

MOSES KOLLIE, Appellant, v. **PETER S. KPAN**, Appellee.

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

Heard: November 14, 1983. Decided: December 22, 1983.

1. The plaintiff in an ejectment suit must show a legal title to the property in dispute in order to recover, and the weakness of the defendant's title will not of itself enable the plaintiff to recover.
2. In an action of ejectment, the plaintiff's recovery must be based on the strength of his own title and not on the weakness of the defendant's title.
3. Where the plaintiff in an action of ejectment has proven his case by the preponderance of evidence, including a valid deed, the judgment must be rendered in plaintiff's favour.

A parcel of land known as lot no. 26, located on Camp Johnson Road in the City of Monrovia, Montserratado County, subject of this litigation, was originally owned by one F. E. R. Johnson who conveyed the said plot of land by a warranty deed to one Mr. T. K. Kpan. Following the death of the said T. K. Kpan, the land passed unto one Evelyn G. Kpan, by an administrator's deed issued by P. S. Kpan, the sole heir of T. K. Kpan who had undertaken to administer the estate of his father. The plot of land was reconveyed to P. S. Kpan, the appellee in this case, by Evelyn G. Kpan who prepared, probated and registered a warranty deed in his favour in August, 1978.

By virtue of this chain of title, the said Peter S. Kpan sued out this action of ejectment against appellant, Moses Kollie, who had occupied the property, in the Sixth Judicial Circuit Court, Montserratado County, for the recovery of his land. The appellee having proved his case in the lower court by a preponderance of the evidence, judgment was rendered in his favour. The said judgment of the lower court was affirmed by the Supreme Court, the Court holding that the appellee had shown sufficient evidence to entitle him to recover his land and that there was an absence of irregularities committed by the trial court.

J D. Gordon appeared for the appellant. J. Emmanuel R. Berry appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

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By virtue of this chain of title, Peter S. Kpan sued out this action of ejectment against Moses Kollie in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, for the recovery of his land. Defendant/appellant filed his answer contending that plaintiff's previous action of ejectment regarding the self-same property having been dismissed on law issues, he is forever barred from re-instituting the said action. He neither denied being on plaintiff's land nor did he claim title or any other right to the property in question in his said answer. Pleadings rested at the reply. While the case was pending, Messrs. Samuel Kollie, J. K. Kollie and Joseph Kollie all of the City of Kakata, Gibi Territory filed a motion to intervene with an answer claiming title to the property, subject of the ejectment. The motion to intervene was heard and denied to which movants excepted but did not pursue this further.

Law issues having been disposed of, trial was had and ended in a verdict and judgement for the plaintiff/appellee and the defendant/appellant, being dissatisfied with the said judgement, appealed to this Court for a final review on a five-count bill of exceptions.

Salient among the points contained in the bill of exceptions of the appellant are, firstly, that appellee had failed to state the quantity of land occupied by the appellant which creates a doubt as to the quantity of land he occupies. Secondly, that appellee having personally testified that he had never surveyed the land, he thereby admitted that he did not know the exact location of his property. Thirdly, that Mr. Joseph Richards, a material witness, testified that the land in question had never been clearly demarcated which testimony creates another uncertainty as to the exact location of appellee's property. Fourthly, that Mr. Richards had said on the witness stand that he and Mr. Kpan had a dispute over the title to said land which cast further doubts as to appellee's chains. And finally that appellant produced a deed for the land which the judge of the lower court ignored.

The appellee on the other hand contended in his brief and strenuously argued before this Bench that the issue of not stating the portion of land occupied by appellant in the complaint and the alleged failure of appellee to re-survey the land and appellant being in possession of a deed not having been raised in the answer in order to have been traversed, argued, passed upon by the trial judge and excepted to during the course of the trial, this issued should not form part of the bill of exceptions in this case. Therefore, the trial judge was legally correct to have ruled against the defendant/appellant and entered judgement in favour of plaintiff/appellee, as there is sufficient evidence to support such judgement.

From these contentions, the pertinent issues presented that warrant our consideration in the

the court to award him recovery against the defendant/appellant.

The issue of appellee's alleged failure to state the number of acres occupied by appellant as well as appellant being in possession of a deed for the property in question not having been raised in appellant's answer or the deed made profert of by that attaching of same to his answer, if there was any, to be traversed in the appellee's reply and to be passed upon by the trial court, was indeed a violation of the fundamental rule of pleadings.

Besides the above, according to records the documents proffered and admitted into evidence and certified to this Court, including deeds, and the witnesses heard on both sides, as well as the various case law authorities cited on both sides, we are convinced that the most important issue in this case is whether or not appellee showed sufficient legal title to the said land that enabled the trial court to award him recovery against the appellant. This last issue is derived from the well known and often cited case law in *Gibson et al. v. Jones*, 3 LLR 78 (1929), which states that a plaintiff in an ejectment suit must show a legal title to the property in dispute in order to recover it, and that the weakness of the defendant's title will not of itself enable him to recover.

During the trial of the case, the appellee relied on his deed, an authenticated copy of which forms part of the records, and on the oral testimony of several witnesses. The appellee's deed certified to this Court shows that appellee was the last in a chain of title starting with one F. E. R. Johnson of the City of Monrovia, Montserrado County, Republic of Liberia who conveyed to one T. K. Kpan also of the same address on May 30, 1928 in a warranty deed. The plot of land in question is described in the deed as lot no. 26, bounded and described in the deed, and was probated and registered September 3, 1928 with authentic official signatures.

In June 1978, the land in dispute was conveyed to one Evelyn G. Kpan, daughter of Peter S. Kpan, Sr., by an administrator's deed. In July of the same year, Evelyn G. Kpan then re-conveyed to Peter S. Kpan (appellee) herein, by a warranty deed, which was probated and registered according to law in August, 1978. The land in question has the same description in metes and bounds on all the deeds in the chain from Johnson to Peter S. Kpan and there is no doubt as to where it could be found in Monrovia.

All of the witnesses who testified on behalf of the appellee showed that appellant, Moses Kollie, had no land in the vicinity, and that the land he now occupies is the lawful property of appellee, Peter S. Kpan. One witness, Joseph Richards, even went on to show that he had personally marked out the

a better or stronger title than the prima facie title proved, he must show it; and until he does, the prima facie title prevails." And there is no doubt in this case under consideration that appellee has shown proof of title and a right superior to that of the appellant, while the latter has failed to show any title at all.

It is the opinion of this Court that appellee has shown sufficient evidence to entitle him to recover his land and in the absence of any irregularities committed by the trial judge, this Court has no other alternative but to uphold the judgement of the lower court which judgement is based on the principle that where the plaintiff in an action of ejectment has proven his case by the preponderance of evidence including a valid deed, the defendant should not recover against him; and that the *Tay v. The, et al.*, 18 LLR 310 (1968) relied upon by appellant only applies where neither party has a valid title deed, which is not the case here since indeed appellee has a valid title deed.

In view of the foregoing, it is the opinion of this Court that the judgement of the court below be affirmed, and that surveyors should assist the sheriff of this county in serving the writ of possession in accordance with the metes and bounds of the plaintiff/appellee' s deed, with costs against the appellant. The Clerk of this Court is hereby instructed to send a mandate to the trial court commanding the judge therein presiding to resume jurisdiction over this case and to enforce its judgment consistent with this Court's judgment and opinion. And it is hereby so ordered.

Judgment affirmed.