

JACOB M. KAMARA and **JAMES S. KAMARA**, Appellants, v. **HENRY V. LOGAN** and **SOMO GBEE**, Appellees.

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

Argued March 9, 11, 1954. Decided May 28, 1954.

1. A written receipt which satisfies the requisites of a binding contract of sale of real property may be specifically enforced by a court of equity.
2. The statutory period of limitation barring an action for enforcement of a written contract is reckoned from the date when the contract became enforceable, and not necessarily from the execution of the instrument.

Plaintiffs sued defendants for specific performance of a written contract of sale of real property. On appeal to this Court from a judgment of the court below that the statute of limitations barred suit, and that the agreement in question was not a written contract, *judgment reversed and case remanded* for new trial.

K. S. Tamba and *Momolu S. Cooper* for plaintiffs. *R. F. D. Smallwood* for defendants.

MR. JUSTICE HARRIS delivered the opinion of the Court.

The appellants, plaintiffs below, paid to Henry V. Logan and Somo Gbee, defendants below and appellees herein, the sum of one hundred and twenty dollars for eight acres of land in Bushrod Island, Montserrado County, for which the following receipt was given :

"Received from Messrs. Jacob M. Kamara and James S. Kamara of the City of Monrovia and of the Republic of Liberia, the sum of (\$120.00) one hundred and twenty dollars, being an amount paid for (8) eight acres of land in Bushrod Island, Montserrado County, of the Republic of Liberia, until said land is surveyed and proper deed is issued and signed by us.

"Bushrod Island, Monrovia, Liberia, February 24th, 1948.

"[Sgd.] Henry V. Logan

"[Sgd.] Somo Gbee (his cross)

"[Sgd.] Moses Abel (witness)."

Some time thereafter the appellants applied to the appellees for a title deed to cover the eight acres of land described in the receipt. Defendants failed to give plaintiffs such a deed. Plaintiffs then instituted a suit for specific performance with a complaint containing the following counts :

"1. On February 24, 1948, plaintiffs paid to defendants the sum of one hundred and twenty dollars for eight acres of land which the said defendants promised to sell to plaintiffs, as will more fully appear from a receipt executed for said sum of money, a copy whereof is annexed to form a part of this complaint.

"2. Despite repeated application by plaintiffs for title deed to cover the eight acres of land duly paid for, defendants have neglected, failed and refused to issue said title deed."

The defendants in their answer pleaded by way of confession and avoidance. That is to say, they confessed having received the one hundred and twenty dollars from plaintiffs for eight acres of land in Bushrod Island, but contended that a petition for specific performance must be instituted within three years after the cause of action accrues. The plaintiffs in their reply contended that, since this was an action for the specific performance of a written contract other than for the payment of money, the applicable limitation was seven years, not three years. Defendants, in their rejoinder, contended :

"1. The enforcement of specific performance does not depend upon a written contract; for specific performance can be based upon a verbal understanding between the parties. Such an action therefore cannot be brought after three years.

"2. In this case there is no written contract upon which plaintiffs have brought this suit to enforce specific performance since all written contracts must be signed and sealed by the contracting parties.

"3. The receipt for the payment of money filed with plaintiffs' complaint is only evidence of plaintiffs' claim, and not a written contract, since it is *ex parte* in its nature and not signed by any contracting party. Therefore it lacks the requisites of a written contract."

In the surrejoinder the plaintiffs contended, in substance, that a document signed by defendants is, to all intents and purposes, a written contract of sale of real property

by the said defendants to the plaintiffs, wherein the said defendants contracted to sell eight acres of land to plaintiffs in consideration of money paid them by plaintiffs. This the defendants denied in their rebutter, at which stage the pleadings rested.

The legal issues were tried by the Circuit Court of the Sixth Judicial Circuit, Montserrado County, which sustained the defendants' contentions that this action should have been brought within three years because the receipt in question was not a written contract, and on that ground dismissed the complaint. It now becomes our duty to inquire into the soundness of this ruling dismissing plaintiffs' action and forever barring them from recovering by reason of the statute of limitations.

Since this action was predicated upon the purchase of eight acres of land from the defendants for one hundred and twenty dollars, in return for which defendants gave a receipt pending the survey of said land and issuance of a deed by them, we shall see whether such a receipt can be so written as to constitute a written contract. It is well settled that, when a contract which need not be in writing is reduced to writing, it is not necessary that it should be expressed in a particular form.

"A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act. The consideration of a contract may be anything which is troublesome or prejudicial in any degree to the party, who performs or suffers it, or beneficial in any degree to the other party, an agreement without such a consideration is not a contract but only a promise." 1841 Digest, pt. II, tit. I, sec. 11 ; 2 Hub. 1516.

The receipt in question, *supra*, shows there was an agreement entered into by the assent of two or more minds, and involving an exchange of consideration. It is therefore the opinion of this Court that the receipt given by defendants to plaintiffs is so drawn that it constitutes a written contract.

Moreover, this Court is at a loss to know how the court below arrived at its conclusion that the plaintiffs are barred by a statute of limitations. Such a statute could not, in any event, begin to run from the date of the receipt. It would begin to run only after the failure of the defendants to sign and deliver a proper deed to plaintiffs to cover the said eight acres of land, and after the survey of said land, as stated in the receipt. There was nothing before the court to show that the land had been surveyed and that three years had elapsed from the time of the survey to the

filing of the action. If A receives from B an amount of money for which he executes a note stipulating to pay said sum of money upon the happening of a certain event, and that event does not happen until ten years thereafter, the statute of limitations does not begin to run until after the happening of that event; it does not begin to run from the date of the execution of the note. On this issue of law the trial Judge also erred. Because of what has been stated above, the judgment of the court below is therefore reversed; the case is remanded to be tried upon its merits; the appellees are ruled to pay all costs; and it is hereby so ordered.

Reversed.