

**Mrs. Joko Marwolo** of the City of Monrovia, Liberia APPELLANT VERSUS **Mrs. Letitia Reeves** also of the City Monrovia, Liberia APPELLEE

APPEAL. CASE REMANDED

HEARD: OCTOBER 17, 2007 DECIDED: DECEMBER 21, 2007

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case originates from an action of ejectment filed by the Appellee requesting the Court to oust and evict the Appellant from a parcel of land allegedly owned by the Appellee. Appellee alleged in her Complaint that the Appellant had encroached on portion of her property of two (2) lots lying and situated in Lakpazee, Airfield, transferred to her in 1978 by Mrs. Mabel Fagans-Hill, her sister. The Appellee presented into evidence a deed duly probated and registered and described as follows:

"COMMENCING AT THE SOUTHWESTERN CORNER OF LOT NO. #95 OWNED BY EDWIN Y. NIMLEY AND RUNNING THENCE ON MAGNETIC BEARING SOUTH 55 DEGREES 30' WEST 132' FEET TO A POINT THENCE RUNING NORTH 31 DEGREES WEST 165' FEET TO A POINT THENCE RUNNING NORTH 50 DEGREES 30' EAST 132' FEET PARALLEL WITH THE 30 FOOT STREET TO A POINT; THENCE RUNNING SOUTH 52 DEGREES EAST 165' FEET TO THE POINT OF COMMENCEMENT AND CONTAINING TWO (2) LOTS OF LAND AND NO MORE"

Appellant on the other hand claimed that the land that she occupies and the subject of this dispute was purchased in 1985, by her from the Administrators of the late Chief Bai Bah for her minor son. She also presented into evidence a duly registered and probated deed of 0.5 lot of land described as follows:

"SOUTHWESTERN CORNER OF HE ADJOINING PARCEL OF LAND WITH THE INITIAL J.M. THENCE RUNNING ON MAGNETIC. BEARINGS AS FOLLOWS:-SOUTH 60 DEGREES WEST 46 FEET PARALLEL WITH A 10 FOOT ALLEY TO A POINT THENCE RUNNING NORTH 30 DEGREES WEST, 130 FEET TO A POINT, THENCE RUNNING NORTH 60 DEGREES EAST 46 FEET TO A POINT, THENCE RUNNING SOUTH 30 DEGREES EAST 130 FEET ALONG SAID ADJOINING PARCEL OF LAND WITH THE INITIAL J.M. TO THE PLACE OF COMMENCEMENT AND CONTAINING

0-50 LOT OF LAND AND NO MORE."

In establishing her title and rightful ownership to the premises, Appellee set out to establish her chain of title beginning from the Republic of Liberia by attaching copy of this Court's Opinion referencing a Public Land Sale Deed signed by President Daniel B. Warner in 1866, transferring 60 acres of land in the Lakpazee area to Mr. Edmund Chavers which land was subsequently transferred to Appellee's grantor, Mabel Fagans Hill et al. It is from Mrs. Mabel Fagan Hill's parcel of the property that two lots were deeded out to the Appellee in 1978. The Appellee asked the court to take judicial notice of the case *Deshield & Williams Ban Euri v. Mabel Fagans Hill et al*, Appellees *19LLR 395(1970)*. In this case, this Court decided that Mabel Fagans Hill, Appellee's grantor and others were the genuine owners of the parcel of land that were passed on to them from Edmund Chavers.

Appellant, on the other hand, tried to establish her claim to the land in dispute by tracing her title to the late Chief Bah Bai who is said to have acquired the property by public land sale *deed in 1908, and whose Administrators had sold the 0.5 acres of land to her in 1985.*

The empanelled jury in the court below listened to the evidence presented by both sides and brought a unanimous verdict in favor of the Appellee. Appellant appealed from the verdict and Final Judgment of the court below and filed an 8-Count Bill of Exceptions.

This Court is concerned about whether the Appellee sufficiently established in the court below her claim to the land which Appellant occupies, establishing it as being part and parcel of Appellee's two lots so as to eject Appellant from the land?

Appellant in her Bill of Exceptions argued by her Counsel before this Court stated that *"the court below erred in that the Appellee's property as exhibited by her deed was distinct from that of the appellant's with different quantity of land and different metes and bounds and therefore the court could not render judgment for the Appellee where no survey was carried out to ascertain whether the Appellant's 0.5 lot was part and parcel of Appellees' two lots"*

The Appellee being crossed examined by Appellant's Counsel, in the court below, was asked:

Q. Madam Witness, the deed that you have presented to this court and trial jury contains two lots allegedly owned by you to be the property in dispute. The deed

submitted by the defendant in these proceedings calls for half lot. My question is, the two lots that you are claiming and the half lot claimed by the defendant are not the same, am I correct?

A. The defendant built on the two lots that I am claiming.

Q. Madam Witness, by that answer, I take it that, before you instituted this action, you conducted a survey of your two lots and that of the half lot of the defendant in these proceeding, am I correct?"

OBJECTION: GROUNDS: 1. entrapping, 2. Not the best evidence, the deed from both sides are before Court.

The Court: The question preceding this question was put to the Witness and in her answer she testified that the Defendant is occupying portion of her two (2) lots. Perhaps the Witness may tell this Court and the trial Jury as to how she got to know that Defendant is occupying portion of two (2) lots. Hence let the Witness answer the question. AND SO ORDERED.

A. The property in question had been surveyed with cornerstones and growing trees marking the area.

Q. Madam Witness, by that answer, you mean the survey that was conducted in the year 1978, 29 years ago, am I correct?"

A. Yes.

Q. Madam Witness, I therefore take it that the four (4) cornerstones are still visible that you can see, am I correct?"

A. They are not visible because Madam Mawolo or whoever removed the cornerstones and put a fence there.

Q. Madam Witness, the fact you that you told the court and the trial jury that your cornerstones are no longer there, mean that for you or anybody to know today where your property actually begins and where it ends you must conduct a survey by a licensed surveyor, am I correct?

OBJECTION: GROUNDS: 1. entrapping; 2. vague and indistinct as to the question

of today; 3. irrelevant and immaterial."

THE COURT: Question put to the Witness falls straightly within the province of the court and the trial Jury, hence, objection sustained. AND SO ORDERED.

To which ruling Defendant excepts. (43th Day's Jury Sitting, December Term, A.D. 2006, Wednesday, February 14, 2007, SHEET 7 & 8).

This Court finds it difficult to understand why the judge in one instance would overrule an objection to a question of whether a survey was carried out to ascertain Appellant's occupancy of Appellee's two lots and request the Appellee to answer the question and tell the court and trial jury as to how she got to know that the Appellant is occupying her property, and in another instance to a similar question put, uphold the objection, stating that the question put to the witness falls straightly within the province of the court and the trial jury. Is the court saying that only the court and jury could say a survey was carried out, and that the defense counsel could not ascertain from the witness if a survey was carried out to prove if Appellant's parcel of land falls within the Appellee's two lots?

Recently, in its March Term 2007 Opinion, This Court stated, *"It is not enough in an ejectment suit that a party has an older title deed; nor is it conclusive that the older title holder ipso facto becomes the owner of the land. What ought to be enough and conclusive is that the land in dispute is the same parcel or portion of land."* Garkpor et al. Vs. Calvary Baptist Church.

This issue raised by the Appellant is salient to the final determination of this case. This Court has held that: *"In an ejectment action where the description in the plaintiff's deed differs from that of the defendant's deed, and moreover, where both parties derive their properties from different sources, it is incumbent on the court to request that a survey be conducted by a board of arbitrators so as to ascertain the exact place and location of the property in dispute"* This is necessary to determine the main issue argued before this Court, with respect to which of the parties has a better title to the disputed property. *Aidoo Vs. Jackson, 24 LLR 306, text at 312-313 (1975); Freeman VS Webster 14 LLR 493, text at 506-507 (1961)*. It was incumbent on the court below to ensure that a survey was carried out in order to determine whether the disputed property is part and parcel of plaintiff's two lots.

Regarding the holding of an older and superior title, we look at the testimonies by the parties:

Appellee and her witnesses contend that she had acquired two lots from her sister,

Mabel Fagans Hill, in 1978. Mabel Fagans Hill had acquired through descent parcel of land situated in Lakpazee, Airfield and from which she had deeded two lots to her sister, the Appellee. Appellee stated that she had to leave the country because of the civil war and upon leaving gave a power of attorney to her brother-in-law, the late Samuel D. Hill and her Nephew Author Saye. While abroad, her brother-in-law and her nephew informed her that the Appellant had encroached on her land and that her brother-in-law Mr. Hill had contacted Cllr. Joseph Findley to halt the Appellant from carrying out construction on the land. Appellant testified further that when she returned from the USA in 2004, she, accompanied by her nephew Saye and his wife, went to see the Appellant about the land but they were pushed out of the house with invectives thrown at them by a young man apparently associated with the Appellant. Appellee's nephew Arthur Saye also testified that several persons including the late Samuel B. Hill, his son Sando Hill, a Police officer named Stephen Zombo and him had tried to stop Madam Marwolo from carrying out construction on the land, but she refused. Laying further claim and attempting to stop Appellant from carrying out further construction on the land, Appellee's Attorneys in Fact and Appellee herself took complaints to the Ministry of Justice, and several lawyers who all wrote communication to the appellant requesting her to stop further construction on the land but she persistently refused to adhere to these warnings and continued to carry out her construction on the premises.

Appellant in her testimony in essence said that several individuals had laid claim to the same property, and she was taken to court for the same property in which case the court ruled in her favor. She was therefore tired of individuals laying claim to this one property and therefore had even volunteered to re-buy the property. However, when Appellee offered to sell at Fifteen Thousand United States Dollars (US 15,000.00) Appellant declined and told Appellee to take her to court.

Addressing the issue of title in an ejectment action, this Court says it is the older title and superior title that have always been the controlling principle in cases of ejectment and this have controlled decisions in cases of ejectment in our courts. *Cooper Vs. Gissie et al.*, 28 LLR 202, *text 210 (1979)*. In a case of ejectment which depends upon legal title, the defendant must show an outstanding title in some third person. *Dasusea and KarEou Vs. Coleman* 36 LLR 102, *text at 130 (1989)*.

The Appellee in this case presented a deed duly probated and registered in 1978 for two lots, and attached to her pleading this Court's Opinion of January 1970, confirming grantor's title to said land by descent from her great grand uncle, Edmund Chavers, who acquired the property from the state through a land sale deed dated

1866, signed by President Daniel B. Warner. Appellant, on the other hand, traced her title to her grantors, the Administrators of the late Chief Bai Bah who deeded her 0.5 lot in 1985, of the intestate estate of the late Chief Bai Bah who acquired 209.55 acres of land in 1908 through a public land sale deed signed by President Arthur Barclay.

This Court has held in numerous cases that in an action of ejectment, the parties must necessarily rely upon title, and the best title is that given by the Republic of Liberia, with preference according to the date of issuance, the older being preferred. Walker Vs. Morris 15 LLR 424, text 426 & 427 (1963); Nyanlay, Alfred Kehyee, et al. Vs. Martha Sadolo-Belleh and David L Blegay, 32 LLR 264, text 268 (1984); Cooper Vs. Gissie et al. 28 LLR 202, text 203 (1979).

As this Court encourages speedy adjudication of cases, in this case where the jurors judging the facts as presented by the parties, brought a unanimous verdict for the Appellee adjudging that the Appellee has the older and superior title, this Court will not encourage the retrial of facts as it relates to the older title, but only as to whether indeed the Appellant's 0.5 lot forms part and parcel of the Appellee's 2 lots. Upholding the judgment as it relates to the older and superior title, this court has held: that:

*"In the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, estimate and weight its value, accept, reject, reconcile, and adjust its conflicting parts, and be controlled in the result by that part of the testimony which it finds to be of greater weight. The jury is the exclusive judge as to what constitutes the preponderance of the evidence.*

*Accordingly, where the jury have reached a conclusion after having 'given consideration to evidence which is sufficient to support a verdict, the decision should not be disturbed by the court". 39 AM. Jur. 2cL, Sec. 133, New Trial, Liberian Oil Refinery Company Vs. Ibrahim Mahmood, 21 LLR 201, text at 214 (1972); Insurance Company of Africa Vs. Gipli, 32 LLR, 230, text at 336 (1984)*

In view of the forgoing, it is the candidate opinion of this Court that the case be remanded with instructions to the court below that a Board of Arbitrators be set up to carry out an impartial survey starting first at the same point and following the same course as the original survey in Appellee's deed which is older; and afterwards following the same procedure with respect to the description in Appellant's deed. And that the court below limits its judgment to the issue of the Arbitrators' Award.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and execute this mandate. Cost disallowed. AND IT IS HEREBY SO ORDERED.