

Patrick Nayandibo of the City of Monrovia Liberia APPELLANT VERSUS
Morris Kiazolu and Morris Sonii, Administrators of the Intestate Estate of the late
Chief Bah Bai of Matadi Area, Monrovia, Liberia APPELLEES

APPEAL. JUDGMENT REVERSED

HEARD: April 21, 2008 DECIDED DECEMBER 18, 2008

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE
COURT

As early as 1905, the government of Liberia by legislative enactment declared:

"Extent of tribal rights in lands. Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the possession of such land as against any person whomsoever.

"The President is authorized upon application of any tribal authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying.

"A plot or map of such survey or description shall be filed for reference in the archives of the Department of State within six months after the completion of such survey. The omission of a tribe to have its territory so delimited shall not, however, affect in any way its right to use of the land.

"Communal holdings. *The interest of a tribe in lands may be converted into communal holdings upon its application to the government. The proposed holding shall be surveyed at the expense of the tribe making the application. The communal holding shall be vested in the members of the tribal authority, as trustees for the tribe, but the trustees shall not be able to pass title in fee simple in such lands to any person whomsoever.*

"Division of tribal land into family holdings. *If a tribe shall become sufficiently advanced in civilization, it may petition the government for a division of the tribal land into family holdings. On receiving such a petition, the government may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres." 1956 Code 1:270-272."*

Chief Bah Bai, Chief of Matadi (Gbovo Town) in the settlement of oldest Congo, Town, County of Montserrado District, and the inhabitants of said town to the number of thirty (30) heads of family, applied for a grant of land in accordance with the provision of said Act stated above. In response to this request, President Arthur

Barclay granted Chief Bah Bai and the inhabitants aforesaid, and their heirs as tenants in common, 209.55 acres of land in 1908, for agriculture purposes and to enable them exercise their voting rights. At that time the 1847 constitution required that only those with real property were eligible to vote.

A Certified Copy of this Aborigines Grant to Chief Bah Bai and inhabitants of Matadi Gbovo Town reads as follows:

REPUBLIC OF LIBERIA

TO WHOM THESE PRESENT SHALL COME: -whereas in the 2^d section of an Act of the Legislature of Liberia entitled "An Act for the Government of Districts in the Republic inhabited by aborigines approved January 25th A.D. 1905 it was provided that there should be granted to the inhabitants of each town of a District inhabited by aborigines sufficient land around each town for agriculture purposes and whereas Chief Bah Bai, Chief of Matadi (Gbovo) Town in the settlement of Oldest Town County of Montserrado District and the inhabitants of said town to the number of (30) thirty heads of families have applied for a grant of land in accordance with the provision of said Act. Now, therefore, I, Arthur Barclay, President of the Republic of Liberia, for myself and my successors in office have granted and by these presents do give, grant and confirm unto the said Chief Bah Bai, Chief of Matadi (Gbovo) Town and to the inhabitants aforesaid and their heirs as tenants in common forever all, that piece or parcel of land situated, lying and being in the area of Matadi Town (Gbovo) the settlement of oldest Congo Town near the Mggfurdo River, Montserrado County, and bearing in the authentic record of said township the number N/N and bounded and described as follows: "commencing at a point in the Southwestly direction Deline's property, said point being a soap tree and also serves as a boundary point between Define and Chief Bah Bai's properties, and running thence on magnetic bearings: North 86 degrees 30 minutes East 1840.0 feet, along the property line of Define to a point; thence running South 55 degrees 30 minutes East 780 feet to a point; thence running South 34 degrees East 1043.0 feet to a point; thence running 1880.0 feet to a point; thence running South 40 degrees West to a point; thence running North 50 degrees West 3800.0 feet to a point,' thence running North 3 degrees 30 minutes West 1240.0 feet to the place of commencement and containing 209.55 acres of land and no more."

And in keeping with the provision of said Act to have an to hold the above granted premises together with all an singular the buildings improvements and appurtenances thereof and thereto belonging to the said Chief Bah Bai, Chief of Matadi (Gbovo) Town and the inhabitants thereof and their heirs forever. And I the said Arthur Barclay, President as aforesaid for myself and my successors in office do covenant to and with the said persons and their heirs at the ensealing hereof I the said Arthur Barclay, President aforesaid by virtue of my office and by authority of said Act, had good right and authority to convey the aforesaid premises to the said Chief Bah Bai, Chief of Matadi (Gbovo) Town and to the inhabitants thereof as tenants in common and I the said Arthur Barclay, President as

aforsaid and my successors in office will forever warrant and defend the said land to the said Chief Bah Bai, Chief of Matadi (Gbovo) Town their heirs against the lawful claims of all persons claiming any part of the above granted premises.

IN WITNESS WHEREOF, I, the said Arthur Barclay have hereunto put my hand and annexed the Seal of the Republic to be affixed this 7 th day of February A.D. 1908 and of the Republic the 62nd year.

(Sgn.) Arthur Barclay

PRESIDENT

(Sgn.) D.L. Rosa, Land Commissioner

MONTSERRADO COUNTY

The above tract of land cannot be sold, transferred or alienated without consent of Government of Liberia. (emphasis ours)

ENDORSEMENT

Land Commissioner 's office grant from the Liberian Government to Chief Bah Bai and inhabitants of Matadi (Gbovo) Town Native Township Lands. Vol. 102.74, pages 67-68.

Surprisingly, despite the year this grant was executed, not many knew of this grant as this area was commonly known and referred to as the King's farm. The heirs of former President C. D. B. King sold properties to various persons over the years and it was not until after a Supreme Court ruling in September 1994, that a group named and style "the administrators of the late Chief Bah Bai" began to initiate the sale of land in the area to individuals and began filing various ejection actions against inhabitants of the Matadi area who relied on their transfer from the Kings. These sales and actions of ejection, initiated by the administrators of the intestate estate of the late Bah Bai are normally based on the Aborigine deed of 1908, above quoted, and Letters of Administration for the intestate estate of the late Bah Bai. One of such cases of ejection is this one before us, where the administrators attempted to evict the appellant/defendant below because petitioner had successfully ejected a grantee of the appellee, claiming that he, the petitioner, was the rightful owner of the land which he had bought from the Kings. The Complaint and Letters of Administration relied on by the appellee are quoted as follows:

PLAINTIFF'S COMPLAINT

Plaintiffs in the above entitled cause of action complained of the defendant in manner and form as follows:

1. That the plaintiffs are the administrators of the Intestate Estate of the late Chief Bah-Bai which premises is situated and lying in Matadi Estate; as will more fully appear from copy of the Letters of Administration hereto attach and marked as exhibit "A" to form a part of this complaint.

2. That plaintiffs' intestate died seized of a certain parcel of land (209.55) acres situated in the Matadi Estate, City of Monrovia, Montserrado County, Republic of Liberia, described as follows:

"commencing at a point in the Southwesty direction Deline's property, said point being a soap tree and also serves as a boundary point between Deline and Chief Baibai's properties, and running thence on magnetic bearings: North 86 degrees 30 minutes East 1840.0 feet, along the property line of Deline to a point; thence running South 55 degrees 30 minutes East 780 feet to a point; thence running South 34 degrees East 1043.0 feet to a point; thence running 1880.0 feet to a point; thence running South 40 degrees West to a point; thence running North 50 degrees West 3800.0 feet to a point; thence running North 3 degrees 30 minutes West 1240.0 feet to the place of commencement and containing 209.55 acres of land and no more." Said deed is hereto attached and marked as exhibit "B" to form a part of this complaint.

3. That the plaintiffs have written defendant on several occasions with regards to the portion of their land (38 lots) being illegally occupied by the said defendant: but the defendant has failed and neglected to heed plaintiffs' communication; as can be easily seen from copy of letters to defendant hereto attached and marked in bulk as exhibit "C" to form a part of this complaint.

4. That the defendant is unlawfully and wrongfully occupying and withholding a portion of plaintiffs' premises thereby depriving them of the use and enjoyment of the said premises (38 lots), to plaintiffs' detriment.

5. That plaintiffs respectfully demand that defendant be ejected and evicted from their premises, and that said premises be delivered to them.

Dated this 25th day of March, A.D. 1996.

Plaintiff's exhibit "A" dated July 22, 1988, attached to the complaint states:

REPUBLIC OF LIBERIA MONTHLY AND PROBATE COURT
MONTSERRADO COUNTY

IN RE: THE PETITION OF FODAY KAMARA, MORRIS KIAZOL U AND
MORRIS SON", PRAYING THIS HONORABLE COURT FOR LETTERS OF

ADMINISTRATION TO ADMINISTER THE INTESTATE ESTATE OF THE
LATE CHIEF BAH BAI

LETTERS OF ADMINISTRATION

REPUBLIC OF LIBERIA

TO: FODAY KAMARA, MORRIS KAIZOL U AND MORRIS SONNH
GREETINGS

WHEREAS, CHIEF BAH BAI, died Intestate being at the time of his death, a resident of the City of Monrovia, Montserrado County, Republic of Liberia, having at the time of his death properties within the Republic of Liberia; and being desirous that said properties ma), be well and faithfully administered properly applied and disposed of now:

UPON PETITION DULY MADE AND ALL PROCEEDINGS HAD THEREUPON, we the Monthly and Probate Court for Montserrado County, Republic of Liberia, do hereby grant unto you the said Foday Kamara, Morris Kaizolu and Morris Sonni, full power to administer said Estate, to demand and receive the debts due the aforesaid deceased at the time of his death and to pay the debts which the deceased did owe at such time and hereby require you to forthwith make a true and perfect inventory of all the properties of the said deceased within Sixty (60) days from the date hereof which have or may hereafter come to your knowledge, and to be appraised according to law.

AND WE DO FURTHER COMMAND YOU TO OBEY ALL ORDERS: THAT MAY FROM time be made by this Honourable Court touching the Administration of the said Estate hereby committed to you.

AND WE DO HEREBY THESE PRESENTS, DEPUTIZE, CONSTITUTE AND APPOINT you the said Administrators named herein above of all the Real and Personal properties of the deceased.

AND YOU ARE FURTHER COMMANDED TO ADMINISTER THE AFORESAID ESTATE hereby and submit your report to this Honourable Court covering your activities as such Administrators and have the said Estate closed within Twelve (12) months or one (1) Calendar year from the date hereof.

IT IS HEREBY ORDERED AND DECREED: That this Letters of Administration be recorded and/or registered in the office of the Registrar of Deeds for Montserrado County, Republic of Liberia, with Five (\$5.00) Revenue Stamps Affixed on the Original Copy.

GIVEN UNDER OUR HANDS AND SEAL OF COURT THIS
22ND DAY OF JULY, A.D. 1988.

Harper S. Bailey

PROBATE JUDGE

ATTEST: Ellen Hall

CLERK OF COURT

REGISTERED ACORDING TO LAW IN VOLUME 15-88 PAGES 403-406

The defendant/appellant in answer to the complaint, proffered a deed alleging that he purchased his property from C.T.O. King, I., in 1976, and that he had gone through all lengths to verify his grantor's deed which was traceable to the Republic in 1859; that the King's deed was 14years older than the aborigine grant deed that the appellee/plaintiff relied on; if the land was expropriated, it was against the constitution to take land from a private individual and give it to another private individual; it could only be done for the use of the good of the public at large and same could not legally be given to Chief Bah Bai individual; it could only be done for the use of the good of the public at large and same could not legally be given to Chief Bah Bai.

Because of the lateness of the filing of appellants' complaint, the court had his answer stricken and the appellant ruled to bare denial. The appellant did participate in the trial however and testified but he was not allowed to introduce documentary evidence as it was objected to as introducing affirmative matter in face of the bare denial on which the appellant was placed. The appellant cross-examined appellees several witnesses who took the stand to testify, attempting to set out the issue, whether the deed rely on by the appellees in the ejection action was part and parcel of the intestate estate of the late Chief Bah Bai which would validate their standing to sue. Despite appellant/defendant's efforts on the cross examination to discard appellee's right to sue, at the end of the trial, judgment was handed down against the appellant. It is from this judgment that appellant/defendant appealed to this Court challenging the capacity of the defendant to sue based on the aborigine deed presented.

We shall quote counts 5 and 7 of appellants' Bill of Exception: and portions of appellees/plaintiff testimonies referred to:

Bill of Exception:

5. *"During the October 16, A.D. 2003 sitting of this Honourable Court, when on the cross-examination counsel for defendant asked plaintiff's witness as to whether or not the land*

granted by the Government of Liberia to the inhabitants including Chief Bah Bai of Gbovo Town and their heirs forever was later on changed from public ownership and use to the private ownership of Chief Bah Bai as claimed by plaintiffs' to form a part of the intestate estate of the late Chief Bah Bai? Counsel for plaintiffs' objected on grounds: (a) not the best evidence, President Barclay will be with respect to the previous ownership of the land, (b) argumentative; and stare decise and (c) the Doctrine that the Judge can not review the act of his predecessor Your Honour sustained the objection on ground (c) and to that Ruling of Your Honour, counsel for defendant there and then excepted and the exception was noted by Your Honour. See Minutes of October 16, A.D. 2003 sitting of this Honourable Court as found on sheet Six (6)." and their heirs forever form a part of the Intestate Estate of Chief Bah Bai? Counsel for plaintiffs objected to the question on grounds: (a) argumentative (b) parole evidence rule. Your Honour sustained the objection on violation of parole evidence rule and to that ruling of Your Honour, counsel for defendant there and then excepted and the exception was noted by Your Honour. See (minutes of sheet four (4) of October 16, A.D. sitting of this Honour Court."

Cross examination in line with appellant's issue of capacity to sue was as follows:

Cross Examination of Plaintiff's First Witness

Q. "Mr. witness, the deed that you have testify to is the same deed that you have attached to your Complaint as Exhibit 13" and according to that deed the land described therein was granted by the President of the Republic of Liberia of Liberia, that is to say Arthur Barclay. If this is aborigine grant from the government of Liberia to Chief Bah Bai and the entire inhabitants called Gbovo town and their heirs for ever, and that being the case, can you tell the court and jury that the land described in the deed forms the intestate estate of Chief Bah Bai?"

Q. "Mr. Witness, since the deed says among other things, that the land described therein and for which you are in court on the basis of action of ejectment, that the land was a grant unto the said Chief Bah Bai and to the inhabitants and their heirs of Gbovo Town in common, do you have any authority (Power of Attorney) by the inhabitants and their heirs to sue on their behalf as you have done?"

A look at the certified copy of the deed granting land to Chief Bah Bai and the inhabitants of Gbove town rely on by the appellees states that the land is to be held in common and is not to be sold, transferred or alienated without the consent of the government of Liberia. This case present an issue that has been permeating various communities to whom aborigine land grants were given to inhabitants of these communities. There have been problems of who are those entitled to such lands and

how are these parcels of land to be disposed of. In most cases, the descendants of the chiefs at the time the grants were given think that they are the heirs of such grants.

The appellant in its motion for a new trial pleaded:

"Because movant says and contends that the verdict of the jury is contrary to the evidence adduced at the trial as well as the law controlling such evidence in that although the plaintiffs in the ejectment action show no title to the land claimed by them but only presented the title deed for the inhabitants of Gbovo Town now known as Matadi which deed was granted to all the people living in said town by the although the plaintiffs in the ejectment action show no title to the land claimed by them but only presented the title deed for the inhabitants of Gbovo Town now known as Matadi which deed was granted to all the people living in said town by the Government of Liberia in keeping with the Act of 1905 whereupon President Barclay on behalf of the Government of Liberia granted said deed to the inhabitants and their children's children and heirs forever which means that no one of the inhabitants or his personal heir can claim title to said land as his exclusive land; all of these facts although were brought to the attention of the jury, they ignored all and brought in an erroneous verdict in favor of the plaintiffs who had no deed either in their exclusive names or the exclusive names of their late Bah Bai whom they claim to be their deceased father.

That the verdict as brought by the jury is contrary to the evidence because at the trial of the case, and on cross examination, when counsel for defendant asked the plaintiffs as to whether they have a deed in their own names or in exclusive name of their late father or they were suing in behalf of the inhabitants of Gbovo Town, they answered in the negative, and said that they were suing on the strength of the deed granted by the Republic of Liberia to the inhabitants of Gbovo Town and their heirs forever; all of these facts the jury ignored and brought in a verdict in favor of the plaintiffs. "

From the deed granted Chief Bah Bai and the inhabitants of Gbovo town, could the land granted by government form part and parcel of Chief Bah Bai's intestate estate or the estate of any of the inhabitants? This Court says "no". The land was given to the Chief and his people in common. Tenancy in common is interpreted as a form of ownership where each tenant holds an undivided interest in property; there being no right of survivorship. **Black Law Dictionary, 5th Edition.** In the case, Bendu Karpai et al. vs. Sarfloh, et al., reported in 26LLR3 (1977), President Arthur Barclay in 1911, under similar grant as enumerated above, and upon application made by Kindi Worrell, Chief of Kindi Town, Paynesville, Montserrado County and a number of heads of the various families at the time, granted to Chief Kindi Worrell and the inhabitants of Kindi town and their heirs as tenants in common forever, 100 acres of land in their community. Chief Worrell died and the appellees attempted to eject, oust and evict the appellants/defendants from portion of the land alleging that they the

appellees were the administrators of the intestate estate of the late Chief Kindi Worrell, and they were entitled under the law of decent to the ownership, possession and occupancy of the said 100 acres of land. Justice Azango speaking for the Court in death: In other words, Chief Kindi Worrell was to possess and enjoy the premises without interruption and his descendants were to succeed to the enjoyment of this property; and the ancestors and their heirs were to take equally as a succession of fiduciaries, each of whom during his life was to enjoy the benefit but non of whom could lawfully dispose of **or have absolute dominion over the property**. Besides, the grant specifically mandates that the tract of land cannot be sold, transferred or alienated without consent of the government of Liberia. To make valid sale of any parcel of this grant property, the inhabitants would have to seek the permission and consent of the government."

In this case, although the appellant's answer was dismissed, the complaint, the Letters of Administration, and the deed filed and on which the appellees rely to evict the appellant are documents that the court should have taken cognizance of. This court in a number of cases have ruled that "A 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 him to recover." Kollie vs. Kpan, 31 LLR 300, 603 (1983).

As rightly brought out by the appellant during the cross examination, and in his motion for new trial, could this land that was granted by the government to the Chief and inhabitants of Gbovo town form part and parcel of the intestate estate of Chief Bah Bai from which the administrators could evict an individual? Could the appellees have instituted an action for ejectment without the authority of the Gbovo people? This court says that the appellee/plaintiff relies on a title that is of communal holding and not that of their decedent father Chief Bah Bai. The communal holders and inhabitants have entire possession of the whole property and there is a fiduciary relation among them which imposes on their mutual rights to protect, so any act which any tenant or inhabitant does for the benefit of the property must be for the benefit of the whole property and not one tenant. Independent of the many heirs and joint owners of the granted property, the administrators cannot legally claim a right to transfer title or evict individuals from the property. See the case, McGill vs. Magisterial Court and Alfred Yeagon, 28LLR174, (1979). Such land grants given to a particular chief and his inhabitants, simply means that succession of such land goes to the lineal and collateral heirs of the chief and inhabitants of the community which is presided over by successive chiefs goes to the lineal and collateral heirs of the chief and inhabitants of the community which is presided over by successive chiefs. This

land grant is not and should not form part of the intestate estate of the chief who presided when the grant was given and be treated by his distributees as part of the chief's intestate estate.

That, the property not being part and parcel of the intestate estate of the late Chief Bah Bai, the heirs or administrators of his intestate estate have no standing to bring an action of ejectment for the said government granted property, and hence have not authority to sell any parcel thereof. It is the representatives of the people of Gbovo Town who have the right to bring an ejectment action to evict an individual from the property, and with the consent of the government to sell any parcel thereof. The judgment of the court below is therefore reversed.

The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and give effect to this judgment. Cost against the appellees. IT IS HEREBY SO ORDERED.