

M. ALEXANDER KETTER, by and thru his Attorney-In-Fact, FRANCIS A. DENNIS, JR., Appellant, *v.* **MR. and MRS. WILLIE F. JONES**, 1st Appellees, MS. ORETHA WHONDAY and MR. QUARIQMAY, 2nd Appellees, and MR. and MRS. MOSES VAH KPANNEH, 3rd Appellees.

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

Heard: May 20, 2002. Decided: June 14, 2002.

1. A judge is charged with the responsibility of passing on issues of law and the jury that of passing on issues of fact, except as otherwise provided by law.
2. The disposition of law issues is the sole responsibility of a trial judge but it is the function of the jury, as the triers of the facts, to hear and decide the factual issues upon evidence adduced at the trial.
3. The question of fact, subsequent to the disposition of law issues by the trial judge, ought to be determined by evidence presented by both parties in support of the allegations contained in their pleadings.
4. All documentary evidence which is material to the issues of fact raised in the pleadings should be submitted to the jury.
5. A trial judge must adhere to the well settled principle that all issues of law must be decided before any questions of fact can properly go to a jury for trial.
6. An action of ejectment involved both issues of law and fact, and as such a judge is legally bound to hear evidence in the case to enable him to decide with certainty the matter in dispute.
7. A trial judge invades the province and usurps the functions of the trial jury in determining the factual issues in a case during the disposition of the law issues, and without presenting the question to the jury for determination.
8. It is erroneous for a trial judge, during the disposition of the law issues to base his ruling on the law issues upon documents which have not been formally admitted into evidence by the court to form a cogent part of the records in the case.

The appellant appealed the ruling of the trial judge dis-missing the complaint, the answer, the reply, and the action of ejectment while disposing of the issues of law. The trial judge had used as the basis for the dismissal that the documents relied on by the parties were misleading and ambiguous. The appellant contended that because the action of ejectment contained both issues of law and fact, the trial judge had erred in dismissing the action and relying on documents which had not been testified to, identified, and admitted into evidence as a basis for the dismissal, rather than submitting the case to the jury for trial.

The Supreme Court agreed with the contention of the appellant, holding that the judge had acted in error in dismissing the case on the strength of documentary evidence which had not been passed on or submitted to a jury trial. The Court opined that the responsibility of the judge was to dispose of the law issues and that disposition of issues of fact was for the jury; and that the trial judge had usurped the province of the jury when, in disposing of matters of fact, he had determined that the documents were misleading and doubtful, such determination being strictly for the jury. The Court noted that actions of ejectment contained mixed issues of law and fact and that the trial judge should therefore have forwarded the matter for a jury trial rather than dismissing in on the documents pleaded by the parties. On the basis of the foregoing, the Court *reversed* the ruling of the trial court, reinstated the pleadings of the parties, and ordered a new hearing.

M Kron Yangbe of Cooper & Togbah appeared for appellant. *Joseph H. Constance* of Greene & Associate appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court

This case is before us on an appeal from the ruling of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, dismissing appellant's action of ejectment on the disposition of law issues. The single question to be resolved by this Court is whether or not the trial judge erred in dismissing the appellant's action of ejectment on the disposition of law issues without the aid of a jury to hear and determine the factual issues in the case.

The facts, as culled from the certified records transmitted to this Court, are as follow: On the 16th day of November, A. D. 1999, the appellant herein, M. Alexander Ketter, by and thru his attorney-in-fact, Francis Dennis, instituted an action of ejectment against the appellees. In count two of his six-count complaint, the appellant claimed ownership to a parcel of land containing two (2) acres, which he acquired from the Republic of Liberia through its Commissioner of Public Lands, J. C. N. Howard. The records show that the public land sale deed for the mentioned land was signed by the late President William V.S. Tubman on the 19th day of December, A. D. 1963, probated on the 24th day of January, A. D. 1967, and registered in Volume 88-F, at page 397 of the Registry for Montserrado County. In counts 3,4, and 5 of the complaint, the appellant alleged that the defendants had illegally entered upon his property, withheld said property from him, and began constructing and planting thereon despite several attempts to resolve the matter. The appellant alleged in count 6 of his complaint that he had suffered embarrassment, inconvenience, and the loss of his property. He prayed the trial court to evict, oust and eject the appellees from the property and to award him general damages for wrongful and illegal occupancy of the premises.

On the 26th day of November, A. D. 1999, the appellees filed a four-count answer which

was withdrawn and an eight-count amended answer filed in its stead on the 3rd day of July, A. D. 2000. In count 2 of their amended answer, the appellees contended that J. C. N. Howard only served the Republic of Liberia from 1950-1980 as the third Township Commissioner for Paynesville, but never served as land commissioner as would have authorized him to execute the public land sale deed signed by the Late President Tubman on December 19, 1963. In counts 3 and 6 of the amended answer, the appellees claimed the property by virtue of their deeds, as well as their mother deed of December 20, 1957. They alleged in count 5 of the amended answer that William Ketter was the land commissioner for Montserrado County from 1950-1975, and that it was impossible for J. C. N. Howard to have signed a deed as land commissioner. The appellees therefore prayed the trial court to dismiss the appellant's complaint.

On the 13th day of July, A. D. 2000, the appellant filed a twenty-three count reply which also attacked appellees' mother deed as being ambiguous, as well as the failure of the appellees to establish their claim of title to the property.

On the 17th day of August, A. D. 2000, His Honour Emmanuel M. Kollie, assigned circuit judge presiding over the June, A. D. 2000 term of the trial court, disposed of the law issues and dismissed the appellees' answer, the appellant's complaint and reply, and his ejectment suit, without prejudice to either party. The judge noted as the reason that the documents were misleading and doubtful. The appellant excepted to the ruling and appealed to this Court upon a three-count bill of exceptions. We deem only count 1 to be relevant for the determination of this case. In that count, the appellant alleged that the trial judge, in disposing of the law issues, had also decided the documentary evidence without the aid of a jury.

In his argument before this Court, the appellant contended that the trial judge passed on the factual issues in his ruling on the law issues, and dismissed his cause without the aid of a jury. The appellees, for their part, argued that the appellant did not establish that title was legally vested in him in order to oust, evict and eject them from the property, since J. C. N. Howard, who allegedly executed appellant's public land sale deed, never served the Republic as Land Commissioner for Montserrado County at the time the deed was said to have been executed.

This Court observes that the trial judge dismissed the appellees' amended answer, the appellant's complaint and reply, and the entire ejectment proceeding on the ground that the instruments or deeds annexed to the pleadings of both parties were misleading, ambiguous and doubtful, rather than submitting the documentary evidence to the jury to determine their validity and credibility.

In *Dagher v. Molley*, 26 LLR 422 (1978), text at 427, this Court held that "a judge is charged with the responsibility of passing on issues of law and the jury that of passing on issues of facts"

The disposition of law issues is the sole responsibility of a trial judge, but it is the

function of a jury, as the trier of facts, to hear and decide the factual issues upon evidence adduced at a trial. It is improper for a trial judge to constitute himself as the sole judge of factual issues in matters which should properly be determined by a jury. *Lartey v. Corneh*, 18 LLR 177 (1967). The questions of fact, which were to be disposed of subsequent to the disposition of law issues by the trial judge, should therefore have been determined by evidence presented to the jury by both parties in support of the allegations contained in their pleadings. *King v. The International Trust Company of Liberia*, 20 LLR438 (1971).

It is an elementary principle of law, practice, and procedure in this jurisdiction that all documentary evidence which is material to the issues of fact raised in the pleadings, as in the instant case, should be submitted to the jury. *Walker v. Morris*, 15 LLR 424 (1963). We perceive of no legal reasons upon which the trial judge ignored, failed and neglected to adhere to the well settled principle in this jurisdiction that all issues of law must be decided before any questions of fact can properly go to a jury for trial. *Watson v. Oost Afrikaansche Compagnie*, 13 LLR 94 (1957).

An action of ejectment involves mix issues of law and fact. As such, the trial judge was legally bound to hear evidence in the case to enable him to decide with certainty this matter in dispute. *Pelham v. Pelham*, 4 LLR 56 (1934). We hold that the trial judge invaded the province and usurped the functions of the trial jury when he determined the factual issues in this case during disposition of the law issues without presenting the questions of fact to the jury for its determination. It was also erroneous for the trial judge to base his ruling on law issues upon documents which had not been formally admitted into evidence by the trial court to form a cogent part of the records in the case. *Dauber v. Molley*, *supra*.

Wherefore, and in view of the foregoing facts which we have narrated, and the laws cited herein, it is our considered opinion that the ruling of the trial judge dismissing the pleadings of the parties and the appellant's action of ejectment is hereby reversed. The pleadings of both parties are hereby re-instated and the case is remanded for a trial on its merits, commencing with the disposition of the law issues. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and to proceed with its hearing in conformity with this opinion. Costs are to abide the final determination of the case. And it is hereby so ordered.

Ruling reversed; case remanded.