Messr Moses Karpeh, **Thomas Sellu**, **Roland Dweh**, **Newton**, **et al** of the Township of Gardnersville, Montserrado County, Liberia APPELLANTS VERSUS The **Testate Estate of Quengar Barchue**, by and thru its Executrix and Executor, Martha Barchue-Kollie and William Dennis Barchue, all of the City of Monrovia, Liberia APPELLEE

LRSC 9

APPEAL

Heard: December 2, 2009 Decided: January 22, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

Quargar Barchue, deceased, died leaving a Last Will and Testament dedicating his entire physical and personal possessions to his son, John Dennis Barchue, and his daughter, Martha Barchue Kollie, executor and executrix of his will. Clause 3 of the will reads:

3. "I will and devise all my properties, real and personal to my son, John Dennis Barchue, and my daughter, Martha Kollie Barchue, both of the City of Monrovia, including my thirty (30) acres of land situated on the Freeway within the Monrovia Transport Authority (MTA) area and my twenty (20) acres of land on Kesseley Blvd. commonly called Mago Island and one hundred (100) acres of land situated in Congo Town from which twenty (20) acres was conveyed to Charlie Johnson".

In February 2001, the executor and executrix filed an Ejectment Action on behalf of the testate estate against Messers Moses Kerper, Thomas Sellu, Roland Dweh et al., of the place known as the MTA Community. This matter was venued before the Sixth Judicial Circuit sitting in its March Term, A.D.2001. The appellee attached to the complaint, the Last Will and Testament of their late father Quaigar Barchue and a certified copy of a deed dated May 1909, signed by the Late President Arthur Barclay, granting thirty acres of land located in Gardnersville to Quaigar Barchue. The complaint was withdrawn and amended on June 13, 2001. The amended complaint reads:

The plaintiffs in the above captioned cause of action complain of defendants in form and manner to wit:

1. That they are the bonafide owners of a Thirty Acre (30) parcel of land situated, lying and being in Gardnersville as herein described by metes and bonds as follows:

"Commencing at a small palm tree designated by the elders and chiefs of Surdiva at the intersection of Gboe Camp Road and a drain called Sand Creek, running into Gaul Creek and on the right bank of the said drain called Sank Creek which is the Northeastern side of said Gboe Camp and running thence on magnetic bearing North 75' East 15 chains, thence right angle North 15' West 20 chain, thence right angle South 5' East 20 chains, to the place of commencement and containing thirty (30) acres of land and no more;" as more fully shown by an ABORIGINES GRANT Plaintiff's Exhibit DM/1.

2. That by due process of law, the said Estate has descended to William Dennis Barchue and Martha Barchue Kollie as evidenced by the Last Will and Testamentary herewith proferted and made a cogent part of this complaint as Plaintiffs' Exhibit DM/2.

3. That despite the above clear, cogent and legal show of title to the above described property, the defendants have encroached thereupon, occupied and are illegally and wrongfully withholding portions of the said described property of Plaintiffs without their knowledge, against their will and consent and to their detriment and damages.

4. That plaintiffs served both oral and written notices to the defendants to cease their encroachment and vacate from Plaintiffs' property all to no avail. Plaintiffs herewith profert two (2) of such notices given defendants as Exhibit DM/3 in bulk.

5. That by the defendants' encroachment on plaintiffs' property, their illegal occupancy and wrongful withholding from plaintiffs of their legitimate property, they have been prevented enjoying the economic benefit of their property and thereby inflicting financial and economic damages upon plaintiffs.

6. That the plaintiffs have paid the accrued cost as evidenced by plaintiffs' Exhibit DM/4 herewith attached.

Wherefore and in view of the foregoing, plaintiffs bring this Action of Ejectment against the defendants, praying this Honorable Court to have them ousted, evicted and ejected from plaintiffs' property, and awards plaintiffs general damages commensurate with the illegal encroachment, occupancy and wrongful withholding of plaintiffs' property, rule the said defendants with all costs of these proceedings and grant unto plaintiffs any and all other relief which the exigency of this case demands and which, to this Honorable Court, seemeth just, legal and equitable .

Respectfully submitted,
The Testate Estate of Quaingar Barchue By and thru its Executor William Dennis

Barchue And Executrix Martha Barchue-Kollie....PLAINTIFFS,
By and thru their Counsel: C/o Sherman & Sherman Corner of Mechlin/Ashmun Streets
P.O Box 10-3218 1000 Monrovia 10, Liberia
CONSELLORS-AT-LAW

The appellants, defendants below, filed an eleven (11) count amended answer. Counts 1, 2, & 6 are quoted, being relevant to the matter before us:

Defendants in the above entitled cause of action answer the Plaintiffs as follows, to wit:

1. Defendants in the above entitled cause of action are tenants of the Intestate Estate of the Late Ethelda James-Yancy. See Letters of Administration marked as Exhibit D/1 and Deeds marked as D/2 in bulk.

2. "That as to Count One (1) of Plaintiffs' complaint, Defendants say and submit that while they do not dispute Plaintiffs' ownership of a 30 acre parcel of land in the Township of Gardnersville as described in their purported certified Public Land Sale Deed, Defendants contend that the property they occupy is not or does not form part of Plaintiffs' land, in that Gboe Camp Road and Sand Creek which are named in Plaintiffs' deed are not located and cannot be found anywhere in or near the property that defendants occupy. Defendants further contested that while Plaintiffs may own a parcel of land in Gardnersville as described in their Exhibit DM/1, Plaintiffs have mis-located their property and have embarked upon a fishing expedition aimed at claiming the property on which Defendants reside under the mistaken belief that said property is legally vacant. Defendants therefore challenge Plaintiffs to show and prove firstly that Gboe Camp Road and Sand Creek named in their purported Public Land Sale Deed exist and can be found on or around the property Defendants occupy. Count One (1) of Plaintiffs' complaint together with their "Exhibit DM/1 are therefore dismissable."

6. And also to count 3 of plaintiffs compliant, Defendants categorically deny that the pieces of land they occupy are the lawful and legitimate property of the Plaintiffs and or that the said property is part of the Intestate Estate of the Late Quaingar Barchue. Defendants submit and say that the pieces of land that they occupy presently are a part and parcel of the Intestate Estate of the Late Ethelda James-Yancy and the Late Magnus Yancy under the administratorship of Reverend Joshua Antonio James by virtue of a Letter of Administration from the Monthly and Probate Court for

Montserrado County, copy of which is hereto attached and marked D/1 to form part of Defendants' Amended Answer. Also attached to the Defendants' Amended Answer are copies of two (2) Public Land Sale Deeds from the Republic of Liberia to the Yancys, marked in bulk as D/2 to also form part of the Defendants' Amended Answer. Count three (3) of the Plaintiffs' Complaint is therefore dismissable.

Subsequently, Rev. Joshua A.James filed a motion to intervene in his capacity as Administrators De Bonis Non of the intestate estate of the late Ethelda James Yancy. His motion was granted by the court. Intervenor attached two deeds, a Public Land Sale Deed to Magnus Yancy and wife Ethelda Yancy, signed by the late President William V.S. Tubman, in 1962; and a Quit Claim Deed from Magnus Yancy to Ethelda Yancy to the Intervenor's Answer.

Ruling on the law issues, the court maintained that the proper way in dealing with the defendants' contention raised in counts 2 & 6 of their amended answer was to set up a Board of Arbitration to proceed to the subject property and make demarcation as to the claims of the property in the area. A board of arbitration was therefore constituted, following which a survey was carried out and a report made to the court on February 7, 2005. This report was signed by all the surveyors including the appellee's own surveyor. It reads:

FROM: The Chairman and Members of the Board of Arbitration in the case:

The Intestate Estate of the Late Quaingar of The City of Monrovia, Liberia PLAINTIFF VERSUS Messrs Moses Kerper, Thomas Sellua, Roland Dweh, Neuton, et all of Monrovia DEFENDANTS. ACTION OF VERSUS EJECTMENT

TO: His Honor Yussif D. Kaba Circuit Court Judge Presiding Sixth Judicial Circuit Court Montserrado County, Republic of Liberia

SUBJ.: REPORT OF THE BOARD OF ARBITRATION IN THE ABOVE CASE

DATE: February 7, 2005

We the members of the Board of Arbitration in the above case do hereby submit this survey report. It contains information of documents (Deeds) received during the survey exercise, survey methodology, technical analysis, findings/observation, recommendation and conclusion.

BACKGROUND

In a bid to find out the actual owner of a land that borders the MTA fence, Gardnersville, a Board of Arbitration comprising Mr. Morris Kanneh, Chairman, Mr. Edwin Boakai, member and Mr. Mulbah Buku, member was set up by this Honorable Court. The land is claimed by the Intestate Estate of the Late Quaingar Barchue while Messrs Moses Kerper, Thomas Sellu, Roland Dweh, Neuton, et al claim that they do not possess deed for the area and that the Barchue family are not the legitimate owners of the land they are occupying.

DOCUMENT—DEEDS RECEIVED

NAME	TYPE OF DEED	QTY. OF LAND	DATE OF PROBATION
1. Quaigar Barchue	Aboriginees	30 acres	7th day of Sept. 1909

FIELD SURVEY

The survey commenced on December 3rd, 2004 after survey notices were served to all of the parties as well as surrounding property owners. As stated above, it is only the Barchue family between the two contestants that produced a thirty acres bounty deed from the Republic of Liberia to Quaingar Barchue. Since it was only the Barchue family that produced deed for the land in question, the Board requested them to show their property corners. During this process, Mr. William Dennis Barchue for and on behalf of the Intestate Estate of Quaingar Barchue showed the following as their property boundary: two wooden pegs buried into ground; one concrete pillar near MTA fence which does not bear any initial and an iron pin also buried into the ground. For Messers Kerper, Thomas Sellu and others, they did not show any boundary mark. All of these exercises were carried out in the presence of the parties, the Sheriff of this Honorable Court as well as adjacent property owners.

SURVEY METHODOLOGY

In a complicated situation wherein a land dispute exists and only one of the parties produced a deed for the area being contested, the Board decided to be extra careful in the execution of its duties. Consequently, we extended a loop traverse whereby each of the corners shown by the Intestate Estate of Quaingar Barchue were located and placed on a self explanatory map contained herein. During this process, major buildings, roads, swamps and MTA fence were located to give the map detailed information.

Your honor, we will like to state that since the area is clustered by buildings, it was not possible to locate every building within the area as doing so could require extra time.

Hence, our major focus was on the property corners shown that can be related to the corners on the deed presented so as to establish ownership.

TECHNICAL ANALYSIS

With the data acquired from the survey, a map was produced and from the map, the following technical analyses were acquired:

1. That of the four metes and bound described in Quaingar Barchue's deed, only one bearing came close to the boundary points shown on the ground. To be specific, it is the line that reads North 75° East in the deed that corresponds to the line North 71° East on the ground for the same line the distance on the deed is 15 chain or 990 feet whereas the distance on the ground is 1,540 feet;

2. Besides one line whose bearing seems to be closer, all other lines are in no way in agreement with each other as well as their respective distances;

3. Third and perhaps the most important has to with the point of commencement indicated in the deed. The point of commencement states that the land begins from a small palm tree designated by the elders and chiefs of Surdiva at the intersection of Gboe Camp Road and a drain called Sand Creek, running into Gaul Creek on the right bank of same drain called Sand Creek. This point of commencement is not in direct harmony with points shown on ground;

4. Still on the technical side, the land shown by Mr. Barchue is by far more than the land indicated in his deed. The deed presented by Mr. Barchue calls for thirty (30) acres whereas the area shown by Mr. Barchue is forty-one (41) acres.

OBSERVATION

It is observed by the Board that the deed presented by the Intestate Estate of the Barchue family can not be directly related to the points shown on the ground.

1. As far as the ground location is concerned, the Board did not see the Sand Creek which runs into Gaul Creek.

2. It is further observed by the Board that certain errors are permissible in surveying. For example, if the thirty acres stipulated in the deed came out to be thirty acres and one lot, the difference in the distance is slight that could appeal to the Board; but this is not the case and the excess of the land claimed is eleven (11) acres. This board has

therefore arrived at the following conclusions:

CONCLUSIONS

1. That the thirty acres deed cannot be placed on the map as the point of commencement stipulated in the deed cannot be related on the ground.

2. It was concluded further that two separate maps be produced which shows the deed area and the other area on the ground.

Respectfully submitted
Morris Kanneh CHAIRMAN
Mulbah M. Buku MEMBER
Edwin Boikai, Sr. MEMBER

The appellees excepted to and rejected the arbitration report, stating basically that they did not understand the technical words, "Loop Traverse" used in the report. Besides, the landscape and topography of a 96-year old deed can never be the same, as with the passage of time, physical landmarks included in the deed would never be readily traced on the ground because of erosion and other natural events and the surveyors were under obligation to take into consideration the elements of nature which directly affected the land. The Surveyors not having done so, the report was questionable.

The appellants, in resisting the appellees' reactions to the arbitrators' report, generally accepted it. They stated that the conclusion reached by the board of arbitrators is simply that the land, which is the subject of this proceedings, is not part of the appellees' estate; that the report has said that the thirty (30) acres deed of the plaintiffs cannot be placed on the map as the point of commencement stipulated in the deed cannot be related on the ground; that both parties had the right and opportunity to call the members of the board of arbitration to the witness stand to seek clarification by either direct or cross examination with respect to what is meant by "Loop Traverse" or any other doubt relating to the arbitration's report. However, in count 3 of their resistance, the appellants excepted to the arbitration's failure to involve the deed of the intestate estate of the late Ethelda James-Yancy, the intervenor in the case.

Ruling on the issue of the Board of Arbitration's report of February 7, 2005, the Presiding Judge, His Honour, Emery Paye, ruled setting aside the board of arbitrator's report. He ordered the clerk to send out notices of assignment to the parties including the surveyors to appear for further detailed instruction set at the instance of the parties and to carry out a re-survey. Meanwhile, all parties including the intervenor were to

underwrite all incidental expenses relating to the re-survey.

The appellants excepted to this ruling of the Judge, and filed a petition for a writ of prohibition before the Justice in Chambers. Justice J. Emmanuel Wureh invited the parties to a conference. The Justice thereafter sent a mandate to the court below to resume jurisdiction and appoint a new board of arbitration to ascertain the rightful owner to the disputed property, and thereafter act in accordance with the law.

Having read the mandate from the Justice in Chambers, the court proceeded to set up a second board of arbitration. A second survey was conducted and a second report, dated February 6, 2007, submitted to the court. This report of February 6, 2007, two years after the first board's report reads:

CASE HISTORY

On May 30th 2006, the Assistant Minister for Lands, Survey and Cartography acknowledged receipt of a letter dated May 18, 2006 under the signature of His Honor Karboi K. Nuta requesting the Ministry of Lands, Mines and Energy to send a Surveyor to conduct a survey of parcel of land in dispute between Quaingar Barchue et-al and Messrs Moses Kerper, Thomas Sellu and Roland Dweh Et-al. Base on the request of the Civil Law Court, Sixth Judicial Circuit, the Assistant Minister for Land Surveys and Cartography appointed Mr. Stephen Kollie as Chairman of the Board of Arbitration from the Ministry of Lands, Mines and Energy. Other members of the Board include Mr. Edwin Boakai and Mr. Lanson Massaquoi.

The Board was inducted into office on the 8th day of August A.D 2006. Hereafter, the Board of Arbitration began work by conducting a reconnaissance survey of the area in dispute in December, 2006, and title deeds were collected.

PRESENTATION OF DOCUMENTS

1. One certified copy of an Aborigine Grant from the Republic of Liberia to Quaingar Barchue, probated this 7th day of September A. D. 1909, registered according to Law in volume 32-page 49 and registered in volume N/N-91 page 274-277 due to the mutilation of the original volume 32, page 49 uses presented.

MTA

The M.T.A, a community represented by Messrs Moses Kerper, Thomas Sellu and Roland Dweh Et-al did not present any deed/title documents to members of the Board of Arbitration for use in the investigation. They informed the Board of Arbitration that they are all squatters and hold or posses no title for the land they are occupying,

but are willing to comply with the bonafide owners by legal title.

COMMENCEMENT OF SURVEY

Prior to the commencement of the survey, radio publications dated December 9, 2006 and December 11, 2006 were placed on stations L.B.S and Star Radio respectively. The publication was also placed in the December 12 Edition of the Inquirer Newspaper, Vol. 15 No. 231 page 12. On the day of survey, the following person/property owners were present:

Member of the Board of Arbitration

Mr. Stephen K. Kollie	Chairman
Mr. Edwin Boakai	Member representing MTA Community
Mr. Lanson Massaquoe	Member representing the Barchue family

Mr. Monday Nyuman

Mr. Vesco Sam

Mr. Clement B. Morris

Barchue Family

Mrs. Masa Barchue Dennis

Rev. Borbor B. Barchue

Brother Isaac Reor II

Teddy Robertsor

T.B. Kollie

Observers

Mr. Alphons B. C. Bah

Ms. Marie Brown

Jorgbah A. Jorgbah

OBSERVATION

We wish to inform the court that the survey was conducted under peaceful atmosphere with the MTA Community accepting all points identified by the Barchue family. At the end of the field survey exercise, a cadastral map depicting various features, such as, existing roads, houses, fences, concrete and wire, and a small bridge was produced. The purpose of producing the cadastral map is to give a pictorial view of the map as it relates to the property on the ground.

DIFFICULTIES ENCOUNTERED DURING THE SURVEY EXERCISE

The Board of Arbitration wishes to report that during the entire survey exercise, there

were no difficulties encountered. The Board of Arbitration was satisfied with the cooperation the Board received from the parties.

OBSERVATIONS QUAINGAR BARCHUE'S DEED

As the Board was scrutinizing the deed submitted by the Barchue family, the following were observed:

a. That the Barchue's deed when plotted, depicts a rectangular geometric figure but points shown by the Barchue family, showed an irregular geometric figure which do not correspond with the metes and bounds of the deed.

b. That according to calculations made from points shown on the ground, it was observed that the close figure of the ground points gave acreage of 32.14 of land while that of the Barchue's family is 30 acres.

c. That neither Letter of Administration nor Decree of Sale was submitted by the Barchue family to the Board.

RECOMMENDATION

In conclusion of our report, we do hereby recommend that the Barchue family should properly identify their property according to the metes and bounds of their deed.

Having accepted the report based on the request of both parties, the court ruled that although both counsels in the proceedings had requested it to accept the report and pass upon same, the court needed certain clarification from Members of the Board of Arbitration and also needed both parties to submit a brief in order to have clear cut on the whole matter. In obedience to the request of court, both parties presented a Legal Memorandum.

The appellants in their Legal Memorandum requested court to take judicial notice of its own records, specifically the conclusion of the report of the first Board of Arbitration submitted to the court on February 7, 2005; that observations made by the Board concerning the appellees' deed were certainly adverse to their claim; and that the second board in its recommendation/conclusion stated that it recommends that the Barchue family properly identify their property according to the metes and bounds of their deed. This conclusion of the second board, the appellants said, confirms and supports the appellants' contention in count 1 of their answer to appellee's\plaintiff's complaint that if appellants' decedent owns a parcel of land in Garnersville, it is not the parcel of land appellees presently occupy and the subject of these proceedings.

The appellants also stated in their Legal Memorandum that the Supreme Court of Liberia has held in numerous cases that the plaintiff shall recover on the strength of his title, not the weakness of the defendant's title. *In the case John W. Duncan vs. MacDonald M. Perry, 13LLR, 510, 515, (1960), the Supreme Court held: "The Plaintiffs right of possession must not depend upon the insufficiency of his adversary's claim; he must be entitled to possession of the property upon a legal foundation so firm as to admit of no doubt as to his ownership of the particular tract of land in dispute."*

On the other-hand, the appellees said in their legal memorandum that they found no problem with the commencement of the survey, including members of the Board of Arbitration, the representation of families, those representing communities as well as observers. That at the end of the field survey exercise, a cadastral map depicting various features such as roads, houses, fences was produced. Since the prime purpose of producing the cadastral map is to give a pictorial view of the property on the ground, the question appellee desires to ask and require answer to, is whether or not the roads, houses and fences built on the ground did not obscure the proper, sufficient and adequate identification of the Quaingar Barchue's property? Secondly, didn't the age of the land deed (almost one hundred years old) have effect on the proper identification of the points in plotting the Quaingar Barchue land in keeping with the rectangular geometric figure which the metes and bounds on the deed depict? Did not the Board realize that the "SMALL PALM TREE" designated by the Elders and "Chief as the commencement of the land could no longer be there after almost a hundred years? Consequently, the report of the Board of Arbitration lacks clarity and professional conclusiveness. According to the Arbitrators, the Quaingar Barchue's land when plotted out will depict a rectangular geometric figure of 30.00 acres of land while the close figure on the ground would give a total of 32.14 acres of land, what precluded the Board from plotting out the Quaingar Barchue's land which is 2.14 acres less then the land discovered by the Board in the area and where the appellants themselves admit they are only squatters?

Because of these observations, the appellees prayed that the report of the Board of Arbitrators be accepted with the following modifications, correction or clarification of the award by the Arbitrators and/or the court. That is, to have the Quaingar Barchue's land plotted in keeping with the geometric rectangular figure which it depicts on the deed presented to the Arbitrators. For reliance, appellees cited 1 LCLR, Section 64.8; and thereafter, that the court confirms the award in keeping with Section 64.10 of 1LCLR.

Following argument on the legal memorandum submitted, the judge made a ruling in favor of the plaintiff/appellee. Here are excerpts of the judge's ruling:

"In the mind of this Court, the report of the Board must be entertained by this Honorable Court as it has already been accepted by all parties and Counsels as being perfect and correct."

"Wherefore and in view of the foregoing, it is the final Ruling of this Court that plaintiffs, the Barchue's family are entitle to their 30 acres of land as in keeping with the report of the Board of Arbitration. The report of the Board being accepted by all Counsels and parties, said report is hereby confirmed and affirmed by this Honorable Court; thereby awarding the plaintiffs in the proceedings their 30 acres of land having been surveyed and the cadastral map drawn by the Board of Arbitration also confirming the ownership of the Plaintiffs 30 acres of land. The Clerk of this Court is hereby ordered to prepare a Writ of Possession, place same in the hands of the Sheriff who is hereby ordered to proceed to the area at issue, and possess the plaintiffs of their 30 acres of land as in keeping with the cadastral map, as well as the board's report; thereby, evicting all parties occupying said property without consent of the plaintiff. Cost of these proceedings are hereby ruled the defendants. AND SO ORDERED"

The appellants herein noted their exception and announced an appeal before this Bench en banc, filing a Bill of Exceptions which was approved March 16, 2007, as follows:

DEFENDANTS' BILL OF EXECEPTIONS
Defendants in the above entitled cause of action beg leave of Court to approve their Bill of Exceptions which they file with this Honorable Court for the several reversible errors committed during the course of this case, as follows to wit:

1. That Your Honor committed reversible error when your Final Judgment was made in favor of Plaintiff on the basis of the arbitration reports which were clearly in favor of defendants and against plaintiff. The report of the First Board of Arbitration stated, inter alia, that the plaintiffs purported land could not be found on the disputed land in the following words:

"1. That the thirty acres deed cannot be placed on the map as the point of commencement stipulated in the deed can not be related on the ground."

The second Board of Arbitration concluded in its report, inter alia; "In conclusion of our report, we do hereby recommend that the Barchue family should properly identify their property according to the metes and bounds of their deed." The conclusions of the Boards of Arbitration confirmed the assertion by defendants in Court of their answer that the plaintiff does not own the land they occupy (subject of this cause of action).

Your Honor, by your Final Judgment, contradicted the long-established principle of law repeatedly upheld by the Supreme Court that in all ejectment cases, the Plaintiffs shall prevail only on the strength of his title not on the weakness of his adversity and that there should be no doubt as to Plaintiffs ownership of the disputed property. "...the Plaintiffs right of possession must not depend upon the insufficiency of his adversary's claim; he must be entitled to possession of the property upon a legal foundation so firm as to admit of no doubt as to his ownership of the particular tract of land in dispute." Duncan vs Perry, page 510, text page 515.

2. That Your Honor again committed reversible error when you failed and neglected to take into consideration and mention anything set forth and contained in Defendants' Legal Memorandum/ Brief wherein the issues determinative of the case were raised and discussed even though you requested the parties to file same and it was filed on February 28, 2007 long before rendition of your erroneous Final Judgment.

3. That Your Honor committed further reversible error when you failed to ask the surveyors as to why they failed to include in their reports their finding relating to the status of Intervenor/Co-Defendants Moses Kerpeh et al are residing on the property subject of this cause of action. Your Honor should have ordered the surveyors to include co-defendant Ethelda James-Yancy's status relating to the subject property;

4. That Your Honor committed further reversible error when you did not address the issue of adverse possession, a silent issue in this case and ignored the intervener/Co-Defendant, the intestate estate of the late Ethelda James-Yancy completely thereby denying it due process and / its day in Court.

Respectfully submitted:
The above named Defendants by and thru their Counsel
J. Nagbe Blidi Law Firm and Consultancy Inc.
111 Randall Stret, Opposite City Builders
P.O. Box 573, Monrovia, Liberia
Cell: 06519-127

Joseph N. Blidi COUNSELOR-AT-LAW
Dated this 13th day of March A.D. 2007 $5 Revenue Stamps affixed to the original

Approved: CIIr. Emery Paye Assigned Circuit Judge
Civil Law Court, Montserrado County

While the appellants were in the process of perfecting their appeal, the Clerk of the Civil Law Court, Ellen Hall, upon the request of the plaintiffs/appellees issued a Clerk's Certificate on May 8, 2007, which reads:

"This is to certify that from a careful perusal of the records of this Honorable Court, it is observed that no Appeal Bond has been filed in this Court in the above title cause of action by Appellants. Secondly, no Notice of Completion of Appeal had been filed up to and including the date of this Clerk's Certificate. Further that the appeal was announced, taken and granted on March 6, 2007. HENCE, THIS CLERK'S CERTIFICATE".

This case placed on appeal before us, the appellees filed a Motion to Dismiss the Appeal based on the Clerk's Certificate above. Filing their returns, the appellants attached a revocation of the Clerk's Certificate signed by the same Ellen Hall on November 21, 2007, and it reads as follows:

Judicial Branch Republic of Liberia
IN THE SIXTH JUDICIAL CIRCUIT COURT MONTSERRADO COUNTY, R.L., SETTING IN ITS SEPTEMBER TERM A.D. 2007.

BEFORE HIS HONOR YUSSIF D. DABA, ASSIGNED CIRCUIT JUDGE

IN RE :The intestate Estate of the Late Quaingar BArchue, by and thru its Executrix Martha Barchue—Kollie of Monrovia, Liberia PLAINTIFF VS Messrs. Mosses Kerper, Tjhomas Sellu, Roland Dweh, Neuton, Peter Quieh, A.B. Konneh, Christ Temple International Church And School, by and thru Rev Eric L Joseph, Pastor, Advamture Outreach Church, the Management of the Small Woodwork Shop, And others to be identified of the Township of Gardnersville DEFENDANTS. ACTION OF EJECTMENT

REVOCATION OF CLERK'S CERTIFICATE
After listening to arguments on the Motion to Dismiss, this Court ruled that the motion to dismiss and the appeal be consolidated. This Opinion, therefore, incorporates the

ruling on the motion and the appeal.

It has been observed that the Notice of Completion of Appear in the above entitled cause of action was issued on the 3rd day of May, A.D. 2007 and same was not served on the plaintiff's counsel; mistakenly, a Clerk's Certificate was issued on the 8th day of May A.D. 2007, at the hour of 3:30 P.P. to the effect that no Notice of Completion of Appeal was filed before this Court. Since the date of the Notice of Completion of Appeal was filed before the Clerk's Certificate was issued, this Clerk's Certificate mentioned above, is hereby cancelled/revoked. AND RESPECTFULLY SUMITT.

GIVEN UNDER MY HAND AND SEAL OF COURT, THIS 21ST DAY OF NOVEMBER, A.D. 2007.
COURT'S SEAL:
ELLEN HALL CLERK OF COURT

ATTESTED:
NANCY WASHINGTON
FILE CLERK, CIVIL-LAW COURT MONTSERRADO COUNTY, R.L

The appellants argued before this Bench that they met the requirement of the statute for the notice, filing and completion of appeal; that the Judge approved the appeal bond along with the Notice of Completion of Appeal, but serving the Notice of Completion of Appeal on the appellees counsel, Counsellor Emmanuel Koroma, proved difficult as reported by the Sheriff in his Returns. The Sherman and Sherman Law office, Inc. refused to take possession of the papers stating that Counsellor Emmanuel Kroma, did worked with their Office but his representation of the appellee was personal and not in the interest of the Office'. Counsellor Koroma, said to be sick and hospitalized, did not know of the appellants attempt to serve him.

This court took cognizance of the records before it and noted that the filing of the Bill of Exceptions was on March 13, 2007, seven (7) days after the judge's final ruling; approval of the appellants appeal bond was on May 3, 2007, about 53 days after the final ruling and the returns of the Sheriff on the non service of the notice of completion of appeal was made the next day, May 4, 2007. This Court fails to see how it could justifiably dismiss the appeal in face of these facts and circumstances. An appellate court has a strong preference for deciding cases on the merits so that any doubt may be addressed in allowing rather than dismissing an appeal. Where it is shown that an appellant was diligent in perfecting his appeal in accordance with our statutory provision, but because of reasons beyond his control, failed to meet the statutory

period for perfecting the appeal, this Supreme Court will deny the motion to dismiss the appeal. Inter-Con Security Systems, Inc. vs. Philips and Tarn, 4OLLR, 30, 32 (2000); Also this Court has thread cautiously in dismissing cases involving property, and in face of the Clerk's subsequent revocation of her previous certificate of May 8, 2007, this Court has reached the conclusion that the timely service was not due to the fault of the appellants. The motion to dismiss the appeal is therefore denied.

We shall therefore proceed to consider the appeal based on the appellants' Bill of Exception.

The issues for consideration therefore are:

1. Whether or not the two surveys conducted affirmatively and with certainty state that the area occupied by the appellants is that described in the appellees' deed, and which entitles the appellees to an award.

2. Whether the judgment by the Presiding Judge is erroneous and therefore reversible?

Clearly, both arbitration reports were not definite and conclusive about the metes and bounds in the appellees' deed corresponding with the disputed property being surveyed. In fact, the conclusion of the first survey stated: In conclusion of our report, we do hereby recommend that the Barchue family should properly identify their property according to the metes and bounds of their deed." How this should have been done when the description was already stated in the deed used for the survey, we do not know.

In reaction to the first board of arbitration's report, the appellees themselves cited the need for an explanation and further clarification on the report: "That count 2 of the conclusion be further explained by the arbitrators to the court and parties. The defendants excepted to the fact that the intervenor's deed was not used in the survey despite the fact that it was part of the court's records.

Rightly, we say, the judge ordered another survey. But can this Court say the second survey report is now conclusive in establishing ownership of the disputed property?

Upon presentation of the second board's report, the court said it again needed clarification from members of the Board of Arbitration specifically as the board's report again indicated that the Barchue family needed to identify their property, and according to the calculation made from points shown on the ground, it was observed

that the calculations on the ground give 32.14 acreage of land while that of the Barchue is 30 acreage.

Like the Judge and appellees have questioned, this Court also wonders what happens if one who acquires a piece of property can not locate certain features distinguishing the property because of the passage of time? Can a board of arbitration locate the land based on the description in the deed only? What is needed in order for a board to clearly identify properties described in a deed? Why wasn't the appellee's 30 acres carved out of the 32.14 acres found on the ground?

This brings to mind these questions, what prevented the court from putting members of the board on the witness stand to be examined as the appellants had requested after the first board's report? How did the court arrive at its conclusion to award the appellees the property in face of the appellees' own prayer in their Legal Memorandum reference above and the court's own statement that it needed clarification on the report? Did the court get the needed clarification? If so, how? There is no record before us citing the board for clarification on the report, or showing otherwise.

Despite all these unanswered questions, the Judge made a final ruling as follows, awarding the property to the plaintiffs/appellees:

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In conclusion of the Board's report, they recommended that the Barchue family should properly identify their property, according to the metes and bounds of their deed.

By way of repetition, this report being signed by the three (3) members of the Board, none of the Counsel objected to the said report. Under the circumstance, this Court being the referee shall now proceed to construe the intent of the Board as in keeping with the report.

Looking at the cadastral map referred to by the Board of Arbitration, the said Board noted that the area bordering (a, b, c and d) of the cadastral map represents 30 acres of land owned by Quaingar Barchue according to a deed probated on the 7th day of September, A.D. 1909 and registered in Volume 3, page 49. On the report, the Board having indicated on the cadstral that plaintiff owned 30 acres of land and again observed in its survey report that the Barchue family should properly identify, according to the metes and bounds of their deed, after also having indicated that...the

close figure of the ground points give an acreage of 32.14 land while that of the Barchue family is 30.00 acres. It is worth noticing that this property according to a deed was bought before this Court in the year, 1909, and we believe to have been surveyed, evidenced by the Public Land Sale deed. On the other hand, the Plaintiff sued for 30 acres of land and from the survey report and the cadastral map drawn, it is established that the Plaintiff's land is 30 acres. The question as to the 32.14 acreage which may have moved this Board to have recommended the plaintiff identify its property according to the metes and bounds may be due to the differences of the 2.4 acres which was observed on the ground location (emphasis ours). In the mind of this Court, the report of the Board must be entertained by this Honorable Court as it has already been accepted by all parties and Counsels as being perfect and correct.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the final ruling of this Court that Plaintiffs, the Barchue's family is entitled to their 30 acres of land as in keeping with the report of the Board of Arbitration. The report of the Board being accepted by all Counsels and parties, said report is hereby confirmed and affirmed by this Honorable Court thereby awarding the Plaintiff in the proceedings his 30 acres of land having been surveyed and the cathedral map drawn by the Board of Arbitration also confirming the ownership of the Plaintiff of their 30 acres of land. The Clerk of this Court is hereby ordered to prepare a Writ of Possession, place it in the hands of the Sheriff who is hereby ordered to proceed with the cadastral map as well as the Board's report thereby evicting all parties occupying said property by evicting all those occupying the property without the consent of the Plaintiff. Costs of the proceedings are hereby ruled against the Defendants. AND SO ORDERED."

GIVEN UNDER MY HAND AND SEAL THIS COURT, THIS 6TH DAY OF MARCH, AD. 2007
EMERY S. PAYE ASSIGNED CIRCUIT JUDGE, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, R.L
COURT'S SEAL

To which erroneous several rulings and final rulings of your Honor, Counsel for the Defendants announce an appeal to the Honorable Supreme Court of Liberia, sitting in its March Term, A.D. 2007. And respectfully submit

COURT: Exception noted, and appeal being a matter of right, same is hereby noted and this STAY ORDER OF THE ENFORCEMENT OF THIS COUORT'S FINAL JUDGMENT SO ORDERED.

We are puzzled by this ruling of the Judge which we find unintelligible. In the Judge's final ruling, he states: *"The question as to the 32.14 acreage which may have moved this Board to have recommended that the Plaintiff identify its property according to the metes and bounds may be due to the differences of the 2.4 acres which was observed on the ground location."*

So how did he derive at his ruling where the property had not been properly identified? Should he have surmised when he could have sought clarification from the arbitrators? So how would the Sheriff have effectively carried out the order in the ruling: *"The Clerk of this Court is hereby ordered to prepare a Writ of Possession, place it in the hands of the Sheriff who is hereby ordered to proceed with the cadastral map as well as the Board's report thereby evicting all parties occupying said property by evicting all those occupying the property without the consent of the Plaintiff"* Which part of the property would the Sheriff had put the appellee in possession of when the report said the appellee's needed to identify its property and so had not come out with a conclusive report.

Clearly we can not uphold this ruling of the court below. This court has held that Judgment relied on as proof of property must designate property affirmatively and with certainty; *John W. Duncan vs. MacDonald M. Perry, 13 LLR, 510, 515, (1960);* This Court has further said that in an ejectment action, the plaintiff's title is not presumed, but must be established; Cooper-King vs Scott, 15 LLR, 390, 403,(1963).

Regarding a surveyor's report, this Court has said, "The report of a surveyor is in the nature of evidence rather then an award. Where the survey is held and the facts are admitted, leaving only the issue of law to be determined, it is not error for the court to hear and determine the matter without the aid of a jury;" Pratt vs. Philips, 9 LLR, 446, 451 (1947).

In this case at bar, the inconclusive report by the Board of Arbitrators needed to be clarified to have enabled the court make an informed and justifiable decision of award. The appellee itself in its Legal Memorandum, prayed:

"Wherefore and in view of the foregoing, plaintiff prays that the report of the board of arbitration be accepted with the following modifications, correction or clarification of the award by the arbitrators and/or the court. That is to have Quainciar Barchue's land plotted in keeping with the geometrical rectangular figure which it depicts on the deed presented to the arbitrators (emphasis ours). Reliance - 1 LCLR, Section 64.8, at page 275. Thereafter, that the court confirms the award in keeping with § 64.10 at page 277 of 1 LCLR."

The ruling of the judge is therefore erroneous and reversible because the Sheriff could not with out the aid of the board, and just the with the report put the appellees in possession of property which was not plotted when the survey was done?

This Court is aware of the problems courts face where board of arbitration reports are not clear, leaving the courts with a lot of unanswered questions so as to justifiably award property to deserving parties. This case is a classical case where the court could not have made a final ruling without putting the arbitrators on the stand to provide further clarification on their report and a decision made based on such, or if necessary and required, order another survey. But be what it may, the Court should not have awarded the property to the appellees without a decision by the board identifying the appellee's property on the ground with certainty.

Again, the intervenor's deed was not used in the second survey. The records before us show that the administrator of the intervenor's estate died while the case was being proceeded with. A motion was file by appellants for two persons who were now administrators of the intestate estate of the intervenor to be substituted in the case. This motion was filed on the same day the law issue was assigned to be heard. The appellants counsel moved the court for postponement of the hearing of the law issues because of the motion filed. The Court ruled then that the assignment for law issues was sent out six days before the appellants' application which was filed just two hours before the hearing. That the substitution of counsel not being relevant to the ruling on the law issue, the court would proceed and the substitution be done anytime during the trial. *(See minutes of 6h day Chamber's Sitting; Thursday March 14, 2002).*

Nothing in the records shows the participation of the intervenor in this matter, thereafter. The records show that both surveys were conducted only with the participation of the appellees and the co-appellants, Moses Karpeh, Thomas Sellu, et al who had no deed. The survey was therefore done using the appellee's deed only. Why didn't the intervenor participate in the survey? The intervenor had filed a copy of the decedent's deed with the court. Couldn't the Court have Summons the intervenor to be present at the survey and with his deed? What happened to the copy filed with the court?

Using both the appellee's and intervenor's deeds to carry out the survey would clearly avoid a future dispute as to whether the appellants/squatters do occupy the intervenor's property; especially where the appellants have admitted that they are squatters and will cooperate with whomever, the court can establish, owns the property. Carrying out the survey with only the appellee's deed will only confirm whether or not the disputed area

is appellee's property; where the appellee's property is not found in the disputed area, this does not automatically confirm intervenor as the owner of the disputed property as against others. This Court has said in numerous of its opinions that where evidence in an ejectment action is insufficient to support a finding, the case will be ordered remanded for an accurate survey by a board of arbitration.

In view of all that have been stated, the appellees' motion to dismiss is denied. The Booard of arbitration report being inconclusive the ruling of the judge is reversed, and the case remanded with instruction that the judge set up a board of arbitration to carry out a third survey using both the appellees' and intervenor's deed to clearly set out the proper demarcation establishing the ownership of the property occupied by the appellants. The court is further instructed to have a hearing on this Board's report for clarification when necessary, and to make a final determination of this case. AND IT IS HEREBY SO ORDER.

Counsellor Joseph N. Blidi of the J. N. Blidi Law Firm and Consultancy Chambers, Inc. appeared for the respondents/appellants, and Counsellors Momodu T. B. Jawandoh and Cooper W. Kruah of the MUSIDAL CHAMBERS LIB. INC. and Henries Law Firm appeared for the movant/appellee.