store. In fact, a hundred percent rent waiver was granted the appellee for three years, from 1992-1995, and thereafter, appellant commenced payment of rent to appellee up to 2005, when the appellant called a meeting of all twenty four of his tenants on the property informing them of his intention to carry out a general renovation work on the property, and his intend to increase the rents after the renovation. All the other tenants accepted the proposal in good faith except for the appellant who then and there declared that he was unwilling to continue his rental payments as he had acquired squatter's rights from the Monrovia City Corporation and therefore the property was now his in fee simple. All attempts to get the appellant to reconsider his unreasonable stand proved futile and this left the appellee with no other option but to institute summary proceeding to recover real property in the magisterial court.

Appellant has argued that while he was appellee's tenant, a survey was conducted which showed that the property on which the appellant reside is an alley and for which appellant had gotten squatter's rights permit from the Monrovia City Hall; that he had paid rent over the years because of misrepresentation from the appellee. He denies that he rented a structure built by the appellee's estate but had rented from the appellee a government toilet which he had turned into a shop.

There is no dispute by the parties, of the appellee's actual control and possession of the property and that it had been rented to the appellant for more than two decades. The appellant for about fifteen years or more had recognized the possession of the appellee and the squatter's rights on which he relies was only acquired in 1996. Nine years after he acquired his so-called squatter's rights, the appellant continued to present himself as appellee's tenant and paid rent to appellee. Appellant also alleges that a survey was conducted by the appellee's estate which excluded his property from appellee's, but appellee had no knowledge of the conduct of such survey. Under our laws, no survey of a property should be conducted without the knowledge and participation of one who has de-facto physical possession and maintain residency on the property. **Property Law, Title 29, Chapter 8, Sub-Chapter B.** Even assuming that a survey was carried out, the Monrovia City Hall could not without the proper recourse legally conveyed the property to appellant when the appellee had possession more than two decades and had been exercising actual control and possession over same. This Court has held that "If recovery may be had on right of title and not on weakness of adversary's title, the right of possession may be prima facie evidence of title against intruders;" *Dausea and Kargou vs. Coleman*, 36LLR102, 130 ( 1989). In effect, a defendant who has no title to the premises may not contest the plaintiff's title thereto where the latter has shown a prima facie right to the premises.

Since squatter's rights does not constitute title and the Charter creating the Monrovia City Corporation (MCC) does not authorize it to convey title, there is no genuine issue of fact to be determined as the appellant has not disputed the appellant's possession and control of the property. Our Public Lands Law states: "*A citizen desiring to purchase public land in the County Area shall apply to the Land Commissioner of the county in which the land is located, and the Land Commissioner if satisfied that the land in question is not privately owned and is unencumbered shall issue a certificate to that effect.*" **1CLR V: Title 34, Public Lands Land, Chapter 3, Section 30, Sale of Public Lands.** No where has this Court been able to find the law giving the Monrovia City Corporation (MCC) the authority to convey title to land.

Summary proceeding being any proceeding in which the court determines from the facts presented by the parties that there is no genuine issue of facts to be determined, a case then, of this nature when brought before a court, must be heard and disposed of speedily. In this case, where the squatter's rights relied on by the appellant as his title has been denied and the appellant has not disputed the appellee's possession of the property for more than two decades, and has not denied that he paid rent to the appellee for more than fifteen years, this Court fails to see any genuine issue of fact that could be decided by the court below if this prohibition is granted.

This Court has the authority, on examination of the records to render whatever judgment the lower court should have rendered and which will effectuate the ends of justice. Having determined based on the records before us, that the appellant has no title or one on which to rely and challenge the possession of the appellee, the ruling of the circuit court is hereby upheld with instructions that its mandate be carried out. The Clerk is ordered to send a Mandate to the court below to enforce the Judgment. Costs ruled against the appellant. AND IT IS HEREBY SO ORDERED