Solo T. Nyepan and **Mulbah Lahun** of the City of Monrovia, Liberia
APPELLANT VERSUS **S. Nagbe Jarteh** also of the City of Monrovia, Liberia--S
APPELLEE

LRSC 24
APPEAL

Heard: April 28, 2010 Decided: June 29, 2010

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The salient facts of this land dispute case are as follows: Plaintiffs acquired a warranty deed from Borbor Chelley and Thomas Chebioh in June of 2000 for 1.18 lots of land in Gardnersville. The defendant on the other hand acquired a half lot in New Georgia from the administrator of the estate of one Solo Tee Nyepan in December 2000. The intestate estate deed of Solo Tee Nyepan out of which defendant's deed was extracted was probated and registered in 1963 consisting of 11/2 lots and situated in Gardnersville presumably in the area claimed by plaintiffs herein.

Upon acquiring his half lot from Solo Tee Nyepan,Jr., the administrator of the Solo Tee Nyepan, Sr. estate, the defendant, Mulbah Lahun, began to construct a building on the premises. This construction activity set in motion the institution of several proceedings in the Magisterial Court in the area by the plaintiffs, S. Nagbe Jarteh and Priscilla G. Jarteh against the defendant. The defendant at some point raised the issue of title, that he had a deed and because same is not cognizable before a magistrate, plaintiffs instituted this action of ejectment in the Civil Law Court attaching thereto their A.D. 2000 warranty deed to substantiate their title to the land. The defendant having failed to timely file his answer to the complaint was ruled to a bare denial. Subsequently the administrator, Solo Tee Nyepan, Jr., defendant's grantor, who was absent at the time the ejectment action was brought, filed a motion to intervene alleging that the land in dispute was part and parcel of the Solo Tee Nyepan, Sr. estate and as such he had an obligation to intervene, in order to protect the interest of the estate and that were he not allowed to intervene the estate could be bound by the outcome of a judgment adverse to the interest of the estate since the plaintiffs' claim had in fact engulfed not only the half lot but the entire property out of which the half lot was extracted and conveyed to the defendant herein. The plaintiffs filed their resistance to the motion.

When the motion to intervene was granted, the intervenor filed his answer to the

complaint alleging inter alia that the disputed land was acquired by his late father in 1963 and that he as the administrator of his father's estate by authority of the probate Court decree of sale, disposed of the half lot on which defendant was undertaking the construction. Intervenor made profert of the 1963 deed, the Letters of Administration and the court's decree of sale in support of the allegations set forth in his answer. The plaintiffs filed their reply to the intervenors' answer and both parties rested pleadings.

The trial judge disposed of the law issues and ruled the case to trial on the merits, but not by a jury as is often done in ejectment cases, but by the arbitration method. A board of arbitration was selected with the participation of the parties and instructed to survey the disputed land using the deeds of all interested parties. The report of the first board of arbitration was however declared null and void for the surveyors' failure to use the deed of the intervenor and a new board of arbitration was constituted. The report of the new board is herein quoted in parts:

"The survey exercise commenced on Saturday, April 22, 2006 at the hour of 10: 30 a.m. precisely. The two deeds presented from the court were utilized according to the mandate of the court. In our orientation, the representative of Solo T. Nyema displayed two points in the ground along the New Georgia paved road, and that the other two could not be shown because they were taken away by unknown individuals. In similar observation, Mr. S. Nagba Jarteh displayed two cornerstones in their positions and could not show the definite positions of the others in that they were taken away by some treacherous elements.

Accordingly, the intervenor's deed was interpreted according to points displayed and the metes and bounds in agreement with the deed. Similarly. Mr. Jarteh's deed, the plaintiff, was interpreted according to the metes and bounds, in our survey exercise, preferable locations were made technically within the confines of the disputed area as it is reflected in the map.

In our technical observations, two points along the New Georgia paved road were displayed to us in favor of Mr. Solo T. Nyma, the intervenor; whereas, the other points could not be seen, because they were assumed being taking away. During the orientation of the deed according to the metes and bounds, and the mandate authorizing the Board to firstly engage the intervenor's deed, the other two points were established technically and professionally.

However, it was observed that the deed did not conform with the 144 feet measurement from the Freeway, known as Somalia Drive as a point of commencement

reflected on the drawing at the back of the deed. It was also realized that this deed was executed in the year 1963.

Secondly, we technically observed Mr. S. Nagbe Jarteh's parcel of land in line with the corner makers displayed on the ground and the deed according to the mandate. It was also discovered that corner markers along the New Georgia paved road were removed. However, according to the metes and bounds of the deed, the other corner points were located and placed. It was realized that this deed was executed in the year 2000.

In our final analyzation and technical observations, we have realized that this entire area in question has been sold by family members belonging to Mr. Solo T. Nyema and other family sources with the pretense of being different people. We believed that the court has the jurisdiction to summon all the grantors of different parcels of land in this area to people and to duly investigate their family back grounds and sources.

It is envisaged at such that if this is done, there will be lots of revelation to this parcel under investigation. It is a clear truth that deeds can be placed anywhere along the Somalia Drive or Freeway and on New Georgia Road and anywhere of interest if the intent of the grantors are criminal have become the flood gate and open policy in the offices of this parcel of land in dispute is the same in the sense that the grantors are likely to be the same people pretending to be different in their transactions."
Kind regards.

Respectfully submitted by:
1. Peter N. Blamo Chairman, Board of Arbitration
2. Edward K. Browne Surveyor-Plaintiff
3. James B. Wilson ,SSurveyor-Intervenor"

The survey report was submitted to the trial court on May 11, 2006 and read upon notice to the parties on May 19, 2006. There is no record in the case file however, showing that either party objected to the survey report. Three months subsequent to the reading of the survey report in the trial court, that is on August 7, 2006, plaintiffs filed the following two count motion for judgment in their favor.

"Movants say that since the submission of the arbitration report in the above entitled cause on May 19, 2006 to this Honourable Court, the subsequent reading of same in open court upon notice of assignment duly served and returns served, and the distribution of copies to the respective parties, the respondent has failed, refused and neglected to file an objection to said arbitration report, as can be clearly seen from

photocopy of clerk's certificate attached and marked as Movants' Exhibit MN/1 to form a cogent part of movants' motion.

Movants submit that failure of respondent to object to the award contained in the arbitration report within five days after service of a signed copy of the award constitutes an acceptance of the award by the respondent.

Wherefore and in view of the above, movants pray your Honour and this Honourable Court to confirm the award contained in the arbitration report submitted to this Honourable Court and rule accordingly and grant unto movant any other further relief deemest legal, just and equitable.

Respectfully submitted movants by and thru their Counsel The Henries Law Firm Counsellor-At-Law"

The defendant/intervenor Solo T. Nyepan, filed a resistance to the motion for award on August 22, 2006 contending as follows:

1. "That because respondent/intervenor submits and contends that there were no other reasons to object to the award/arbitration report submitted by the surveyors duly commissioned by this Honourable Court because, said report clearly confirmed and affirmed the longstanding claims by the intervenor/respondent that the - 5 - movant/plaintiff in the main suit of the ejectment has indeed illegally, willfully, intentionally and unlawfully encroached into the one (1) and a half (11/2) lots of land owned by the intervenor/respondent since 1963, at the New Georgia Junction.

2. That also because intervenor/respondent further submits and contends that the arbitration report did not leave anything in doubt as to the unlawful conduct of the plaintiff/ movant in his desire to own land at all costs; to the extent that the movant/plaintiff could survey the intervenor/respondent's land in an open place unknown to anybody on the spot there, eventhough there are people living there physically and visibly, only to prove that movant/plaintiff owns a land against all norms of land purchase in this Republic. This is unbelievable but yet, movant/plaintiff has produced a deed that encroached and entered into intervenor/respondent's land with his 2000 deed as compared to intervenor/respondent's 1963 deed. Perhaps if movant/plaintiff has been properly educated on the diagram of the quantity of land and the location of said movant/plaintiff's own house in intervernor/respondent's land, he would have allowed a sleeping dog lie peacefully.

3. That also because intervenor/respondent having observed from the arbitration report that movant/plaintiff's house is indeed within the perimeter boundary of intervenor/respondent's one and a half (11/2) lots of land, it is the request and prayer of the intervenor/respondent that following the confirmation of this award, said movant/plaintiff be ejected, removed, evicted and ousted from intervenor/respondent's land without further delay, by means of writ of possession and execution in favor of intervenor/respondent.

4. That also because intervenor/respondent further submits and contends that the Board of Arbitration report has in no uncertain term on sheet three (3) of said report as found in paragraph three (3), it is reported therein that the surveyors were able to establish that indeed and in truth the property is that of intervenor/respondent and that any portion thereof given to the movant/plaintiff was made under the pretext by movant/plaintiff's grantor that they also were family members of intervenor/respondent, which in law of real property cannot and will not be accepted as valid transfer of property in the absence of an expressed authority thereof from the intervenor/respondent, who is lawful and legal and bonafide owner of said piece of land. More besides, the board of arbitration report earlier suggested some form of investigation so that the movant/plaintiff will be afforded the opportunity to know the weaknesses in his title by having the family members suggested by the report to be called upon to appear in court as to their source of authority in disposing of intervenor/respondent's property.

6. And that movant/plaintiff having failed to utilize this opportunity, believing he has a case in the instant ejectment suit, intervenor/respondent has no other alternative but to invoke its right to have movant/plaintiff evicted from intervenor/respondent's land in keeping with the report submitted by the Board of Arbitration. Intervenor/respondent request court to take judicial notice of diagram map submitted by the Board of Arbitration with specific reference to the area marked in red ink (A, B, C, D) representing the one and a half (11/2) lots belonging to intervenor/respondent and the house spot marked (3) being the house belonging to movant/plaintiff and located in intervenor/respondent's land, as well as the area marked in green ink (E,F,G,H,J,K) representing 1.18 lots of land belonging to movant/plaintiff's and purchased in the year 2000, which extends into intervenor/respondent's one and a half (11/2) lots of land purchased in 1963. (What an amusement in the instant case?) This is a land that people are living on with structures thereon. By what means the movant/plaintiff purchased and resurveyed intervenor/respondent's land in that visible and open place, only God knows. But this is how land grabbers and hungry people can own other people's land.

7. That also because intervener/respondent having observed from the arbitration report that movant/plaintiff's house is indeed within the perimeter boundary of intervener/respondent's one and half (11/2) lots of land, it is the request and prayer of the intervener/respondent that following the confirmation of this award, said movant/plaintiff, be ejected, evicted and ousted from intervener/respondent's land without further delay, by means of writs of possession and execution in favor of intervener/respondent."

After hearing arguments on the motion and the resistance thereto, the trial judge made the following record on the minutes:

"The Court: The Motion for Confirmation of Award and the Resistance thereto, having been entertained, heard pro-et-con with the respective law citations, this Court says it reserves ruling pending a conference with Members of the board of arbitration in the presence of the parties and their counsels. Accordingly, this matter is hereby re-assigned for a chambers conference and the citation for said conference should be served on members of the board of arbitration and copies for the parties for Monday, August 28, 2006 at the hour of 3:00P.M. The parties are hereby ordered to superintend and underwrite the cost of the citation to the Board of Arbitration to ensure that Members of the Board appear on the said 28 Th day of August, A.D. 2006, to clarify the mind of the Court or harmonize the drafting with the literature that constitutes their report and the Clerk is ordered to specifically indicate in the citation that the purpose of that conference is for the Court to seek clarification from them as it relates to the drawing or graph and or map attached to the Arbitrators' report to ascertain whether or not the report harmonizes with the drawing. AND IT IS SO ORDERED. "(Our emphasis).

However, to the amazement of this Court and counsels of both parties, there is no record in the file to substantiate that the judge proceeded according to his previous dictates when he reserved ruling in this matter. According to the minutes of August 22, 2006, subsequent to the arguments pro and con on the motion for an award, the judge realized that there was a need to have the surveyors clarify and harmonize the written report with the drawings/maps submitted by them. He therefore ordered that all concerned, that is, the surveyors, parties, and their counsels should meet with him in a conference on August 28, 2006 for the sole purpose of said clarification of the survey report and harmonization of the drawings/maps with the written report. But because of the lack of proof in the records that the needed clarification and harmonization process took place, and that it took place in the presence of all concerned, this Court must conclude that the trial judge brushed aside the necessity of clarifying the report and harmonizing the maps with the literature. He instead proceeded and made a final

ruling on August 29, 2006 and awarded the disputed premises to the plaintiffs. The relevant portions of the trial judge's ruling are herein quoted:

"This Court observes from the movant's motion and the respondent's resistance that while the movant/plaintiff is claiming the award, the respondent/defendant is also claiming the award. The question facing this Court is, which of the two(2) parties should be entitled to the arbitration award.

"The movant/plaintiff claims that the arbitration report operates in his favor as contained in the Clerk's certificate to the effect that with the filing of the arbitration report on May 10, 2006, up to August 3, 2006, the date the Clerk's certificate was obtained, the respondent/defendant has neglected, failed and refused to have filed his objection to the report. The respondent on his part contends that the arbitration report operates in his favor; as such, the Court should confirm and affirm the report to evict, eject and, oust the plaintiff/movant on the property at issue.

"Under the circumstance, and in order for this court to effectively pass upon the question facing it, recourse to the arbitration report is necessary. Our main point of focus is centered around that portion of the technical observation of the Board of Arbitration which we shall now proceed to quote:

'In our technical observation two points along the New Georgia Junction paved road was displayed to all in favor of Mr. Solo T. Nyema, the intervener, whereas, the other point could not be seen because they were assumed to have been taken away. During the orientation of the deed according to the metes and bounds, the mandate authorizing the Board to firstly engage the intervener's deed, the other two(2) points were established technically and physically. However, it was observed that the deed did not conform with 144 feet measurement from the free way known as Somilia drive as the point of commencement reflected on the drawing at the back of the deed. It was also realized that this deed was executed in the year 1963.

'Secondly, we technically observed that Mr. S. Nagbe Jarteh's parcel of land was in line with the corner markings displayed on the ground and the deed according to the mandate. There was also discovered that corner markers along the New Georgia Paved Road were removed. However, according to the metes and bounds of the deed, the other corner points were located and placed.

'In our final analyzation and technical observations, we have realized that this entire area in question has been sold by family members belonging to Mr. Solo T. Nyema and other family sources with the pretense of being different people. We believed that the court has jurisdiction to summons all of the grantors of this parcel of land in this area to the people and to duly investigate their family background

and sources...'

"From the report of the Board just read, and entered on the minutes of court, this Court is of the strong opinion that said arbitration report operates in favor of the plaintiff As such, it is the plaintiff/movant who should be awarded the arbitration report. The failure, refusal and neglect on the part of the defendant/respondent, to have filed its objection on reasonable grounds if any, amounts to a waiver.

"WHEREFORE AND IN VIEW OF THE FOREGOING, the arbitration report submitted to this court is hereby confirmed and affirmed in favor of the plaintiff Consequently, the Clerk of this court is hereby ordered to eject, evict, and oust, the defendant from the premises at issue. Further, the Clerk is hereby ordered to prepare a writ of possession to that effect place same in the hands of the Sheriff who is hereby ordered to oust, eject, and evict the defendant from the land at issue thereby placing the plaintiff in possession of its property. AND IT IS HEREBY SO ORDERED."

Defendant/appellant noted his exception and announced an appeal from this ruling and is before us on a six count bill of exceptions quoted as follows:

"1. That Your Honour erred when you awarded and confirmed the arbitration award of May 11, 2006 in this case and rendered final judgment against the respondent and ordered him, respondent, ousted, evicted and ejected from subject premises, without a verdict of the Jury as is required by law and the constitution (1986) of this country.

"2. That Your Honour erred when Your Honour took and considered an arbitration report as an "award" instead of an evidence.

"3. That Your Honour erred when you entered a final judgment in this case based only on the arbitration report, but not evidence from the both parties in this case on December 29, 2006 which was excepted to by the respondent herein.

"4. That Your Honour erred when you totally ignored the recommendation made by said arbitration report under its TECHNICAL OBSERVATION as found page 3 of said report which says that the entire land area belonging to the intervenor has been sold by the alleged family members of the intervenor, and therefore, the Grantors herein should be invited for further investigation.

"5. That Your Honour erred when Your Honour ignored the surveyor report which clearly shows that intervenor had deed for said piece of land in 1963 and that the respondent/plaintiff had its deed in 2000 as found on the same page 3 of the arbitration report.

"6. That Your Honour erred when the report on which your final judgment was based was read only by the Clerk and the surveyor's who conducted the resurvey and prepared the report did not testify to same as required by law."

In counts 1, 2 and 3 of the bill of exceptions (consolidated) the appellant's contentions are that the arbitration result or finding should have been admitted into evidence to be deliberated on by the jury and a verdict brought pursuant to provision of law controlling ejectment trials and not to have been treated as an award to be confirmed and affirmed by the trial judge and that by not so proceeding the trial judge was in violation not only of the controlling statute but the 1986 constitution. In the opinion of this court, based on the circumstances of this ejectment case, the trial judge was not in error for conforming and affirming the arbitration report and treating seem as an award and not as evidence for jury deliberation. The circumstances of this case referred to are the following facts: After the parties had rested pleadings, and the judge disposed of the law issues, the parties agreed to submit the controversy for resolution to a board of arbitration consisting of three surveyors, one surveyor selected by each party and a third appointed by the trial judge who served as the chairman of the team. The specific assignment to be performed was to determine whether the deeds in the possessions of the contesting parties contained the land in dispute and then to determine who was encroaching on the other person's land in dispute. This exercise is technical in nature. It cannot be performed by a jury sitting in a courtroom or in its room of deliberation. There is therefore a difference between an ejectment action not submitted to a board of arbitration initially but to a jury, and this case and others that are submitted with the parties consent to be resolved by a board of arbitration.

At this point a dictionary definition as well as our own statutory provision regarding the term arbitration will better convey the basis for our holding. According to Black's Law Dictionary, Eighth Edition, the word arbitration is defined as "a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding." Our own statute says similarly that:

"A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any Controversy thereafter arising, is valid and enforceable without regard to the justifiable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract." 1LCLR Chapter 64 Section 64.1 validity, enforceability, irrevocability of arbitration agreement.

It can be clearly seen from the definition of the word and our own statutory provision that an arbitration agreement has a binding effect. Since that is the case, it is not only logical but legally sound and correct not to submit the result of the arbitration findings again to a jury for review as evidence. It is our holding therefore that the report of the board of arbitration submitted in this case was not evidence for jury deliberation, but an award to either be confirmed or set aside on legal grounds. We hold further that when the parties to this land dispute agreed for said dispute to be resolved by a board of surveyors, they voluntarily waived their right to trial by jury. We hold further that the appellant's constitutional right was not violated because the arbitration statute is not in contravention of the 1986 constitution. Said counts of the bill of exceptions are therefore not sustained.

In counts 4 and 5 of the bill of exceptions the appellant contended that the trial judge ignored portions of the arbitration report. In support of that averment, counsel for appellant referred to the arbitrators' recommendation to the court to summon the grantors for further investigation because "the entire land area belonging to the intervenor has been sold by some family members of the intervenor." Appellant's counsel said further that the judge ignored the fact that the intervenor's deed for said land was dated 1963 while appellee's deed was dated 2000. Finally, that the survey report was only read by the clerk of court and not testified to by the surveyors. The foregoing contentions perhaps would never have formed part of the bill of exceptions had the trial judge followed his own advice to have the surveyors appear and clarify the report to the court and the parties. Said counts in the bill of exceptions are sustained.

Judge Emery S. Paye in his ruling said among other things and he is herein quoted:

"From the report of the board just read and entered on the minutes of court, this court is of the strong opinion that said arbitration report operates in favor of the plaintiff/movant, as such, it is the plaintiff/movant who should be awarded arbitration report. The failure, refusal and neglect on the part of the defendant/respondent to have filed his objection on reasonable grounds, if any, amounts to a *waiver."*

We wonder how the judge arrived at the conclusion that the survey report was in favor of the plaintiff in view of the inconsistencies, and doubts, coupled with the surveyors' own recommendations that the "Court probe further into this land dispute because the intervenor's own family members have been selling his land disguising themselves to be different people and at the same tirhe the said surveyors saying in the said report that the intervenor's land did not conform to the drawing at the back of the deed. If the land could not be located or conform to the drawing we must wonder which land

was sold by members of the internevor's own family? By that statement were the surveyors saying that the intervenors' land was sold to the plaintiff by family members who pretended to be different people? We are as baffled by this report as judge Paye was when he heard said report read and the arguments on the motion for an award. When the plaintiff filed his motion for an award and the defendant filed his resistance thereto, judge Paye became even more aware of the inconsistencies, contradictions, and disharmony between the written report and the maps the surveyors had drawn. Good and legal reasons he reserved ruling and ordered issued notice of assignment for all concerned including the surveyors to meet him in his chambers for clarification of the written report and harmonization of the maps with said written report. Had he held the proposed conference with the parties and surveyors he would have had clarification and answers thereby enabling himself to arrive at an informed decision instead of this ruling that he based on his "strong opinion." The rendering of a fair and impartial decision by a court of justice should not be based on the judge's strong opinion because the strength of the judge's opinion might not necessarily produce a just decision. After all judges are only human. Judicial decisions should therefore be based on the facts and the judge's interpretation of the law controlling. In this particular case the trial judge based the decision on his strong opinion and not on the facts and issues of law. We cannot uphold this decision. (Emphasis ours)

Land by nature is an immovable, fixed asset. So even though title to it may change, its metes and bounds remain constant. The suggestion that the intervenor's family members disguising themselves to be different people have been selling his land, should in no way lead to the disappearance or removal of the land. In Cole v. Philips, 29LLR 125, 131 (1981) this Court, citing Addo v. Jackson, 24LLR 306 (1975), and Wolo v. Sambullah, 27LLr 22, (1972) said that where evidence of title is insufficient in an ejectment action to support a finding the court will order the case remanded for an accurate survey by a board of arbitrators." We shall go even further to hold that where a survey report is contradictory, inconsistent, and inconclusive, the Court will remand the case.

We are in agreement with the defendant that there was no reason to object to the survey report because it could be in favor of either party, depending on which paragraph the party relied on.

Wherefore, and in view of the contradictions, inconsistencies, inconclusiveness, and lack of clarity in the survey report herein, and considering the fact that before a plaintiff in ejectment can prevail in an action to evict and eject an alleged intruder, he /she must rely on the strength of his own title and not on the weakness of defendant's

title, this court cannot confirm the ruling of the trial court awarding the report in favor of the plaintiff and ordering the eviction and ousting of the defendant from the disputed land until plaintiff proves his ownership on the strength of his own title and not on the weakness of defendant's title. Said ruling therefore is hereby reversed and the case remanded for resurvey because of the total failure of said arbitrators to resolve the dispute.

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction and constitute a board of arbitration consisting of competent, unbiased and professional surveyors to proceed to the area in dispute and to use the plaintiff's "mother deed," that is the deed or deeds of his grantors to establish his chain of title which alone will give strength to his deed dated A. D. 2000. The surveyor's will also use the defendant's deed and his grantor's/intervenor's deed dated 1963. After conducting an unbiased survey, the surveyors must submit a clear, cogent, and professionally well written report to accompany the sketches or maps so drawn, so that the dispute submitted to them can be finally resolved. AND IT IS HEREBY SO ORDERED. *COSTS ARE DISALLOWED.*

The appellant was represented by Counsellor Jonah A. Barbu of Liberty Law Firm. And the Appelle was represented by Counsellor Yamie Quiqui Gbeisay, Sr. of the Tiala Law Associatse.