

Alexander Konkai /Freeman, Momolu S. Freeman, Ecelo Elaine Freeman, B. Dixon Momolyn Dixon and Moice Dixon, Heirs of the Administrator and Aministratrix of the Intestate Estate of the late Alexander B. Mars Jr. all of Montserrado County Republic of Liberia APPELLANTS/MOVANTS Vs. **Mr. Ezzat Eid**, also of the City of Monrovia, Liberia APPELLEE/RESPONDENT

LRSC 18

HEARD: March 29, 2011 DECIDED: July 21, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

Before us is an appeal from both parties herein on a ruling by the Sixth Judicial Circuit granting a motion for summary judgment filed by the appellants/movant for the Intestate Estate of Alexander B. Mars, Jr. against respondent Ezzat Eid.

The origin of this case emanates from an action of Summary Proceedings to Recover Possession of Real Property filed by the administrators of the intestate estate of Alexander B. Mars, Jr. as plaintiff and Mr. Ezzat Eid as defendant in the Sixth Judicial Circuit, Civil Law Court during its June term 2007. The plaintiff, now appellant/movant sought to evict the appellant/respondent from a piece of property situated in Paynesville. Appellant/movant alleged that in 1970, they leased the property to the K. & H. Construction & Industrial Corporation and Mensah-Morgan Construction & Industrial Corporation. They left the country due to the 1980 coup d'etat, and later returned to re-assess the family property. Upon their return, they found the appellant/respondent on the property carrying out rock mining without their consent; thereby, causing damages to the said property. The appellant/movant prayer in the petition for summary proceedings to recover real property reads:

"Wherefore and in view of the foregoing, Plaintiffs pray this Honorable Court to summarily oust and evict defendant from the said property and repossess plaintiffs and also grant unto Plaintiffs accrued rent in the sum of US25,000.00 (twenty five thousand united states dollars) yearly representing rentals per annum that plaintiffs would have

made from the lease of said property from the year of the defendant's illegal possession up to and including the date this case is finally determined and [to also award] damages against defendant for his illegal possession and withholding of plaintiffs property and to grant unto Plaintiffs any other relief, as the court may deem just and equitable."

The appellant/respondent, Ezzat Eid, responded that his occupancy was based on a lease agreement entered into between him and the people of Zinnah Town and Sayonkon Town who had in fact been in actual possession of the subject leased property. Thereafter, the people of Zinnah and Sayonkon Towns filed a motion to intervene and to dismiss the plaintiffs' action against Ezzat Eid. The court below heard and ruled that the intervenors had no title to the property in which they could convey the subject property and therefore denied the intervention. The intervenors appealed the trial court's ruling. This Court heard the appeal, ruled and upheld, on July 23, 2009, the lower court's ruling.

The ruling and mandate of the Supreme Court having been sent and read in the trial court, the court resumed jurisdiction over the matter and on September 11, 2009, the appellants/movants filed a 10 count motion for summary judgment. For the purpose of the matter before us we shall state counts 9, 10, and the prayer of the motion herein:

9. "The Honorable Supreme Court of the Republic of Liberia disposed of the said appeal during its March Term, A.D. 2009 denying Interveners the right to intervene in this matter to protect respondent Ezzat Eid because interveners do not have any interest in and to said property and as such, not having any interest, they also did not have any title or authority to convey leasehold right to respondent Ezzat Eid because interveners withdrew their appeal from the 1978 Civil Law Court's judgment in the same land matter against them. This Court is requested to take judicial notice of the Supreme Court's Opinion dated April 7, 2009 and decided July 23, 2009, March Term, AD 2009.

10. Movants in addition to Count Nine (9) herein this motion, contend that under the law, and based upon the Supreme Court's Opinion, the summary proceedings against Ezzat Eid, is moot, and as such, the Opinion which denies his so-called privies/lessors/

intervenors the right to intervene because they did not have the title to said land makes respondent Ezzat Eid's possession of said land illegal. Movants therefore, content that there being no issue of fact to be raised any longer by respondent Ezzat Eid for his illegal possession of movant's property, movants hereby move this Honorable Court for summary judgment as a matter of law with respondent being held liable for accrued rent at US\$25,000.00 (Twenty-five Thousand United States Dollars) per annum for (5 1/2 years) or US\$137,000.00 (One Hundred Thirty-Seven Thousand United States Dollars) in addition to damages for illegal withholding and illegal disposition in a sum of not less than \$US900,000.00 (Nine Hundred Thousand United States Dollar).

Wherefore, and in view of the foregoing, movants pray court to grant them summary judgment in the case against they and respondent Ezzat Eid, ousting, evicting and ejecting him from movant's property with costs and expenses in these proceedings in addition to movants' accrued rental in the sum of US\$25,000.00 (Twenty-Five Thousand United States Dollars) per annum or US\$137,000.00 (One Hundred Thirty-Seven Thousand United States Dollars) for the five and half (5 1/2) years defendants have been in illegal possession of movants' property plus damages in a sum to be determined by this court sitting without a jury in a sum not less than US\$800,000.00 (Eight Hundred Thousand United States Dollars) giving the value of movants' assets that respondent had been in illegal possession and use of a rock quarry, six concrete storey buildings, loading docks, elevated ramps, etc., and to grant unto movants any and all further relief deemed just and legal under the given circumstances."

The appellant/respondent, Ezzat Eid, filed his resistance to the motion for summary judgment and we shall quote paragraphs 17, 18, 19, 20, 21, 22, 23 of said resistance:

17. Respondent submits that he having entered upon the premises mentioned herein and invested US\$381,092.50 (Three Hundred Eighty-One Thousand Ninety-Two (50/100), injustice would definitely result were movants allowed or permitted to take respondent's investment without any consideration given to respondent. Respondent says that the fact that K & H Construction Company leased this property from the people of Zinnah and Sayonkon Towns from 1982 up to 2005 and respondent, relying upon the possession, use and occupation of said premises by K & H Construction

Company, entered Lease Agreement with the people of Zinnah and Sayonkon Towns for said premises and invested without movants raising any contention, estops movants from evicting and ousting respondent and taking over the investment of respondent without reimbursing respondent for his investment on said property. Respondent submits and says that were movants to succeed in ousting and evicting respondent without reimbursement to respondent for his investment, movants would be unjustly enriched in violation of the doctrine of equitable estoppels.

18. Respondent says that estoppel is founded on the grounds of fair play, justice, good faith, and public policy; it is designed to aid the law in the administration of justice, where without its aid, injustice might result. Thus, it is founded upon principles of morality and fair dealing and is intended to subvert the ends of justice. It concludes the truth in order to prevent fraud and falsehood and imposes silence on a party only when in conscience and honesty he should not be allowed to speak. 28 Am Jur 2d, Estoppel and Waiver, Section 28. Respondent submits that it would be unfair, unjust, and contrary to public policy and the administration of justice, were the movants, who sat supinely and allowed respondent developed the subject premises, take same without paying any consideration to the respondent.

19. That the Supreme Court of Liberia held in the case Johnson vs. Bevsolow, 11LLR 365; that: "from this decision it is clear that the indispensable factors in determining whether a party is stopped from asserting his claim because he made no objections at the time the property was being acquired by another are:

(i) Knowledge by the party that his property rights were being invaded. He must know that some other person is attempting to convey and has conveyed property belonging to him; for without such knowledge, it is folly to expect that he would raise any issue.

(ii) The party acquiring the property must have made some improvement, in which case it would be unfair to him to have expended money upon the land while the original owner stands by, planning to reap what he has not sown. Moreover, improvement upon the land serves as notice to the real owner that a trespasser has invaded his property rights and he is then expected to invoke the aid of the law immediately." Respondent

having entered upon said premises and developed same without any objection from movants, movants are stopped from ousting, evicting and ejecting respondent from the hereinmentioned property.

20. That as to Count (10) of the motion, respondent says that there are factual issues to be determined by this Court. Which include, but not limited to the following: (a) whether or not the property in question was leased by the people of Zinnah and Sayonkon Towns to K & H Construction Company, who occupied, possessed and used same up to the execution of the Lease Agreement between the people of Zinnah and Sayonkon Towns, as lessors, and Ezzat N. Eid, Respondent herein, as lessee; (b) Whether movants had knowledge of the use, possession and occupancy of the herein-mentioned premises, first by K & H Construction Company and later by respondent; and (c) Whether or not respondent invested over US\$381,000.00 (Three Hundred Eight-One Thousand United States Dollars) on said premises. Respondent submits that these issues are germane to the determination of whether the respondent should be evicted from the subject premises, or compensated for the investment he carried out on said premises.

21. That also traversing Count 10 of the motion, respondent says that there is no agreement between movants and respondents, calling for the payment of rent in the amount of US\$25,000.00 (Twenty-Five Thousand United States Dollars) per annum to aggregate US\$137,000.00 (One Hundred Thirty-Seven Thousand United States Dollars), representing five and one-half (5 1/2) years' rental payment, as averred by movants in Count 10 of the motion. Respondent submits that assuming, without admitting, that movants were entitled to rent, same would not be US\$25, 000.00 per annum, but rather same would be based on what amount is being paid for ground lease for similar quantity of land in the locality of the premises. Accordingly, movants are not entitled to rent as prayed for in the motion for summary judgment.

22. That notwithstanding the fact that the Lease between respondent and the people of Zinnah and Sayonkon Towns calls for an aggregate of 51.18 acres of land, but in actual fact respondent is in possession, occupancy and use of only seven (7) lots, as the people Zinnah and Sayonkon Towns have sold the rest of the portion of land covered

by the Lease Agreement to third parties. This is an issue of fact, which requires the production of evidence, and therefore cannot be determined by a motion for summary judgment.

23. That respondent is not extracting rocks from the premises, subject of the Action of Summary Proceedings to Recover Possession of Real Property. Respondent is conducting and carrying out block-making business on the seven lots of land mentioned in County Twenty-Two above. This is an issue of fact, which requires the production of evidence and therefore cannot be determined by a motion for summary judgment.

Ruling on the motion for summary judgment, the trial Judge ruled as follows:

"The movants are aware that in order to award damages, even where the claim is for general damages, the claimant is required to provide evidence at a trial to sustain an award." *Gbandour vs. Jawandoh and Neal*, Supreme Court's opinion, decided December 22, 2006. In another case, the Supreme Court ruled that even for general damages, a plaintiff must not only prove the occurrence of the act complained of as an injury or damage to his person, property or rights, there must be some evidence to support monetary award, which must be proportionate to the damages sustained. *Knuckles vs. The Liberian Trading and Development Bank*, 4OLLR, 511. Specifically, in an ejectment case, the Supreme Court has ruled that the assessment of damages is peculiarly the province of the jury as trier of the facts. *Dasusea and Kargou vs. Coleman* 36LLR, 102.

Notwithstanding, these and many other decisions of the Supreme Court on damages, movants have moved this Court to dispense with a trial of this Action of Summary Proceedings to Recover Possession of Real Property and to, based on the July 23, 2009 Opinion and Judgment of the Supreme Court in the motion to intervene proceedings, rendered a summary judgment. To the mind of this Court, this means that movants do not wish to submit to a trial to prove the damages they claimed in their complaint. And since this July 23, 2009 Opinion and Judgment of the Supreme Court clearly adjudged that respondent's landlord, the people of Zinnah and Saryonkon Towns have no title

or interest in the land which they could have leased to respondent, movants are entitled to the possession of said land as a matter of law."

The Judge therefore ruled to have respondent ousted and evicted from the property, disallowing damages sought by the appellants/movants and counterclaim of the appellant/respondent to be reimbursed his investment on the property. Both parties excepted to the court's ruling and announced an appeal, filing their separate bills of exceptions.

The movant/appellants, heir and administrators of Alexander B. Mars, Jr. Intestate Estate, basically reiterated their claims for specific and general damages that were denied. They stated that the judge misapplied the statute on summary proceedings by failing to reviewed the lease agreement attached to the respondent's Ezzar Eid's own answer in the summary proceedings suit as well as his own exhibit to his resistance to movants' motion for Summary Judgment in which Milton & Richards documented all of movants' property located on movants' land to include six (6) concrete buildings, a rock crusher and many other equipment and facilities that were on movants' property prior to respondent's illegal possession of same; that equity must come into play in that it is encumbered upon the court to award damages using the types of structures and facilities on the property as well as the activities undertaken by the defendant/respondent on movants' property, the number of years occupied by the respondent, market value and comparable rent that such property would be leased for on the propriety market in the country and accordingly award damages for wrongful withholding and repossession for the deprivation of movants from the use, benefits, rents and occupancy and possession of their legitimate property. The movants/appellant stated further that the law on summary proceedings to recover possession of real property does not require specific proof of rent or damages for wrongful withholding. The law only requires that the plaintiff must demand damages for wrongful withholding and possession of Plaintiff's property as well as rent due.(emphasis ours). For the judge to require movants/Appellants to produce evidence when such damages in summary proceedings are in the nature of general damages, he committed prejudicial and reversible error.

As for the respondent/appellant Ezzat Eid's, his bill of exceptions complained the same as his resistance to the motion. He alleges that he was an innocent purchaser who had expended good amount of money developing the disputed property while the movants/appellants sat supinely without protesting; and since the judge had awarded the movants/appellant the property, ousting and evicting him from said property, he is entitled to reimbursement of the invested amount of US\$381,092.50 (Three Hundred Eighty-One Thousand Ninety-Two 50/100 United States Dollars) under the principle of unjust enrichment. The Judge therefore erred when he failed to rule the matter to trial to substantiate the facts and claim of his counterclaim.

The exceptions filed by the parties raised the following issues:

1. Whether the law on summary proceedings to recover possession of real property does not require specific proof of rent or damages for wrongful withholding and possession of Plaintiff's property?
2. Under the facts and circumstances, should the appellant/movant be entitled to his claim of investment carried out on said property?
3. Under the facts and circumstances in this case, where summary judgment was granted on the issue of possessory rights, should the judge's ruling have been a final ruling or interlocutory given that other claims were undecided?

The appellants/movants in their bill of exceptions and argument before us allege that the judge's ruling denying damages is reversible as the law on summary proceedings to recover possession of real property does not require specific proof of rent or damages for wrongful withholding and possession of plaintiff's property. The law only requires that the plaintiff must demand damages for wrongful withholding and possession of plaintiff's property as well as rent due. Appellants/Movants rely on Sections 62.21, 62.22 of our CPLR. These Sections read:

"Where title is not an issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate.

The court of the justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars (Section 62.21).

The relief granted by the court may include a judgment for rent due and for damages for wrongful entry on or withholding of the property which is the subject of the action if the citation contains a notice that a demand for such judgment has been made (Section 62.22)."

We see no where these sections quoted above require the lower court to award damages based merely on demand in the plaintiff's complaint. The emphasis above states that the court in granting relief in summary proceeding to recover real property may include judgment for rent due and for damages for wrongful entry on or withholding of the property. But all judgments are based on proof of the facts constituting the claim, the default and the amount due.

We are taken aback by the appellants/movants counsel's argument that one only has to demand rent and damages in a summary proceeding to recover property matter and the judge will grant it without any evidence taken to substantiate the claim. It is a settled principle in our jurisdiction that special damages such as rent owed must be pleaded with particularity and affirmatively proved. *Hanson & SOEHNE LTD. vs. Tuning* 17LLR617 (1966); General damages especially when specifically requested must be considered in face of the conduct of the defendant's deliberate, obstinate and unreasonable refusal to leave the disputed property and continued occupation and withholding of plaintiff's property to their dissatisfaction and displeasure. *Dasusea and Kargou vs. Coleman* 36 LLR, 102, 136 (1989). Again, in *Zahn Mayson vs. Moses Bowen* 24 LLR 365,366 (1975) this Court said, "allegation of the sum as special damages must be substantially proven by unimpeached evidence; and according to the laws of this country, it is not sufficient to merely allege an injury and claim damages therefor, but the plaintiff must prove the injury complained of and that he has been damaged in a sum commensurate with the amount claimed as damages.

The appellants/movants are demanding special damages of US\$25,000.00 annually for

5 1/2 years plus general damages of not less than US\$800,000.00 for illegal withholding of the property. The appellants/movants themselves have stated in Count 1 under ARGUMENT of their brief filed before us, that , "The law requires that equity must come into play in that it is incumbent upon the court to award damages using the types of structures and facilities on the property as well as the activities undertaken by the appellee/respondent on appellants/movants' property, the number of years occupied by the appellee/respondent, the market value and comparable rent that such property would be leased for on the property market in the country and accordingly award damages for wrongful withholding and deprivation of appellants/movants from the use, benefits, rents and occupancy and possession of their legitimate property."

The appellant/respondent is alleging that his lessor, the Zinnah and Sayonkon Town People, leased the property to the K & H Construction Company for five years with no objection from the appellants/movants and it was after the K & H Construction lease expired that he entered the agreement with the Zinnah and Sayonkon Town People. He had no notice of the appellants/respondents title to said property, and they sat supinely and took no action to establish ownership of the property while he rehabilitated and reconstructed the facilities on the property. The appellants/movants acted in bad faith and now that he respondent has satisfied the judgment by the delivery of possession and occupancy to appellants/movants, it is only equitable that movants reimburse to him the amount of \$381,092.50 expended on said property.

All these allegation being issues of facts, how and on what basis could the judge have awarded damages, without taking evidence? How could the Judge have awarded special damages totaling US\$137,000.00 and general damages of not less than US\$800,000.00 as asked for in the motion for summary judgment when the appellants/movants only filed the agreement of 1969 between them and the Mensah and Morgan Corporations which shows annual rent of not more than three thousand dollars (\$3000) per annum and the rent between the appellee/respondent and his lessors was US\$2,500 per annual. In order for the trial judge to award the special damage asked for, the movants should have brought into evidence a lease or other documentary evidence showing the contract value for said property which was lost because of the respondent illegal withholding of said property, or evidence of the market value of said property, and for

general damages, the benefits that the appellant /respondent had reap from the property to the detriment of the movants. The appellants/movants allege that the respondent was extracting rocks from the premises but the respondent denies the allegation, stating instead that he was doing block business on the said property and on only 7 lots and not the 51.18 acres of land as the agreement between him and his lessors had agreed since they had sold the rest of the property to various individuals. Again, all these are issues of facts the judge who was the trial of facts should have heard and ruled on to determine the claims of damages.

The counsel of appellants/movants tried to prevail on us that the judge should have awarded damages by simply taking note of the attachments to the pleadings by the parties, especially a report by the appellant/respondent's engineer stating the worth of the property. But, the attachment by appellant/ respondent was to show the condition of the property when he took over the property and the state after his invested in the property. The architect report was to support the appellant/respondent's counterclaim for reimbursement of costs expended on the property, based on the principle of unjust enrichment and not to specifically prove appellant/movants claim of damages. We agree with the judge that the appellants/movants was required to provide evidence at trial to sustain an award of damages .

In the case where the judge himself decided that evidence was necessary to determine damages, how could his granting of the summary judgment relating to the movants' possessory right could have been a final ruling when there were other claims left undecided?

Section 11.3 of our civil procedure law of 1976 on *MOTION FOR SUMMARY JUDGMENT* provides"

3. *Basis for granting summary judgment.* The court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law.

6. *Judgment for less than all the relief asked.* Judgment may be granted as to one or more

claim or defenses, or as to one or more to several parties, plaintiff or defendant to the extent warranted, on such terms as may be just.

7. *Limitation of issues of fact for trial.* If a motion for summary judgment is denied or is granted for less than all the relief asked, the court, by examining the papers before it and by interrogating counsel, shall, if practicable, ascertain which facts are not in dispute and are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order authorized under Section 12.5.

In this case, when the Judge ruling on the summary judgment, he should have dispose of this segment of the litigation and render judgment on it, reserving the remaining issue for trial at a later time. Ruling on the summary judgment determined possessory rights of the appellants/movants, however, said ruling did not bring a finality to the matter since a final judgment settles the rights of the parties and disposes of all issues in controversy. The aspect relating to the claim of damages by the movants and the counterclaim by the respondent should have been ruled to trial and heard by the trial court Judge as the trial of facts, the matter being a case tried without a jury. The Judge should have proceeded to a hearing on the damages and counterclaim of reimbursement and called upon the parties to produce evidence to substantiate their claims. Failure by the judge to proceed to hear and ruled on the claims of damages and the counterclaim for reimbursement was erroneous.

We agree with the respondent/appellant's argument that all these claims are factual issues that the judge should have considered in his disposition of the matter. Evidence of an assessment done of the property before it was occupied by the respondent, the market value of the property, the business carried out on the property by the respondent Eid and the actual area of the property occupied by the respondent are all issues of fact that should have been heard, substantiated, and a determination made by the trial court. Having failed to hear and ruled on all the issues presented by the parties, the trial was incomplete as other issues raised were left undecided.

We therefore hold that the judge erred when he made a final judgment solely on the

issue of possessory rights when there were other claims to be determined by the court. The court having failed to hear and pass on the issues of damages and other counterclaims made, we affirm the portion of the ruling granting plaintiffs/appellants possessory rights to the disputed property. However, we reverse that portion of the ruling dismissing the issues of damages and counterclaim made, and herewith remands this matter with orders that the trial court takes evidence substantiating the damages and counterclaim by the parties, and makes a final determination on all the issues raised. AND IT IS HEREBY SO ORDERED.

THE PLAINTIFFS/APPELLANTS WERE REPRESENTED BY COUNSELLOR MARCUS R. JONES OF THE JONES & ASSOCIATES LEGAL CONSULTANTS AND THE DEFENFANTS/APPELLANT WAS REPRESENTED BY COUNSELLORS CHAN CHAN A. PAEGAR AND G. MOSES PAEGAR OF THE SHERMAN & SHERMAN, INC.