Samba Ngafua of the City of Monrovia, Liberia APPELLANT Versus **Imam Wurlo Jalloh** also of the City of Monrovia, Liberia APPELLEE

APPEAL

Heard: April 10, 2013 Decided: August 2, 2013

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

Placed on the docket of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in its June Term, A.D. 2007, was a complaint filed on April 16, 2007, in an action of ejectment. Imam Wurlo Jalloh, the plaintiff below and the appellee herein, complained that Samba Ngafua, the appellant, without the consent and permission of appellee, gained illegal entry on his land containing 1.68 lots purchased from Mr. Theirno A. Barry and erected a structure thereon. Appellee alleged that as a result of the appellant's illegal entry he had been deprived of his right to possession of his property, especially that appellant had erected her structure on the identical spot on which he had planned to build his house to avoid paying rent to others and which action of the appellant caused him damage. Appellee alleged further that several demands and appeals were made to the appellant to desist from carrying out the construction and to vacate the premises but that all efforts exerted by him proved futile. Attached to appellee's complaint was a copy of his warranty deed from Theirno A. Barry, probated on March 5, 2007, and registered in Vol. BA -07, Pages 264-285 of the National Archives.

Appellant filed her answer on April 25, 2007, in which she made a two-count general denial of the allegation in the complaint. The answer reads as follows:

Defendant in the above entitled cause of action most respectfully answers the complaint of the above named plaintiff in manner as follows, to wit:-

1. That the defendant denies all the allegations contained in the plaintiff's complaint from counts one (1) to four (4), and says that same are false and misleading.

2. And that the defendant denies all and singular all allegations of law and facts not made a subject of special traverse in this Answer.

Wherefore and in view of the foregoing, defendant prays Your Honor that the plaintiff entire complaint be dismissed, and defendant's answer be sustained and grant unto the defendant such other and further relief as may be just and legal with costs against the plaintiff.

The appellee thereafter filed a reply reiterating the allegation in his complaint and on June 23, 2007, the matter was assigned for disposition of law issues. The record in the matter shows that although the appellant had limited her defense to a general denial of the allegation in the complaint and with no attachment of a title document or nothing

evidencing her right to the property, subject of the suit or provided notice to the court that she will file one at a later date, yet, a year thereafter, the lower court, presided over by His Honor Judge Koboi Nuta, upon the call of the case for disposition of the law issues, stated on the records the following:

From a perusal of the file, there appears to be controversial issues. However, in the mind of this Court, there is a need to delay or stay the resolution of the disposition of the law issues and demand a conference of the parties to be held on June 30, 2008, at 11:30 a.m., at which time the Court requires of each counsel a thoroughly written Legal Memorandum addressing and restricting the issues as raised in the pleading of plaintiff's complaint and the general denial of defendant's answer. AND IT IS HEREBY SO ORDERED.

We are taken aback by the above ruling, to say the very least. What was there in the pleadings that appeared to be controversial and which required a legal memorandum and a conference? Further, and not astonishing, is that we see no record of a memorandum filed by either of the parties, as was required by the Judge, or any evidence that a conference was held. Apparently the parties, seeing the pleadings that had been exchanged between them, did not believe that there was any controversial issue which warranted the preparation of a legal memorandum or the need for a conference.

Subsequently, on July 2, 2008, one Mohammed C. Bah made application to the court, now presided over by His Honor S. Geevon Smith, to allow him to intervene as a party defendant. He stated that he was the attorney-in-fact for Theirno A. Barry, the alleged grantor of the appellee, whom he claimed was also the grantor of the appellant. He alleged that his principal, Theirno A. Barry, felt an obligation to defend the appellant so as to save his face. In his motion to intervene, Mohammed C. Bah stated that his principal did not sell the property to the appellee as alleged, since Theirno A. Barry had left Liberia in November of 2006, and was not in Liberia in January 2007, the time the deed to the appellee was said to have been issued. It was because of this gross misrepresentation, he said, that his principal felt the need to have him intervene. Mohammed Bah attached to his application a general power of attorney alleged to be from Theirno A. Barry, dated November 21, 2006.

The motion to intervene was resisted by the counsel of appellee who stated that the power of attorney allegedly given by Mr. Theirno A. Barry was a general power of attorney which failed to specifically authorize the intervenor to represent him, Barry, in this action of ejectment. Counsel therefore pray that the motion be denied by the court.

Ruling on the motion to intervene, the judge stated that although the movant had stated that appellant was the bonafide purchaser of the property from his principal, he had exhibited no title document issued to the appellant by his principal as alleged. Moreover,

the Judge said, the movant himself had shown no title document as evidence that title lie in his principal for whom he was acting as attorney-in-fact and that therefore he should be allowed to intervene on behalf of his principal who would be adversely affected by the judgment if he was not allowed to intervene. Based on the foregoing reasoning, the judge ruled denying the motion to intervene.

From this ruling denying the motion to intervene, the movant filed a petition for a writ of certiorari before his Honor Francis S. Korkpor, who then served as the Associate Justice in Chambers of the Supreme Court during its October Term, A.D. 2008. The Justice, upon receipt of the petition cited the parties to a conference. Apparently, what came out of the conference, since we do not see a paper filed in the Supreme Court on the contrary, was an understanding that the appellant be permitted to re-plead by withdrawing and filing an amended answer. Following this understanding from the conference, the appellant withdrewher previous answer and filed the following amended answer, which reads:

AND NOW COMES DEFENDANT and most respectfully prays this Honorable Court and Your Honor to deny and dismiss plaintiff's complaint and showeth as follows to wit:

1. Because as to count (1) of the plaintiff's complaint, defendant says that she has no information sufficient to form an opinion as to the truthfulness of the allegation contained therein. However, defendant wishes to state here categorically that she purchased the property, the subject of these proceedings, from Mr. Thienor A. Barry on the 27th day of December 2006, as can fully be seen from the attached certified defendant's deed which is hereto attached as defendant's Exhibit D/1 to form a cogent part of the defendant's answer. The metes and bounds of the defendant's deed are hereto attached verbatim hereunder.

Commencing at the southwestern corner of the adjoining parcel of land marked by a concrete block with initials N.M.G. and running on magnetic bearings:- south 16 degrees west, 120.0 feet to a point; thence running south 78 degrees east, 152.7 feet to a point; thence running north 16 degrees east, 120.0 feet to a point; thence running north 78 degrees west, 152.7 feet parallel with the said N.M.G. parcel of land to the place of commencement and containing (1.68) one point six eight lots of land and no more.

Count one (1) of the plaintiff's complaint should therefore be denied and dismissed.

2. That as to count two (2) of the plaintiff's complaint, defendant avers and says that she is on the property on the strength of her own title and hereby gives notice that during the trial, she shall have her grantor, Mr. Theirno A. Barry, appear and testify to confirm that he, Theirno A. Barry, as a matter of fact sold the land to the defendant herein. Count two (2) of the complaint should therefore be denied and dismissed.

3. Further to count two (2) above, defendant says that the plaintiff exhibited a purported deed allegedly executed by Mr. Theirno A. Barry in 2007, when there are confirmed information that Mr. Barry left Liberia in 2007, meaning that whatever deed that is in the possession of the plaintiff is a product of fraud.

4. As to counts three and four (3 & 4) of the plaintiff's complaint, defendant confirms counts two and three (2 & 3) of this defendant's answer and therefore says that the defendant is on her own property and cannot be held liable to the plaintiff for any wrongful withholding, as the defendant cannot be held liable for a property that she bought with her own money. Count three and four (3 & 4) of the plaintiff's complaint should be denied and dismissed.

5. Consistent with the statute, the defendant in these proceedings has paid accrued cost through the Sheriff of this court as in keeping with the practice and procedure in this jurisdiction. Copy of the receipt is hereto attached to form a cogent part of this answer.

6. Defendant also says that her grantor bought the property in question from Mr. Albert Soko Lombeh who also bought same from Mr. Taro S. Haba. Copy of the defendant's grantor deed is hereto attached and marked as defendant's Exhibit D/3 to form cogent part of this answer to prove defendant's chain of title.

Wherefore and in view of the foregoing, defendant most respectfully prays this Honorable Court to deny and dismiss plaintiff's complaint in its entirety for reasons herein stated and grant unto defendant all further relief that Your Honor will deem just, legal and equitable.

The appellee in turn filed an amended reply contending that the court set- aside, ignore, discard, deny and dismiss the amended answer, as the photocopy of the attached certified copy of the deed attached to the appellant's amended answer was tainted with fraud in that the defendant's survey notice dated March 3, 2007, and signed by appellant's surveyor, Stephen Ndorbor, Sr., called for a survey on Wednesday, March 14, 2007, at 2:30 p.m., yet the photocopy of appellant's certified copy of her deed attached to her amended answer said the survey was carried out on the 27th day December 2006; that the conveyance of the property by Theirno A. Barry was written IN WITNESS WHEREOF, I, Theirno A.Barry have hereunder set my hands and seal this 27th Day of December in the year of our Lord Two Thousand Seven, A.D. 2006. Of the two years indicated in words and figure on the appellant's deed as the transferred date, the appellee asked which of the two figures was he to accept? The date of survey on the deed was by the same Stephen S. Ndorbor, Sr. who surveyed the land on March 14, 2007, and now on the deed showed that the property was surveyed December 27, 2006, and the signing of the deed transferring the property to the appellant by Theirno A. Barry done the same day. Was it realistic that the property could have been surveyed and the property transferred the same day?

Pleadings having rested in the matter, His Honour Peter W. Gbeneweleh, now presiding over the June Term, 2009, of the Civil Law Court, in disposing of the law issues, stated that the pleadings of both parties did not raise pure issues of law and therefore ruled the case to trial by jury.

After presentation of evidence by both parties, the trial jury, who is clothed with the legal authority to weigh all factual evidence presented and come up with a verdict thereon, brought a verdict in favor of the appellee, finding the appellant liable. Appellant filed a motion for new trial stating that the jury verdict was manifestly against the weight of the evidence. The trial judge ruled denying the motion and made a final judgment upholding the verdict of the jury. The appellant appealed from this judgment.

Four days after the court's final judgment on September 11, 2009, confirming the jury's verdict, appellant's counsel filed a motion for relief from judgment stating that during the hearing of the matter, the movant consistently informed the court that her grantor, whom the appellee also claimed was his grantor, left Liberia in 2006, and could not have signed a deed for the appellee in 2007; that the signature appearing on the appellee deed was the product of fraud. The appellant said that she had informed the court that her grantor was in the Republic of Angola and that attempts were being made to have him come to Liberia to testify. True to her word, her grantor did not come but sent copy of his passport by DHL which was received on the 9th day of September 2009. Information contain in the said passport, the appellant said, confirmed that the grantor arrive in Benin in December 2006, and from there went on to Angola where he presently resides. She attached a copy of the DHL documents and the grantor's passport. She also brought to the court's attention that the signature which appeared in the passport of her grantor was clearly and conspicuously distinct from the alleged signature on the appellee's deed, which confirmed her allegation that the signature that appeared on the appellee's alleged deed was a product of fraud.

Chapter 41 of the Civil Procedure Law, Section 41.7 under the caption, Relief from Judgment, at Paragraph 2, provides that:

"Grounds: On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment for the following reasons:

a. Mistake, inadvertence, surprise, or excusable neglect;

b. Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;

c. Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party".

Appellant averred that the jury verdict and the court holding would have been different if this documentary evidence were made available and produced during the trial.

In resisting the appellant's motion for relief from judgment, the appellee responded that the terms of said motion were not just and therefore was a fit subject for denial and dismissal in that that the statutory grounds provided by statues for the granting of said motion were not apparent and applicable to the situation at bar. That there was no showing to the court of mistake, inadvertence, surprise, or excusable neglect to warrant the granting of the motion and that the jury and court acted upon the facts and law as presented during the trial; that there was no evidence before the court to be termed and qualified as newly discovered evidence as envisioned by the framer of the statute. That is, the statute provides that there must be showing of due diligence on the part of the party introducing the "newly discovered evidence" that he/she could not have discovered same before the time of filing of the motion for new trial. In the instant case, the action was filed since 2007, and the trial began two years later, in July 2009, and there was no proof of the implore of due diligence before the court; that the passport before the court, if taken for what it was, could not prove that the movant's grantor was not in Liberia at the time that appellee claimed he obtained his deed from Theirno A. Barry. Further, the copy of the passport presented before this court to prove that Theirno A. Barry departed Liberia in 2006, indicted the appellant herself as the said passport showed the date that Theirno A. Barry is said to have arrived in Burkina Faso and Benin (December 14, 2006) it failed to show when he return to Liberia to have executed the deed to appellant on December 27, 2006; that if it is true that he was in Liberia on December 27, 2006, then it was also possible that he could have also been in Liberia in January 2007, when he issued the deed to the appellee on January 8, 2007.

Also responding to the allegation that the signature in the passport of Theirno A. Barry was not the same as that on the appellee's deed, the appellee said if the signature on the passport was that of Theirno A. Barry, then it is possible that he uses different signatures at different times for different purposes and the best evidence to show his signature in a deed's transaction was for the appellant to have produced the original deed allegedly issued to her by Theirno A. Barry. Her failure to produce this deed and to have her husband send same even where the court points out it relevance was a fatal blunder for which reasons the motion should be denied and dismissed.

In ruling on the motion for relief from judgment and the resistance thereto, the court said that there was only one issue for the determination of the motion: Whether or not the alleged passport of Theirno A. Barry presented to the Court would have changed the result of the case if the said passport was introduced into evidence by the appellant.

The court ruled that a careful perusal of the alleged passport of Mr. Barry clearly showed that he departed Liberia on November 23, 2006, for Angola through Guinea and Benin

and arrived in Benin December 14, 2006 and that there is no showing in the passport as to when he return to Liberia since his departure on November 23, 2006. The Court said both the appellant and the appellee alleged that the deed of each was a product of fraud. The court took judicial notice of the conveyance made by the owner of the passport to the appellant on December 27, 2007, and the conveyance to the appellee on the 8th day of January 2007. The judge stated that assuming the deed of the appellant was executed on December 27, 2006, by the passport holder or grantor, the fact that the passport indicated that the appellant's grantor left Liberia on November 23, 2006, and had not returned since, negated the truthfulness of the execution of the appellant's own deed. If the departure of appellant's grantor was subsequent or after the execution of her deed, he said, there would be a reasonable belief for a need to grant a motion for relief from judgment for the newly discovered evidence. Besides, the judge stated, the appellee had alleged that her original deed was in the United States of America with her husband but she had failed to produced this original deed to negate the testimony of appellee and his witnesses that she, the appellant, was never issued a deed by Theirno A. Barry and that the subject property was surveyed early 2007, after the departure of her grantor. This original deed, the court said, would have substantiated all allegations. The court noted that the defendant's motion for relief from judgment for newly discovered evidence would have been granted if such newly discovered evidence, when produced into evidence during trial, would have probably change the outcome or result of the case. The judge ruled that it would not have. Hence, he denied the appellant's motion for relief of judgment and confirmed and affirmed the court's final judgment.

To this ruling, the appellant noted her exception and announced an appeal to this Honorable Supreme Court. The appeal having been granted the appellant filed a thirteen count bill of exceptions.

Counts 1, 2, 4 and 8 of the appellant's bill of exceptions recap the appellants' contention on appeal, and they read as follow:

1. That, Your Honour made a reversible error by confirming the jury verdict when Your Honour failed and refused to take judicial notice of the inconsistencies of the testimonies of the appellee/plaintiff's witnesses during the trial.

2. That, Your Honour made a reversible error when Your Honour failed and refused to apply the doctrine of priority of title in this jurisdiction which states that the oldest deed in any dispute originating from the same grantor takes precedent, having established that the defendant deed was executed on December 27, 2006, and the plaintiff's deed was executed on January 8, 2007.

4. That, Your Honour made reversible error when Your Honour failed and refused to take judicial notice of the allegation of fraud made by the appellant/defendant which was proven

by the passport as to the fact that Theirno A. Barry was not in Liberia in 2007, and that the signature on the plaintiff's deed was not the signature of Theirno A. Barry.

8. That, Your Honour erred and made a reversible when Your Honour failed to take into consideration, the object of the motion for relief from judgment. The objective of the motion was that the grantor for the plaintiff was not in Liberia on January 8, 2007, the time the plaintiff claimed the grantor signed the deed. This objective was proven by the plaintiff's grantor passport which clearly indicated that the plaintiff's grantor left the bailiwick of Liberia in 2006; and lastly, the signature that appeared in the plaintiff's grantor's passport is not only at variance with the signature on the deed, but contained different elements because the signature on the plaintiff's deed was TCA3 which in no way resembles the signature of Mr. Theirno A. Barry.

The appellant alleges that there were inconsistencies in the testimonies of the appellee's witnesses during trial which warranted the overturn of the jury's verdict by the judge. A summary of the testimonies of the appellee and his witnesses are as follows:

The appellee, Iman Wurlo Jalloh, took the stand and testified that his little brother in Germany sent six cars to him in Conakry, Guinea. He brought the cars into Liberia for sale and one Mr. Albert Lombeh approached him and said he was interested in one of the cars, a Renault bus with air conditioner. Mr. Lombeh said that he did not have cash but had a piece of land in Gardnersville with an unfinished building. He took the appellee to see the land and after confirming to the appellee that he, Mr. Lombeh, own the land in fee simple, the appellee said that he liked the place and so agreed that Mr. Lombeh would try the car for a period of one week. The appellee said that a sales agreement was made on the 1st day of June, 2006, after which he got a call from his brother in Germany that his mother was sick in the village and that he should go and take her to Conakry for treatment. Before leaving for Conakry, the appellee said that he asked his friend Mr. Theirno A. Barry who helped showcase his vehicles to process the land document with Mr. Lombeh, since Mr. Lombeh was now using the car and he, the appellee, would be away for a while.

The appellee testified, that upon his return from Guinea, Mr. Barry asked for the bill of sale for the Renault bus, stating that Mr. Lombeh was giving him hard time for the papers. The appellee responded that if he got the deed from Mr. Lombeh, he would then give the original bill of sale. It was then Mr. Barry brought the deed to him, but he realized that the deed was in Barry's name instead of his. The explanation given by Barry was that the deed was not put in the appellee's name as he was out of the country, and it would be transferred to him now that he was in the country. In a meeting with Mr. Lombeh, Mr. Lombeh explained that since he had made out the deed to Theirno A. Barry, he could not issue another deed for the same property; Mr. Barry would transfer the property to the appellee and he, Lombeh, would witness the transfer. After Mr. Barry had transferred

the deed to him, the appellee stated, he and his uncle went to Mr. Lombeh who signed as witness and the bill of sale for the car was given to Mr. Lombeh.

Testifying further, the appellee said on March 5, 2007, he went to see his property and was given a letter by the neighbor whom he had asked to look after the property for him. The letter informed him of a survey that was to take place by Lands and Mines Ministry on March 7, 2007, in favor of one Samba Ngafua, the appellant. He called Mr. Lombeh telling him of this development and Mr. Lombeh offered to accompany him on the day of the survey. On March 2007, they went to the land and met the surveyor and the appellant. Appellant confirmed that she had the surveyors on the land to survey the land that Mr. Theirno A. Barry had sold to her. Appellee said he then told her that the property was not for Mr. Barry's but his. She however resisted, telling him and Lombeh that unless appellee pays back the money which she paid to Mr. Barry, she would continue with the survey. Mr. Lombeh then posed the question to her, if she surveyed the property now who would sign her deed? She responded that she would keep the deed until Mr. Barry returned to Liberia. Mr. Lombeh told her that he initially owned the property but had given it to the appellee in exchange for his Renault bus. The appellee further testified that the appellant's daughter who was with her asked her to listen to the appellee, but the appellant refused, and so the appellee said he decided to go to the law. After his counsellor issued a writ for the appellant, she requested for a meeting. The meeting was held at the office of Counsellor Fomba Sherrif's, the appellant's lawyer. The apellee narrated that he exhibited his documents included his deed and it was then the family of the appellee talked to him requesting him to accept US$3,500.00 for the property. He initially told them that he was not interested in selling the land, but after much begging, he agreed to sell the property for US$6,000.00, plus expenses. The appellee complained that the money was too much, but after her counsellor, Fomba Sherrif, said to her that the place worth the amount, she said that she was going home to talk with her family. The meeting was suspended and Counsellor Sherrif promised for them to meet the following week. Appellee appeared for the meeting as planned but the appellant did not show up at the office.

Counsellor Sherrif called her on the phone and she told him that she was busy and when less busy she would call and inform him. This matter went on, the appellee said, up to 2008, and appellant made no mention of having a deed transferring the property to her. Even when Mohammed C. Bah filed a motion to intervene, the court denied the motion on the grounds that the movant had proffered no deed of his principal or one transferring the property from his principal to the appellant. It was only when the motion to intervene was denied and the appellant's new counsel of the Henries Law Firm filed a petition for a writ of certiorari before the Justice in Chambers, that the appellee said she had a deed but it was with her husband in the United States. Chief Justice Francis S. Korkpor, Sr. who was the Justice in Chambers then asked the appellant how come she had never mentioned this in her argument or her answer in the court below?

The appellee said that the counsellor of the appellant replied that she had not finished paying for the property at the time and that was why the appellant had not been able to get the deed from her grantor. Justice Korkpor retorted that it should have been mentioned anyhow. However, the appellee testified that the Justice in Chambers said since it was property matter, it was good for the appellee to bring her deed and present it to the Civil Law Court. The appellee said it was not until after a month, when he decided to pursue the case in the Civil Law Court, that appellant finally brought a copy of a certified deed from the Foreign Ministry.

Testifying on behalf of the appellee were the two men, Mohammed K. Diallo and Mr. Albert Solon Lombeh who witnessed his deed. Mr. Diallo took the stand and testified confirming that the appellee owned the Renault bus given in exchange for the land in dispute; that the appellee travelled to Guinea because of the ill health of his mother and before the land was surveyed and the deed made out to him. Upon the appellee's return, he took the deed that he had gotten from Theirno A. Barry to him the witness to keep, but at his place they noticed that the deed was in Theirno A. Barry's name. He and the appellee then went to see Barry about this and Barry told them that it was the surveyor that made the mistake. The appellee was upset and asked how the surveyor could have made such mistake when he had instructed Mr. Lombeh to deed the property in his name. The witness testified that the appellee, Barry and him went to see Lombeh to issue another deed. Lombeh expressed his regret and said he could not sign two deeds for one place but would witness the deed after Barry made the transfer. He testified that the transfer was done and signed at his house where he witnessed it. Thereafter, they took the deed to Mr. Lombeh who also witnessed the deed and the bill of sale was then delivered to Lombeh.

Mr. Albert S. Lombeh reiterated the story of the exchange of his property in Gardnersville for the appellee's Renault bus. He went to visit a friend Wallace who owned a garage on Board Street. He saw the Renault bus and expressed his interests in owning it but he had no money and was willing to exchange his two lots for the bus. His friend took him to some money changers, who were a slim guard, Theirno A. Barry and the appellee. He presented to them his proposal for the bus. Both Barry and the appellee accompanied him to see the property. Since Barry who owned the car was out of the country, he finalized the transaction with Barry who instructed him that it would be ok to put the deed for the property in his name as the appellee was out of the country. After the transfer to Barry, Lombeh stated that he could not get the bill of sale. Barry took him to see the appellee when he returned and to have him give the bill of sale. It was when the appellant told him that his being out of the country was no reason for transferring the property to Barry. It was understood at that meeting that Barry would issue a deed transferring the property to the appellee, and he Lombeh would witness it.

Later, the deed transferring the property from Barry to the appellee was brought to him and he witnessed it.

Mr. Lombeh also confirmed that he went with the appellee to the property on March 7, 2007, the day the appellant was carrying out her survey of the property. He informed the appellant that he initially owned the land but had given it to the appellee in exchanged for his Renault bus. When the appellant insisted on the survey, he asked how she intended getting the deed signed since Barry had left the country; she replied, she would wait for Barry, whenever he got back to Liberia, he would sign her deed. He reiterated to her that Barry did not own the property, the property was for the appellee.

The inconsistency noted by the appellant is that, the appellee said Mr. Albert Lombeh approached him expressing interest in the Renault bus, whereas Mr. Lombeh testified that, his friend Mr. Wallace took him and introduced him to a slim guy and Mr. Theirno A. Barry who dealt with him regarding the purchase of the car in exchange for the disputed property; that in fact, it was Mr. Barry who give the car to Mr. Lombeh and not the appellee.

The appellant's own witness, Cherino Barry testified that he was initially approached by Mr. Albert Lombeh to purchase the car in exchange for land; however, the vehicle not being his, he took Mr. Lombeh to his brother Mr. Theirno A. Barry who was doing business with the appellee (emphasis ours). See minutes of Friday, August 14, 2009, sheet two. Mr. Lombeh also testified that Mr. Wallace took him and introduced to one slim guy, Theirno A. Barry, and the appellee; that it was the appellee who owned the Renault Bus and who gave him the bill of sale.

On the issue as to who owned the Renault Bus which was given in exchange for the disputed property, the jury found from the evidence presented by both parties, that the appellee sufficiently established that he was the owner of the bus for which the property was exchanged, and Barry only help to showcase the vehicles brought in by the appellee. We do not see how the alleged inconsistency of how Mr. Lombeh was brought into contact with the parties for negotiating the exchange affected the fact that it was established that the appellee was the owner of the bus which was exchanged for Lombeh's piece of real property.

This Court has consistently held that, the trial jury is the trier of facts and must determine the weight and credibility of evidence. In the case, Leemue v. His Honor Joseph Barchue and Flomo, 40 LLR 281, 305, (2000), this Court again held: "It must be remembered that under our system of jurisprudence it is only the jury that must examine and review the evidence produced by the parties, determine in their minds what weight and credibility to accord such evidence, and based thereon determine what their verdict should be. It is not for the parties to a jury trial to determine the sufficiency of the evidence; that function is for the jury.

This Court would therefore shy of disturbing the jury findings that the appellee did own the Renault Bus which was exchanged for about 1.68 lots owned by Mr. Lombeh.

The appellant contention in count 2 of her bill of exception is that the doctrine of propriety of title should apply having established that both parties having acquired titles from the same grantor, the oldest deed should take precedence based on propriety of title. Since the appellant's deed was executed on December 27, 2006, and the appellee's on January 8, 2007, appellant was entitled to the disputed property.

Appellee's mean contention was that the appellant's deed was fraudulent, that she acquired no deed from Theirno A. Barry as alleged. The appellee and Mr. Lombeh testified that they were on the property on March 7, 2007, the day the appellant carried out her survey and she made the remark that though Theirno A. Barry was not in the country, upon his return, he would sign her deed. The appellee testified that when they met at the appellant's lawyer Counsellor Fomba Sherrif's office, appellant made no mention of having a deed and that was why her lawyer asked that she settled with the appellee if she wanted the property. Even in her answer to the complaint filed on April 16, 2007, the appellant made no mention of having a deed for the disputed property. It was only in the meeting with the Chamber's Justice did the appellant state that she had a deed and it was with her husband in the United States of America. However, the appellant failed to produce this deed and during the trial proffered a photocopy of a certified copy of a deed instead. The appellee challenged this photocopy of a certified deed as being fraudulent and the trial court after the taking of evidence upheld appellee's allegation. The jury having considered both transferred documents alleged to be transferred made by Theirno A. Barry, though appellant contended that her transfer was (1) week four (4) days older than that of the appellee, we are bound to uphold the findings of the trial court, as this Court has said, where the verdict of a trial jury be in accord with the evidence adduced at the trial and the final judgment of the court below affirms the verdict, it should not be disturbed. Liberian Oil Refinery Company v. Mahmoud, 21LLR 201, 214 (1972).

Counts 4 and 8 of the bill of exceptions of the appellant also assigned as error the court's failure to take into account the object of the motion for relief from judgment, which was to prove by the passport the allegation of appellant that Theirno A. Barry was not in Liberia on January 8, 2007, the time the appellee claimed that Theirno A. Barry signed his deed, and that the signature on the appellant deed was not the genuine signature of Theirno A. Barry.

Appellant did contend in her amended answer and during the entire trial that Theirno A. Barry, the alleged grantor of both parties, was not in the Country at the time the appellee said his deed was signed by Barry. She gave noticed that she would have Barry appear during the trial to testify to this fact. However, she failed to have him come to testify

and her allegation was not substantiated during the trial. Four days after the judgment confirming the verdict in favor of the appellee, the appellant filed a motion for relief from judgment based on a proffered copy of Barry's passport, sent by DHL, to prove that in fact her allegation was true and could be confirmed by the passport, an official document, which showed when Barry had left the country, and he not having returned since, he could not have signed the appellee's deed.

To an extent, we would like to agree with the trial court judge rationale in his ruling denying the motion for relief from judgment when he stated that the appellant intended to show by the passport that Theirno A. Barry left the country before the execution of the appellee's deed, but the travel documents also showed that Barry was not in the country when her deed was allegedly signed. If the departure of her grantor was subsequent or after the execution of her deed, there would be a reasonable belief for a need to grant a motion for relief from judgment for the newly discovered evidence, and the jury would have found differently and therefore would have warranted the granting of the motion for relief from judgment.

However, it is a law extant in this jurisdiction that in an ejectment action, the burden is on the plaintiff to prove his title and not on the weakness of the defendant's title.

This court takes cognizance of the official record of travel exhibited by the appellant which shows that Theirno A. Barry left Liberia in November 2006, and arrived in Benin on December 7, 2006. Thereafter, Theirno A. Barry went on to Angolawhere the appellant alleges he presently resides and has not returned since. There is no clear evidence presented in the records as to whether Barry was in the country when both parties deeds were said to have been executed. This official evidence can only be overcome by proof of the appellee that Barry did return to the Liberia in 2007. Where the appellee has not and cannot provide such proof of Barry's return, both deeds can then be said to be invalid.

This than brings us to the issue, in face the absence of this needed proof, who is equitably entitled to the property?

As stated previously, we believe there is no dispute that the subject property of these proceedings was originally that of Albert Lombeh who desired a car. Upon seeing a Renault bus owned by the appellee, Mr. Lombeh offered to give his 1.68 lots of land situated and lying in Gardnersville in exchange for the bus. Barry told Mr. Lombeh to make out the deed in his (Barry's) name since the appellee, Jalloh had traveled and was not in the country. Upon the appellee's return and he inquired of Barry as to how the transfer had been made. Barry indicated that he had asked that the deed be made in his name, since the appellee was out of the country, and he would proceed to transfer the property to the appellee who was legally entitled to the property. Lombeh even offered to witness the transfer.

Clearly, where the appellee had an emergency and had to leave the country, and asked Theirno Barry to finalize the property transaction with Lombeh on appellee's behalf, Barry could not own the property as he was not entitled to it. The property being made out in his Barry's name was in trust for the appellee Jalloh. Ordinarily an intention to create a trust may be manifested by inference. The intent to create a trust can be inferred from the nature of the property transaction, the circumstances surrounding the holding of and transfer of the property. An inference of intent to create a trust must result from circumstances which showed beyond reasonable doubt that a trust was intended to be created.

There is overwhelming evidence from the record that in concluding the matter of the transfer of the property to the appellee, the appellee having traveled, Mr. Lombeh accepted Mr. Barry's suggestion that the deed be put in his name pending the return of the appellee. Upon the return of the appellee and his making enquiries as to the transfer of the land, Mr. Barry did acknowledged that the deed had been made out in his name because the appellee was away from Liberia at the time, but that title to the property was intended for the appellee. Barry agreed to execute a transfer deed to the appellee who was legally entitled to the property and Mr. Lombeh agreed that the it was the best thing to do since he having executed the deed transferring the property, he could not do another in face of that issued to Barry, that Barry would simply issue a deed in the name of the appellee, and he Lombeh would witness it as the intent behind the transaction was conveyance of the property in question to the appellee, owner of the car. Before proceeding to specifically address the issues stated above, we believe that clarity needs to be provided on a few legally accepted principles, especially as regards contracts, as indeed the execution of title deeds are the outgrowth of contracts. We should note that the contract for the sale and purchase of the land in question was between Mr. Lombeh and the appellee; the consideration for the sale and transfer of the land was a matter between Mr. Lombeh and the appellee; the consideration was paid by the appellee to Mr. Lombeh, in the sense that the appellee had delivered to Mr. Lombeh a vehicle to the value of the amount which Mr. Lombeh had requested for the transfer of the property; and that the transfer by Mr. Lombeh was intended for the appellee. There was no contract, oral or written, between Mr. Lombeh and Mr. Barry for the transfer of the property to Mr. Barry; there was no consideration exchanged between the parties regarding the sale and purchase of the property or the transfer of title to the property; and that the sole purpose for the transfer deed being made in the name of Mr. Barry at his request and acting for and on behalf of the appellee, was that he would hold the property in trust for the appellee, to be given to the appellee upon his return to the country.

Clearly, under the circumstances narrated above and culled from the records, we believe that the circumstances presented in this case show the hallmark of a trust created by Mr. Lombeh in the name of Mr. Barry for the sole benefit of the appellee. The nature

of the property transaction, the circumstances surrounding the holding of and transfer of the property all points to an inference of intent to create a trust.

The intent of the transfer from Mr. Lombeh, the grantor, to Mr. Barry, was that this was done for the benefit of the appellee, who had entered into the agreement with the grantor, who had paid for the land to the grantor, who had departed with his property and given same to the grantor, and for whom Mr. Barry was acting in receiving the property. The sole basis upon which the title deed was made in the name of Mr. Barry, at the time of the transfer was that the appellee was not in Liberia at the time; that Mr. Barry was acting on his behalf; and that Mr. Barry had persuaded the grantor to execute the instrument in his name for the appellee, it being understood that upon the return of the appellee, Mr. Barry would effect a transfer of the property to the appellee, as was intended by the grantor. Black's Laws Dictionary, 9th Edition defines trust as the right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds the legal title. This definition relates to the context in the instant case.

Although the appellant contends, and we accept that contention, that Mr. Barry may not have signed the appellee's deed and hence, the said deed has no legal validity, we hold that under the principles enunciated above, Mr. Barry did not own the property even though the deed was in his name, but that he held same in trust for the appellee; that as such, he could not have transferred same to any person other than the appellee; and that any such transfer by him to any person other than the appellee, was illegal, void ab initio and without any legal effect. The appellant d e e d is accordingly invalid and has in no way conferred title on her to the property.

Under the circumstances, and given the violation of the trust by Mr. Barry, we hold that the lower court has an obligation to terminate or cancel the trust on application of the creator of the trust, that is, Mr. Lombeh, the grantor. We direct and mandate accordingly that upon such application, the lower court should immediately proceed to effect the said cancellation of the inferred trust, and with it the cancellation of the warranty deed issued by the grantor Lombeh to Barry should be expressly cancelled. Further, in effectuation of the intent of the parties (i.e. the grantor and the appellee), the grantor Lombeh should be ordered to execute a new deed in favor of the appellee, consistent with the views and holding stated herein. AND IT IS HEREBY SO ORDERED.

Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the appellant. Counsellor Jallah A. Barbu of the Abbidoe Law Offices appeared for the appellee.