

Momo Kiazolu of Virginia, Montserrado County, Republic of Liberia
APPELLANT VERSUS **Doris Cooper-Hayes of Brewerville**, Montserrado
County, Republic of Liberia APPELLEE

LRSC 26

HEARD: APRIL 27, 2011 DECIDED: JULY 22, 2011

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This case involves a dispute between Doris Cooper-Hayes, plaintiff/appellee, and Momo Kiazulu, defendant/appellant, over a parcel of land lying and situated in the Township of Virginia, outside Monrovia, Republic of Liberia.

On December 1, 1999, the plaintiff/appellee filed an action of ejectment against the defendant/appellant claiming that the late Benjamin Toles, her great grandfather, bought a parcel of land from the Republic of Liberia on February 26, 1894; that on September 20, 1916, her late great grandfather willed to his son, J. Wesley Toles, 20 acres of the parcel of land he purchased from the Republic of Liberia. She said that in the same will, her great grandfather gave to his three daughters, Elizabeth Toles-More 11 2/3 acres; Sarah-Toles-Brown 11 2/3 acres; and Maria-Toles Moore, 11 2/3 acres of land which is now in dispute. The plaintiff/appellee further said that upon the death of Maria Toles-Moore, she petitioned the Monthly and Probate Court of Montserrado County and was granted letters of administration to administer the intestate estate of the late Maria Toles-Moore.

The plaintiff/appellee maintained that from the time of the death of her great grandfather in 1916 up to the issuance of the executor's deed which transferred ownership of the 11 2/3 acres of land to the late Maria Toles-Moore in 1948 until her death in 1967, the subject property was in their open, continuous and notorious control without any dispute until the early 1990's when the defendant/appellant encroached on, and began to indiscriminately sell the land to third parties. She said she wrote several letters to the defendant/appellant to desist from selling the land but to no avail; that she informed her lawyer, Counsellor Marcus Jones, who also wrote letters to the defendant/appellant advising him to stop selling the land but also to no avail; that she

complained to the Commissioner of the Township of Virginia who also advised the defendant/appellant to stop but he did not listen. She said that she further reported the matter to the Ministry of Lands, Mines & Energy who issued a stop order, but the defendant/appellant did not obey the stop order; that upon her request, the Ministry of Lands, Mines & Energy sent a team of surveyors on the land to conduct a survey in order to determine the real owner of the land but the defendant/appellant did not cooperate; that in any case, the surveyors from the Ministry of Lands Mines & Energy conducted the survey and the report established that she is the owner of the land in question, but the defendant/appellant did not accept the report.

The plaintiff/appellee filed this action of ejectment praying the lower court to eject, evict and oust the defendant/appellant from the land; the plaintiff/appellee also prayed the lower court to award her the amount of USD 25,000.00 for the illegal withholding of the land. The plaintiff/appellee attached to the complaint a) a copy of a public land sale deed from the Republic of Liberia purportedly signed by the late President Joseph James Cheesman in favor of the late Benjamin Toles dated February 26, 1894; b) a copy of the will of the late Benjamin Toles; c) a copy of the executor's deed from Lewis Moore, executor of the late Benjamin Toles to Maria-Toles Moore; d) a copy of letters of administration issued to her by the Monthly and Probate Court of Montserrado County to administer the intestate estate of the late Maria-Toles Moore; e) copies of letter written by her as well as her lawyer to the defendant/appellant informing him that he was encroaching on the plaintiff/appellee's land; f) copies of letters of complaint she wrote to the Commissioner of the Township of Virginia and the Ministry of Lands, Mines & Energy and a copy of a survey report conducted by the Ministry of Lands, Mines and Energy.

On December 11, 1999, the defendant/appellant filed an answer to the complaint. He denied encroaching on and selling the plaintiff/appellee's land as alleged in the complaint. He claimed that he is the bona fide owner of thirty (30) acres of land lying and situated in the settlement of Lower Virginia; that his late grandfather, Jamah Momo Kiazulu, purchased the land from the Republic of Liberia on April 21, 1891; that upon the death of his grandfather, he petitioned the Monthly and Probate Court of Montserrado County and obtained letters of administration to administer the intestate

estate of his late grandfather. He contended that in an ejectment action, the parties must necessarily rely on title, and the best title is that given by the Republic with preference to the date of issuance, the older being preferred. He maintained that in the instant case, his title which is derived from the Republic of Liberia is older than the plaintiff/appellee's title which is also derived from the Republic of Liberia; that by operation of law, his title must prevail over the plaintiff/appellee's title. The defendant/appellant attached to the answer, a) a copy of a public land sale deed from the republic of Liberia purportedly signed by the late President Hilary R.W. Johnson in favor of the late Jamah Momo Kiazulu dated April 29, 189; and b) a copy of letters of administration issued to him by the Monthly and Probate Court of Montserrado County to administer the intestate estate of the late Jamah Momo Kiazulu.

When pleadings rested, the trial court, with the consent of the parties, ordered that an arbitration board be set up to conduct a survey of the disputed property and report to the court. Accordingly, an arbitration board comprising licensed surveyors conducted a survey of the disputed property and submitted a report to the trial court on October 29, 2002. It is necessary that we quote the survey report verbatim.

"FROM: THE CHAIRMAN & MEMBERS OF THE BOARD OF ARBITRATION
IN THE CASE:

DORIS COOPER-HAYES OF THE CITY OF BREWERVILLE
MONTSERRADO COUNTY, LIBERIA PLAINTIFF VERSUS MOMO KIAZULU
OF VIRGINIA ALSO OF MONTSERRADO COUNTY, LIBERIA DEFENDANT

TO: HER HONOUR FELICIA V. COLEMAN ASSIGNED CIRCUIT JUDGE
SIXTH JUDICIAL CIRCUIT COURT MONTSERRADO COUNTY REPUBLIC
OF LIBERIA. ACTION EJECTMENT

SUBJECT: REPORT OF ARBITRATION BOARD IN THE ABOVE CASE.

On March 11, 2002, the undersigned surveyors took oath before this Honourable Court to serve as members of the Board of Arbitration in the above case. Below is a

detailed account of technical procedures, documents received, findings/observations, conclusion and recommendations that characterized the entire investigative survey.

TECHNICAL PROCEDURE/RECONNAISSANCE

Prior to the commencement of the field work, the disputing parties were invited by the Board to show their respective property corners on the site of the survey. Mr. Momo Kiazulu showed as his property corners, growing trees, a large soap tree, a heap and an old plum tree stump. For her part, Doris Cooper-Hayes showed a soap tree near a grave site, a growing tree near a well and a tall tree deep into a nearby swamp. The fourth point according to her was obliterated but the metes and bounds in her deed could assist us to find the fourth corner.

DOCUMENTS RECEIVED

Three deeds were received from the disputing parties and two from the adjoining property owners. Of the three deeds from the disputing parties, two were received from Doris Cooper-Hayes and one from Momo Kiazolu. The deeds, volume, page of registration and date of probate are as follow:

DORIS HAYES-COOPER

1. One Public Land Sale Deed, containing 25 acres from Republic of Liberia to Benjamin Toles, situated in the settlement of Freetown, Virginia, registered in volume 102-74, pages; 480-482 of the records of Montserrado County and probated on February 26, 1894. We were informed by Doris Cooper-Hayes that this is the Mother Deed for the 11 3/4 acres that belongs to Maria-Toles Moore.

2. One Executor Deed, containing 11 3/4 acres, from Lewis Moore, Executor of the late Benjamin Toles to Maria Toles- Moore, situated at Lower Virginia, Montserrado County, registered in volume 16-92A, pages 104-105 and probated A.D. 1948. We were also informed by Doris Cooper-Hayes that this is the deed for the disputed area.

MOMO KIAZULU

One Government Grant Deed from Republic of Liberia to Jamah Momo Kiazulu, containing 30 acres, situated in the settlement of Lower Virginia, registered in volume

145-75 and probated April, A.D. 1891. We were informed by Mr. Momo Kiazulu that this is the deed for the disputed area. Strangely, we discovered that there are a number of erasing and/or typographical error in this deed. (See deed for reference.)

ADJOINING PROPERTY OWNERS

1. One Warranty Deed from William Brown to W.H. Thomas, containing 30 acres, registered in volume 30, pages 139-140 of the record of Montserrado County. This deed was received from Mr. Emmanuel Pannah, who represented Timothy Thomas.

2. One Warranty Deed from Writee, Werslo Blama, and Jlay Brown, to Victoria D. Lewis, Cecelia T. Kollie and Stephen G. Davies, containing 11.3 acres, registered in volume 36-946, pages 159-161 and probated on April 15, 1994.

In an effort to get the true picture of the property corners as they are on the grounds, an independent traverse covering the entire disputed area was executed. Through this method, we were able to pick up property corners, building, road and the nearby swamp. This process was tedious and took bulk of the time spent on the entire survey exercise. (See map for reference.)

OFFICE WORK

The office work had to do with data representation on the map. During this process, property corners, buildings and other features were placed in their proper locations on the prepared map. The result of this exercise is a selfexplanatory map drawn at a scale of 1 inch to 100 feet. (See map also.)

FINDINGS/OBSERVATION

As a result of the survey exercise, the following constitute our findings:

1. The area shown by Momo Kiazolu on the ground covers 72.62 acres and the deed presented by him contain[ed] 30 acres.

2. The area shown by Doris Cooper-Hayes on the ground covers 27 acres and the deeds presented by her contain 25 acres and 11 3/4 acres. We were informed by her that the

25 acres is the mother deed for her 11 3/4 acres.

3. On the technical side, the bearings and distances for the starting as well as successive lines in Jamah Momo Kiazolu's deed are no way in harmony with those on the ground. For example, in Jamah Momo Kiazolu's deed, the bearing for the starting line is North 80 degrees East and a distance of 990 feet. The bearing and distance for the same line on the ground are North 19 degrees East and 1,149 feet respectively. This gives a difference of 61 degrees in the bearing and 159 feet in the distance. As a result of these discrepancies, the deed for Mr. Jamah Momo Kiazolu does not hold with the ground information.

4. Still on the technical side, the bearings and distances for the starting line in Maria Toles-Moore's deed are in harmony with that on the ground. For example, in Maria Toles-Moore's deed, the bearing for the starting line is North 40 degrees East and distance of 372 feet. This gives a difference of 17 degrees 30 feet in the bearing and 174 feet in the distance. It was observed by the board that the points shown by Doris Cooper-Hayes were those of the original deed out of which 11 3/4 [acres of land] belongs to her.

5. It was further observed that of the three points shown by Doris Cooper-Hayes, only two hold with the deed information.

6. For all of the points shown by Momo Kiazolu on the ground, none of the information holds with those in the deed. These were perhaps due to the erasing mark on the deed presented.

CONCLUSION

We conclude this entire exercise by stating that based upon our experiences with the surveys that were conducted many, many years ago, we do not expect the information in the deeds to be exactly the same today. However, we can expect the difference to be in a given range. In Jamah Momo Kiazolu's deed, we did not see any relation with deed and ground information. Unlike Jamah Momo Kiazolu's deed which was presented by Momo Kiazolu, Maria Toles-Moore's deed has some relevance with ground points. The

third point shown by Doris Cooper-Hayes is not in the position suggested by her deed.

RECOMMENDATION

In view of the foregoing findings and observations, we give the below recommendations for your consideration:

1. That since the information in Doris Cooper-Hayes' deed has some relevance with ground information, she be encouraged to conduct a survey of her 11 3/4 acres so that the proper corners can be in their proper positions on the ground;
2. That Momo Kiazolu be encouraged to proceed to the Ministry of Foreign Affairs to follow up information in his deed as it is suspected by the board that information in his deed was tempered with.

The board presents the attached map for your attention. It gives information on [the] deed and ground information of [the] property under dispute.

Respectfully submitted:

Signed: Morris Kanneh CHAIRMAN

Edwin Boakai MEMBER

Mulbah C. Buku MEMBER"

On December 23, 2002, the report of the Board of Arbitration was read in open court and corrections were made.

On January 23, 2003, the defendant/appellant filed a motion to vacate the arbitration report, contending basically that the report was not based on proper survey conducted; that the plaintiff/appellee did not identify her property on the ground; that the findings and recommendation are inaccurate; and that there was "manifest fraud in the procurement of the arbitration report."

The plaintiff/appellee filed resistance to the motion to vacate the arbitration report contending that even though the defendant /appellant alleged that the arbitration

report was procured by fraud, he miserably failed to show evidence of fraud, corruption, or other undue influence for which an arbitration report may be set aside. The plaintiff further contended that the defendant/appellant was represented on the Arbitration Board by his own designated surveyor who participated in, and signed the report along with other members of the Arbitration Board without any objection. The motion to vacate the arbitration report and the resistance thereto was assigned for hearing; the records show that the notice of assignment was served on the parties through their respective counsels. However, on the day of the hearing of the motion to vacate the arbitration report, the counsel who signed and received the notice of assignment for the defendant/appellant, the J.D. Gordan Law Firm, failed to appear without excuse. On application of the counsel for the plaintiff/appellee, the trial court denied the motion to vacate the arbitration report.

After denying his motion to vacate the arbitration report, the defendant/appellant filed a petition for a writ of certiorari with her Honour Jamesetta Howard-Wolokolie then presiding in Chambers. It would appear that Justice Wolokolie cited the parties to a conference after which she ordered the lower court to resume jurisdiction over the case and proceed in keeping with law. The mandate was executed and the trial court ordered the plaintiff/appellee to resurvey her 11 % acres of land in keeping with the recommendation contained in the arbitration report, in order to determine the actual points on the ground. The survey was conducted and the report submitted to the trial court.

The trial court entered final judgment in the matter confirming the award of the board of arbitration and ordered defendant/appellant evicted, ejected and ousted from the subject property and placed plaintiff/appellee in possession thereof in keeping with the metes and bounds of the 11 % acres of land contained in the plaintiff/appellee's deed. The defendant/appellant excepted to the trial court's ruling and announced an appeal to the Court for appellate review.

We shall address two issues in deciding this case:

1. Whether or not the trial court acted properly when it dismissed the motion to vacate

the arbitration report.

2. Whether or not the trial court acted properly, also, when it entered ruling in favor of the plaintiff/appellee based on the arbitration report.

We hold that the dismissal of the motion to vacate arbitration report by the trial court was in line with statute. *Section 10.7, 1LCL Revised, Civil Procedure Law* provides:

"If the party making the motion fails to appear, the motion shall be denied provided the motion papers are submitted to the court. If a party does not appear to oppose a motion or fails to furnish the papers demanded on due notice, the motion shall be granted on proof of due service of the notice and the required papers."

The language of the statute quoted above is plain and direct, it does not say if the party who makes the motion fails to appear the motion "may" be denied, it says emphatically that the motion shall be denied if the party making it fails to appear. From the language of the statute, the trial court has no discretion; the trial court is required to deny the motion if the party making it fails to appear, or grant the motion if the party opposing it fails to appear.

From the language of the statute, also, there is no obligation on the trial court to decide the merit or demerit of the motion once the party making the motion fails to appear. The trial court is only required to consider whether the motion papers were submitted to court, copy of the motion was served on the opposite party and notice was served on both parties for hearing. The records before us show that papers in the motion to vacate arbitration report were submitted to the trial court, copy of the motion was served on the plaintiff/appellee and the parties duly received notice through their respective counsels, to appear for hearing, but the counsel for defendant/appellant who made the motion failed to appear. So the trial court acted properly by dismissing the motion.

In similar fashion, the trial judge would have granted the motion to vacate the arbitration report, and rightly so, had the counsel for the plaintiff/appellee failed to

appear for hearing, having received notice of assignment through his counsel to do so. This is the plain language of the quoted statute. Lawyers designated by parties to represent them are agents of the parties. This means that when lawyers act or fail to act, such action or inaction reflects on their clients. This Court has held that once a case has not been completed, the counsel of record is bound to honour all assignments duly issued and served on him until the case is finally decided.

Otherwise, he may be presumed to have abandoned the cause. *Inter-corn Security System, Inc. vs. Biago Bormesahn et al*, 37LLR (1994)

Concerning the second issue, we hold, also, that the trial court acted properly when it entered ruling in favor of the plaintiff/appellee based on the arbitration report. Arbitration is defined as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. *Chicri Brothers, Inc. vs. Isuzu Motors Overseas Distribution Corp. et al*, 40LLR, 128 (2000).

Under Section 64.3, 1LCL Revised, Civil Procedure Law, the court is empowered to appoint arbitrator or arbitrators with qualifications commensurate with the nature of the controversy to investigate and submit to the court, on the contentious issues involving the parties. Arbitrators possess special knowledge on the issues the court appoints them to investigate. Most often than not, they are experts on whose advice the court depends to decide special, technical matters. The decisions of arbitrators are binding on the parties, barring certain statutory grounds.

The parties in this case mutually agreed and submitted to arbitration on the issue of the validity of the title documents each has to the disputed property. The plaintiff/appellee appointed Mulbah C. Buku to represent him; the defendant/appellant appointed Edwin Boakai to represent him; and the trial court appointed Morris Kanneh as the third arbitrator and chairman of the team of arbitrators. All of the arbitrators, including the arbitrator appointed by the defendant/appellant, conducted an investigative survey of the disputed property and submitted a report the court.

The report was unanimous; no arbitrator disagreed with the report or portion of the report. According to the findings/observations of the arbitration report, ..."the bearings and distances for the starting as well as successive lines in Jamah Momo Kiazolu's deed are no way in harmony with those on the ground..." whereas, .. "the bearings and distances for the starting line in Maria Toles-Moore's deed are in harmony with that on the ground..." The arbitration report also stated in its findings/observations that "...of the three points shown by Doris Cooper-Hayes, two hold with the information on the deed...", while "...of the points shown by Momo Kiazolu on the ground, none of the information holds with those in the deed...". Other findings/observations in the arbitration report clearly favored the plaintiff/appellee.

The report recommended that since the information in Doris Cooper-Hayes' deed has some relevance with ground information, she should be encouraged to conduct a survey of her 11 3/4 acres so that the proper corners can be placed in their proper positions on the ground; and that Momo Kiazulu be encouraged to proceed to the Ministry of Foreign Affairs to follow up information in his deed as it was suspected by the team of arbitrators that information in his deed "was tempered with".

The defendant/appellant filed a motion to vacate the arbitration report contending that the report was not based on proper survey conducted; that the plaintiff/appellee did not identify her property on the ground; that the findings and recommendation are inaccurate; and that there was "manifest fraud in the procurement of the arbitration report."

Section 64.11, 1LCL Revised, Civil Procedure Law states the following as grounds for vacating an arbitration award:

- a) The award was procured by corruption, fraud, or other undue means; or
- b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession; or there was corruption or misconduct in any of the arbitrators; or

c) An arbitrator or the agency or person making the award exceeded his powers or rendered an award contrary to public policy; or

d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6.

We note that the defendant/appellant alleged only one statutory ground in his motion to vacate the arbitration award and that is, there was "manifest fraud in the procurement of the arbitration report." We agree with the plaintiff/appellee that the defendant/appellant failed to show, on the face of his motion, evidence of fraud, corruption, or other undue influence for which an arbitration award can be set aside. The law requires that the issue of fraud be particularly pleaded; this, the defendant/appellant failed to do.

But more besides and as indicated earlier, the defendant/appellant did not attend the hearing of his own motion to vacate the arbitration report, even though he received notice of assignment to do so. The motion to vacate the arbitration award was therefore denied, and as we have said, the trial judge was legally justified in denying the motion.

The defendant/ appellant contended that his title which is derived from the Republic of Liberia is older than the plaintiff/appellee's title which is also derived from the Republic of Liberia; that by operation of law, his title must prevail over the plaintiff/appellee's title. To this contention, we say while it is true that in an ejectment action where the parties' titles are derived from the same grantor, the party with the older title is preferred, an older title whose procurement is shrouded in doubt and uncertainly, as in the instant case, can not prevail.

Based on the findings/observations and recommendations submitted by the team of arbitrators we hold that the trial court acted properly when it entered judgment in favor of the plaintiff/appellee; no other outcome could have emerged. The report clearly shows in many respects, that the plaintiff/appellee has a better title to the disputed property. It is trite law that in an ejectment suit, the party with the better title will be

avored. We therefore find for the plaintiff/appellee.

WHEREFORE, the ruling of the lower court based on the arbitration award in favor of the plaintiff/appellant is hereby affirmed. The defendant/appellant is ordered evicted, ejected and ousted from the disputed property and the plaintiff/appellee is ordered placed in possession thereof in accordance with the metes and bounds of the 11 3/4 acres of land contained in the plaintiff/appellee's deed. The Clerk of this Court is ordered to send a mandate to the lower court to give effect to this judgment. It is so ordered.

Appeal denied.

COUNSELLOR COOPER W. KRUAH APPEARED FOR APPELLANT.
COUNSELLOR MARCUS R. JONES APPEARED FOR APPELLEES.