

PETER JUAH, Appellant, *v.* **MOHAMMED KONNEH et al.**, Appellees.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 28, 2004. Decided: August 16, 2004.

1. Waiver is defined as the voluntary and intentional relinquishment of a known right...which except for such waiver the party would have enjoyed.
2. A waiver operates to preclude a subsequent assertion of a right waived or any claim based thereon.
3. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof.
4. An action of ejectment may be brought when the title to real property as well as the right to possession thereof is disputed.
5. An action of summary proceedings to recover possession of real property is only applicable where title is not in issue.
6. A trial judge acts properly in confirming a ruling of a magisterial court dismissing summary proceedings to recover possession of real property where title is in dispute.

This is an appeal from the ruling of the judge of the Sixth Judicial Circuit Court, Montserrado County, upholding the ruling of the New Kru Town Magisterial Court dismissing the action of summary proceedings to recover real property instituted by the appellant. The appellant, previously a member of the Liberia Marketing Federation (LMF), had requested the magistrate to eject the defendants from the said property which he said he held title to based on a purchase of 1.7 lots of a 361 acres plot of land. 1.5 acres of the said 361 acres had also been leased by the LMF from the administrators and administratrix of the Estate containing said land. The magistrate had dismissed the case based on a motion put on the minutes of the court by the defendants that title was in issue. On appeal to the circuit court, the judgment was reversed and the magistrate ordered to proceed with the hearing of the case *de novo*.

The appellants/defendant excepted to the ruling and thereafter filed a petition before the Justice in Chambers praying the issuance of a writ of prohibition.

Following a series of legal actions, including the filing of a petition before the Justice in Chambers, the granting of same, the constitution of a Board of Arbitration by the trial court upon resumption of the case, and a determination by the Board that a portion of the parcel of land leased by the LMF being on the land purchased by the appellant, the court needed to consider the date of execution of the lease agreement. The report of the Board of Arbitration having been read in open court in the presence of the parties, the trial judge

subsequently affirmed the report and accordingly dismissed the appeal taken by the appellant from the dismissal of the summary proceedings to recover real property entered by the magisterial court. From this decision of the trial court, the appellant appealed to the Supreme Court.

The Supreme Court affirmed the judgment of the trial court, rejecting the contentions raised by the appellant. The Court noted, as to the contention that the trial court had entered judgment with prejudice as to the appeal from the summary proceedings to recover real property, that the trial judge had not dismissed the appellant's appeal with prejudice.

The Court also rejected the appellant's contention that he was not given the opportunity to file a motion to vacate the board of arbitration's report, referring to the minutes of the trial court which showed that not only had the report of the arbitrators been read in open court, with the appellant being present, but also that the matter was assigned to another day for the trial court's ruling on the report. The Court opined that the appellant had the opportunity to file an application after the reading of the report and/or after the ruling of the trial court thereon, and that his failure to use those opportunities constituted a waiver.

On the issue of the trial court's affirmance of the ruling of the magisterial court dismissing the summary proceedings action, the court held that the trial judge had acted properly since under the law the magisterial court lacked jurisdiction over the matter, both parties having asserted claims to title to the property.

Joseph N. Blidi and *Richard D. Flomo* appeared for the appellant. *Roger K Martin, Sr.* of Martin Law Office represented the appellee.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This case is before us on appeal from the ruling of the presiding judge, His Honour Varnie D. Cooper, of the Sixth Judicial Circuit Court, Montserrado County, Liberia, during the September Term, A. D. 2000, dismissing the appeal of the appellant in an action of summary proceedings to recover possession of real property filed against the appellees in the New Kru Town Magisterial Court.

Our review of the records in this case reveals that the Liberia Marketing Federation (L. M. F.) leased 1.5 acres of land out of 361 acres owned by the Intestate Estate of the late J. N. Lewis, by and thru its administrators and administratrix E. Kofa Benson, Joseph N. Lewis and Deborah B. Tequah, in the year 1993, for a period of twenty (20) years. The lease agreement was probated and registered according to law.

In 1998, Peter Juah, plaintiff/appellant in this case, purchased 1.7 lots out of the same 361 acres of land owned by the Intestate Estate of the late J. N. Lewis, by and thru the curator of Montserrado County, Mr. Jackson K. Ziah. The deed was probated and registered according to law.

Prior to and during the signing of the lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis, as lessor, and L. M. F., as lessee, on December 1, 1993, and the subsequent purchase of the 1.7 lots by the appellant from the Intestate Estate of the late J. N. Lewis in 1998, the appellant, Peter Juah, was a member of the L. M. F. However, after the purchase of the 1.7 lots from the Intestate Estate of the late J. N. Lewis, appellant withdrew his membership from L. M. F. for reasons best known to himself and thereafter filed in the New Kru Town Magisterial Court an action of summary proceedings to recover possession of real property against Mohammed Konneh, et al. who are members of L.M.F., on the ground that the defendants/appellees had intruded upon his 1.7 lots by operating a market thereon without his approval. He therefore prayed court to have them ousted and evicted from the subject premises. The writ of summons was issued, served and returned served.

When the case was called for hearing, the counsel for defendants/appellees made a motion on the minutes of the court for the dismissal of the action on ground that title was in issue, in that defendants/appellees were members of L. M. F. and that said L. M. F. had a lease agreement for 1.5 acres of land with the Intestate Estate of the late J. N. Lewis, which lease agreement had not expired and that defendants/appellees were operating a market on the said 1.5 acres of land.

Upon the presentation of a copy of the lease agreement, the magistrate dismissed the action. To this ruling, plaintiff/ appellant excepted and announced an appeal to the Sixth Judicial Circuit Court, Montserrado County, Liberia.

The Sixth Judicial Circuit Court, presided over by Judge Yussif Kaba, reversed the judgment rendered by the New Kru Town Magisterial Court and mandated the said court to resume jurisdiction over the case and proceed with the hearing of the case *de novo* on the ground that title was not in issue since the lease agreement between L. M. F. and the Intestate Estate of the late J. N. Lewis made no reference to the property other than the one in dispute.

Defendants/appellants excepted to the ruling and thereafter filed before the Justice in Chambers a petition for a writ of prohibition. Justice John N. Morris, presiding in Chambers, issued a stay order, and after holding a conference, ordered that the presiding judge resume jurisdiction over the case and proceed with the case in keeping with law.

When the trial court resumed jurisdiction over the case, counsel for defendants/appellees made an application to the court for the constitution of a board of arbitration consisting of qualified licensed surveyors, one to be appointed by each party and the chairman to be appointed by the court, so that the board, as constituted, will proceed on the disputed premises to conduct a survey/investigation relative to the property rights of the parties. To this submission, counsel for plaintiff/appellant conceded and Judge Kontoe therefore granted the application and thereafter set up a board of arbitration consisting of Kenpson Morris as chairman, and Edward Kollie and J. Amos Kollie as members.

In the report of the board of arbitration, submitted to the court on July 6, 2000, it was indicated that a portion of the land leased by the Liberia Marketing Federation from the Intestate Estate of the Late J. N. Lewis extended into portion of the 1.7 lots owned by the plaintiff/appellant. Hence, the board concluded that the court should seriously take into consideration the issuance dates of the lease agreement and the deed in resolving the matter.

After the reading of the board of arbitration's report on the 18th day of October, A. D. 2000, an assignment was issued which was served on both parties' counsels and returned served for the ruling on the board of arbitration's report scheduled for the 15th day of November, A. D. 2000 at the hour of 2:30 P.M. The case records show that ruling was made on the 16th of November, A. D. 2000, by Judge Varnie D. Cooper, who affirmed and confirmed the report of the board of arbitration and denied the appeal taken by the plaintiff/ appellant from the New Kru Town Magisterial Court in the action of summary proceedings to recover possession of real property instituted against the defendants/appellees. To this ruling, plaintiff/appellant excepted and announced an appeal to the Supreme Court.

The bill of exceptions filed by plaintiff/appellant consists of three (3) counts, but we deem counts one (1) and two (2) to be relevant to the disposition of this matter; and they are:

- “1. That your Honour committed reversible error when you held in your final judgment that the plaintiffs/appellants' case was dismissed with prejudice against him, when in fact under our law controlling, where title is an issue in a cause of summary proceedings to recover possession of real property, the action is dismissed not on its merits and demerits, but without prejudice to either party”.
2. That your Honour also committed reversible error when you ruled on the surveyors' report without first affording plaintiff/appellant the opportunity to be served a copy of said surveyors' report so as to enable plaintiff/appellant to file a motion to vacate the report since plaintiff/ appellant was dissatisfied with certain counts of the report”.

Considering the facts and circumstances, as well as the bill of exceptions mentioned above, there are only three issues that are worthy of our determination in the matter, and they are:

1. Whether the judge below dismissed the appeal with prejudice?
2. Whether or not the judge below erred when he ruled on the surveyors' report without a copy of said report being served on the plaintiff/appellant?
3. Whether or not title is in issue?

In discussing the issues mentioned above, we shall discuss them in chronological order.

In count one of appellant's bill of exceptions, he alleged that the presiding judge entered final judgment dismissing the appeal that grew out of an action of summary proceedings to recover possession of real property with prejudice against the appellant. A careful review of the records sent up to this Honourable Court reveals that Judge Varnie D. Cooper's ruling,

made on the 51st day's jury sitting, September Term, A. D. 2000, Thursday, November 16, 2000, fell short of said allegation. A portion of the final judgment entered on November 16, 2000 states:

‘WHEREFORE AND IN VIEW OF THE FOREGOING, the surveyors having submitted a unanimous report, same is hereby affirmed and confirmed. Consequently, the appeal announced by the petitioner, Peter Juah in the New Kru Town Magisterial Court, is hereby denied and the action of summary proceedings to recover possession of real property against the Liberian Marketing Federation is hereby dismissed with cost against the petitioner. AND IT IS HEREBY SO ORDERED’.

We therefore hold that the trial judge did not dismiss plaintiffs’/appellants’ appeal with prejudice and therefore did not commit a reversible error.

This brings us to the next issue, which is, whether or not the judge below erred when he ruled on the surveyors’ report without a copy of said report being served on the plaintiff/appellant? The records in the case file also show that the board of arbitration set up by the court below was based on the application made on the minutes of the court by appellees’ counsel without objection from appellant’s counsel. In short, both parties agreed for the setting up of a board of arbitration to proceed on the disputed premises and conduct an investigation. (See Sheets Five and Six of the 30th Day’s Jury Sitting, December Term, A. D. 1999, Wednesday, January 26, 2000). Moreover, each party named a surveyor to serve on the board of arbitration with the chairman being appointed by the court.

The records further reveal that after the submission of the board of arbitration’s report, the court below issued a notice of assignment dated October 10, 2000 for the reading of the board of arbitration’s report on the 18th day of October 2000, at the hour of 2:00 P. M. According to the sheriff’s returns, said notice of assignment was served on Counsellor Richard K. Flomo, counsel for appellant, and Counsellor Roger K. Martin, counsel for appellees, and also on Stephen K. Kollie, for and on behalf of the members of the board of arbitration.

We also found in the records of this case that on the 26th day’s jury sitting, September Term, A. D. 2000, Wednesday, October 18, 2000, the report of the board of arbitration was read in open court with counsels for both parties being present. Thereafter a notice of assignment was ordered issued on November 14, 2000, for ruling on the board of arbitration’s report on November 15, 2000, at 2:30 p.m. This notice of assignment was served and signed for by a representative of each of the parties’ counsels and each member of the board of arbitration.

In view of the facts and the records before us, this Court disagrees with the contention of appellant that he was not given the opportunity to file a motion to vacate the board of arbitration’s report. Appellant had not only knowledge of the report, but was present during the submission, reading and ruling on the report. He therefore had the opportunity to have filed whatever application he wanted to have made against the board of arbitration’s report between September 18, 2000, the day the report was read and November 15, 2000, the day

the ruling was made on the report. His failure to do so is tantamount to waiver. “Waiver is defined in substantially similar language as the voluntary and intentional relinquishment of a known right ... which, except for such waiver, the party would have enjoyed”. See *Kobina et al. v. Abraham*, 15 LLR 502 (1964), text at 507-508. This Court, speaking in the case *Ezzedine v. Saif*, 33 LLR 21 (1985), Syl. 2, text at p. 26, said that a “waiver operates to preclude a subsequent assertion of a right waived or any claim based thereon”. Count two (2) of appellant’s bill of exception is therefore overruled.

This brings us to the last issue, i.e., whether or not title is at issue?

Appellant Peter Juah was a member of the L. M. F. prior to and during the signing of the lease agreement entered into by and between the Intestate Estate of the Late J. N. Lewis and U M. F. in 1993. Appellant also knew the land covered by the 1.5 acres of land within the 361 acres of land owned by the Estate of J. N. Lewis. Moreover, appellant had knowledge and had seen members of the L. M. F. doing marketing business on the said 1.5 acres of land leased prior to the purchase of the 1.7 lots from the same source in 1998. He therefore knew or ought to have known that a portion of his 1.7 lots would form part of the 1.5 acres of land leased by the L. M. F., as confirmed in the board of arbitration’s report submitted to the court below.

Our statute provides that “any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed”. See Civil Procedure Law, Rev. Code 1: 62.1.

An action of summary proceedings to recover possession of real property is only applicable where title is not in issue. In the instant case, both appellant and appellees (by and thru Liberia Marketing Federation) are claiming title to the disputed property. Hence, the judge below acted legally by confirming the ruling of the New Kru Town Magisterial Court dismissing the action of summary proceedings to recover possession of real property.

Wherefore, and in view of all the facts and circumstances, as well as the laws herein cited, it is the opinion of this Court that the judgment appealed from be and the same is hereby confirmed and affirmed without prejudice. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court, Sixth Judicial Circuit, ordering the judge presiding therein to resume jurisdiction over the case and give effect to this ruling. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.