Isaac Paye, **David Yelopolu** and **Sampson Learbebaye**, of Monrovia, Liberia APPELLANTS VERSUS **Augustine T. Fahnbulleh**, by and thru his Attorneys-In-Fact, Tonieh Paasewe, Miata Fahnbulleh and Hawa Fahnbulleh of Monrovia, Liberia APPELLEES

APPEAL. JUDGMENT REVERSED AND REMANDED

Heard: March 19, 2008. Re-argument waived Nov. 20, 2008 Decided: Dec. 19, 2008

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

These appeal proceedings emanate from an action for ejectment. In recent years, ejectment suits have posed a huge challenge to judicial resources. In addition, land and related disputes are proving to be a constant reminder of the agonizing experiences attendant to acquisition, ownership, sale and transfer of realty in this jurisdiction. Further, these land disputes carry unbearable costs both in time and material resources. But the most troublingly is the undeniable reality that land disputes have increasingly become a major source of our nation's conflict. Violence consequential of land controversies have, in notable instances, witnessed loss of precious and irretrievable lives in Liberia.

The ejectment case here for review, provides yet a panorama of the unbearable hardships with which parties litigant are confronted in land ownership controversies. This is not to mention the complexities land disputes continue to pose to the Nation's drive to reconstruction and development.

In the ejectment action, now before this Court for appellate review, the appellees, plaintiffs below, on July 25, 2005, filed a six-count complaint against the defendants, now appellants, in the Sixth Judicial Circuit Court, sitting in its September Term, A.D. 2005.

Complaining, the appellees claimed wrongful occupancy by the appellants, of their half (1/2) acre of land, lying and situated in the Township of Barnersville, Montserrado County; that said land was acquired by appellees through honorable purchase on April 22, 2001, from Moussa A. Toure; that despite several efforts, seeking to have the appellants leave appellees' property, including intervention by the Ministry of Justice, and without any legal color of right, appellants have refused and continued to wrongfully occupy said property. Appellees have therefore instituted action of ejectment to have the appellants evicted, ousted and ejected from their land

and to have the appellees awarded damages to compensate for the financial loss occasioned by said wrongful occupancy. Along with the complaint, the appellees proferted two instruments, a warranty deed for half acre (two lots) executed by Moussa M. Toure in favor of Augustine Tamu Fahnbulleh, Sr. dated April 22, 2001, and a second warranty deed executed on April 19, 1997, by George Curtis for half acre, in favor of appellees' grantor, Moussa M. Toure.

Appellants appeared and filed an eight (8) count answer, setting out the following defenses: that they purchased the land they occupy since 1988 but due to the 1990 war, began to occupy same in 2000; that what appellees termed as title was granted to them by a Moussa Toure, nine (9) years after they, the appellants' had acquired title to the same property; that appellees' original grantor, Mr. George Curtis, knew that he had no legitimate claim to the disputed land, but set out to consciously and maliciously sell the same piece of land to Mr. Moussa M. Toure, who in turn became appellees' grantor; that the allegations contained in appellants' complaint did not constitute legal grounds to award damages and that the entire complaint be dismissed. In support of their answer, the appellants also attached a certified true copy of an administrator's deed for one lot, granted by the executors and administrators of the estate of Gayedu Kpaye, Philip W. Berrian, John W. Kai and Peter B. Bishop in favor of appellants Isaac G. Paye, and David Y. Yelopolu.

When pleadings rested, regular notice of assignment was served on counsels for both parties and a hearing on the disposition of the law issues, had on November 15, 2005. An application was made at said hearing by appellees' counsel to proceed with the hearing on failure of appellants' counsel to be present without an excuse. Appellees' application was granted by His Honor, Wynston O. Henries, who, thereafter, ruled the case to jury trial.

A petit jury was empanelled and trial commenced on October 19, 2006, with His Honor Emery S. Paye presiding, which trial lasted over forty (40) days. The appellees produced three witnesses, each testifying in support of their claim as set out in their complaint. Countering, appellants also produced four witnesses, with each buttressing their counter-claims and defenses as laid down in their answer. Both parties rested thereafter.

On November 13, 2006, the petty jury returned a unanimous verdict, finding the appellants liable. Appellants then filed a five-count motion for new trial.

In their motion for new trial, appellants/movants attacked the verdict as running contrary to the facts of the case. Appellants/Movants also argued that there being no evidence adduced at the trial to support said verdict, awarding a new trial, will be a mandatory legal requirement.

Appellants/Movants have also contended that the presiding judge demonstrated partiality and prejudice when charging the petty jury, he said: *"it is worth noting that both the defendants and plaintiffs have lived on the land each, that is to say, defendants' one lot as well as plaintiffs' two lots. The plaintiffs] informed you that they bought this land from a different grantor whereas the defendants bought their land from a different grantor. It is the plaintiff that has been (at] various Ministries trying to evict or cause the removal of the defendants from the land at issue. You will note from the records that the defendants alleged that they bought their land in 1988, and found out that the plaintiff was encroaching on their land, but you will (also] note from the records that defendants had never made a substantive effort in regard to the one land issue in court..."*

According to the appellants, the above quoted instructions to the Jury violated the Judge's cannon, especially that provision requiring a Judge to demonstrate cool neutrality in all matters brought before him. Appellants therefore contended that a new trial must be awarded as a matter of law.

Resisting this motion, the appellees/respondents filed a nine-count resistance, praying the court to deny said motion and confirm the verdict. Appellees/respondents maintained that the instruction issued by the court to the jury relates essentially to finding of fact from relevant documents including title deed, decree of sale as well as the best evidence adduced at the trial in light of the principle of oldest title.

On December 4, A.D. 2006, the motion for new trial was heard and denied and the Court rendered its final ruling concluding as follows:

"Based upon the evidence adduced by this trial by both parties, the circumstances of the case and the law governing the case at bar, this court says the unanimous verdict of the trial jury holding the defendants liable being in conformity with the facts, the circumstances and the law in control, said unanimous verdict is hereby confirmed and affirmed."

It is from this final judgment appellants perfected an appeal before this court on an eight count bill of exceptions.

Counts two, and six being germane to the issue at bar, are quoted as follows:

"2. Because Your Honor committed a reversible error when in your Final Ruling/Judgment of December 4, 2006, Your Honor said that the verdict of the Trial Jury was consistent with the laws in this jurisdiction and are in harmony with the facts and evidence adduced under the circumstances of the case and that the said unanimous verdict cannot be touched by the Court, when the records on the Court's file show quite the opposite. Defendants say the verdict of the Jury is not supported by law and the weight of the evidence adduced at trial in that, the plaintiffs' alleged agents failed to produce documents of standing to sue as Attorneys-in-Fact, as well as documents of chain of title...."

"6. Defendants also contended that Your Honor committed reversible and prejudicial error when Your Honor, charged the Jury and said: [it is worth noting that both the Defendants and Plaintiffs have lived on the land. That is to say, Defendants' one lot as well as Plaintiffs' two lots. The Plaintiffs informed you that they bought their land from a different grantor whereas Defendants bought their land from a different grantor. It is the Plaintiffs that have been to various Ministries trying to evict or cause the removal of the Defendants from the land at issue. You will note from the records that the Defendants who allegedly bought this land in 1988, but having found out that Plaintiff was encroaching on the defendants' land, have been going from place to place. But you will note from the records that defendants had never made substantive effort in regard to the one land issue]Emphasis added…Because of this, appellants argued that their motion for new trial should have been given closer consideration and granted as a matter of law.

To the mind of this Court, the sole issue dispositive of the controversy at bar is *whether the court's final judgment is supported by records of the facts, circumstances and controlling laws?*

A detailed survey of applicable laws to the case at bar shows that more than a century ago in 1904, this Court clearly set a fundamental rule to guide practice in this jurisdiction. HOUSTON versus FISHER, et. al 1LLR 434, 436 (1904). This law is that evidence must support the allegations or averments contained in the pleadings; [and] where averments are unsupported by evidence, said averments cannot amount to proof. ibid 436 (1904). In a line of cases, this Court has consistently held that "Evidence alone enables the court to pronounce with certainty concerning the matter in dispute". LEVIN versus JUVICO Supermarket 24 LLR 187, 194 (1975).

We shall now examine the records in this case to determine whether the evidence adduced at the trial supports the final judgment.

The records transmitted to us show that the appellees produced four witnesses including the Attorney-In-fact, Toniah E. Passawe. In his testimony in chief, the

witness told the court and the jury that his principal, Augustine T. Fahnbulleh purchased half acre of land (two lots), lying and situated in Barnersville. He said, said parcel of land was purchased from Musa Toure for the amount of US$2,450 (two thousand four hundred fifty United States dollars).

The witness further explained that Sampson Learbebaye, one of the appellants, claimed ownership of the same land and promised to present his instrument of title. This, the witness said, led to postponement of the survey to a week later to allow all parties to come forward with their deeds. At the scheduled meeting, Capt. Sampson presented a certified copy of their deed, and an investigative survey was conducted."

According to the witness also, the property being claimed was not in Capt. Sampson's name but rather one David Yelopolu [whom Sampson claimed to be his brother]. The Surveyor, along with all present went to S.K.D. Boulevard and met with David Yelopolu. At said meeting, the witness told the court, that David Yelopolu confirmed that the land in Barnersville was his and recalled a meeting he (David) attended with the late CIIr. Momo Fahnbulleh at the instance of Mr. Curtis (Mr. Musa Toure's grantor). The witness quoted David as saying that Philip Berrian who sold the disputed land to Mr. Curtis was present also at the Lawyer's office at which time Mr. David claimed it was said that Philip Berrian was only reared by Paul Berrian and was without legal authority to sell any land.

The witness indicated however that based on agreement reached among the parties, the Surveyor conducted an investigative survey; and submitted his report.

The witness told the court that the survey report was distributed to the parties including the Ministry of Justice, and the Ministry of National Defense. He concluded:

"The Justice Ministry called us [the parties] to probe into this issue again but to no avail. That is why we came to the Court [for] the Court is the proper forum to settle such case".

Plaintiffs' three other witnesses also testified corroborating the general testimony of the first witness. Each of the witnesses recounted the numerous difficulties they faced during this long running land controversy. They told the court that in the face of these problems, Capt. Sampson went ahead to build a house on the disputed land. Plaintiffs' second witness, George Curtis told the Court that he sold two (2) lots to Mr. Toure, and that he bought said two lots from oldman Paye Berian.

When appellees/plaintiffs rested with production of evidence, counsel for the defendants moved the court to dismiss appellees/plaintiffs' action, arguing that under the law, a party may be represented by and through agents, commonly known as attorney-in-fact, only by authority. Appellants/Defendants' counsel further argued that contrary to law, Toniah E. Passawe instituting this action, had not been authorized by anyone to represent his interest. The said motion was resisted.

In their resistance, counsel for appellees/plaintiffs argued that appeallants/defendants having recognized the attorney-in-fact in these proceedings all along, cannot, as a matter of law, be allowed at this late hour, to deny that Toniah E. Passawe is attorney-in-fact, authorized to represent appellees/plaintiff's interest. The said motion was dismissed by the trial court.

This Court fully agrees with the trial court as issue of motion to dismiss for lack of standing is a pre-trial motion. In our considered opinion, raising such an issue in the middle of a trial, as the appellants/defendants' counsel did, was disingenuous.

Our Civil Procedure Law I LCL Rev., Title I, section 11.2 (1, 2 & 6) speaking to time, grounds, defer hearing and waiver for such a motion, provides:

"1. ...At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds .:(e) That the party asserting the claim has not legal capacity to sue."

"2. A motion under this section shall be heard and determined before trial on application of either party, unless the court for good cause orders the hearing and determination thereof be deferred until the trial."

"6. A party waives any defense enumerated in paragraph 1 of this section which he does not present either by motion as hereinbefore provided or in his answer or reply..." pp. 118-9.

Raising the issue of standing in the middle of a trial as appellants/defendants' counsel, a lawyer of long standing experience of practice did, was simply calculated to baffle and delay the case. This Bench sternly frowns at such practice.

The trial court having properly dismissed said unmeritorious motion, the principal coappellant/co-defendant, Isaac Paye, took the stand and testified in his own behalf.

In his general testimony, the witness told the court that in 1989, he purchased one (1) lot from one Philip W. Berrian, Administrator of the Gaye Dayedu-kpae Estate, located in Barnersville. He also told the court and jury that he started making blocks to build on the said land in 1989 but had to suspend his work due to the civil strife. He explained further that he received a letter from George Curtis' lawyer at Jones & Jones Law Firm, wherein appellees grantor was claiming the disputed land.

The witness told the court that he attended the said meeting at Jones & Jones Law Firm with his landlord at which time he presented all the documents he had for said land, including the deed and letters of administration. He further told the court that his title instruments were examined by Curtis' Lawyer and in the witness' words: "he [the Lawyer] was convinced that the land Mr. George Curtis is claiming is not for him, it is for the J. Gaye's Estate, Philip Paye and David Learbaye". The Witness also said that in January 2001, they received another citation from one Counsellor Ansumana office on the same land issue. This was followed in May the same year by yet another citation from the Ministry of Justice, all at the instance of the appellant/plaintiff.

According to the witness also, it was at the Ministry of Justice that the appellants/plaintiffs "talked about a survey, [that is to say], they allegedly conducted in the absence of the appellants. The witness said the Surveyor from the Ministry of Lands, Mines and Energy admitted that he conducted this survey by himself. The witness further said he owns only one (1) lot and is located before the gas station; that his grantor, the Gaye Dukpaye family, was the same family who sold the land upon which the Barnersville Estate was constructed by the government of Liberia; that since 2000, one of the appellees, Sampson has been living in a three bedroom house together with one shop built on the disputed land.

The respective instruments of title of the parties adduced at the trial were admitted into evidence. Having considered both the oral and documentary evidence, the trial jury by their verdict, concluded as follows:

"We the Petty jurors to whom the case: Augustine T. Fahnbulleh, by & thru his attorney-in-fact of Monrovia, Liberia, PLAINTIFF of the City of Monrovia, Liberia Versus Isaac Paye, David Y. Yelepolu & Sampson Learghaye; also of the City of Monrovia, defendant(s) was submitted, after a careful consideration of the evidence adduced at the trial of the said case, we do unanimously agreed that the defendant is liable."

The trial judge affirmed the verdict, entered a final judgment thereon and ordering as follows:

"....accordingly, the defendants are hereby adjudged liable in these proceedings and are hereby ordered to evict, oust and eject from the plaintiffs' premises at issue. The clerk of this court is hereby ordered to proceed with the issuance of the writ of possession and place same in the hands of the sheriff, who is hereby ordered to oust, eject and evict the defendants from the premises of the plaintiffs thereby possessing the plaintiffs of the property at issue."

Having carefully examined the entire certified records, this Court is of the view that the findings made in this case are insufficient to make a conclusive determination in relation to appellees' land.

Clearly, the deeds admitted into evidence, constitute the most critical evidentiary instruments upon which the claims of the respective parties are based. Answers to the material questions of location and size of the disputed land are essential to a final determination of this controversy.

Seeking to provide answers to these questions, let's look at the metes and bounds contained in appellees' deed. The metes and bounds as contained in appellees' deed state as follows:

"COMMENCING AT THE SOUTHWESTERN CORNER OF THE ADJOINING ONE ACRE OF LAND OWNED BY E.Y., AND THENCE, RUNNING ON MAGNATIC BEARINGS; NORTH 20 DEGREES EAST 264.0 FEET PARALLEL WITH THE SAID E.Y. ...ADJOINING PARCEL OF LAND TO A POINT, THENCE RUNNING NORTH 70 DEGREES WEST 82.5 FEET PARALLEL WITH A PROPOSED 20 FOOT STREET TO A POINT; THENCE RUNNING SOUTH 20 DEGREES WEST 264.0 FEET PARALLEL WITH THE ADJOINING PARCEL OF LAND OWNED BY MOUSSA M. TOURE ALSO TO A POINT; THENCE RUNNING SOUTH 70 DEGREES EAST 82.5 FEET PARALLEL WITH THE BARNERSVILLE-FREEWAY MOTOR ROAD TO THE PLACE OF COMMENCEMENT AND CONTAINING TWO (2) TOWN LOTS OR HALF (1/2) ACRE PARCEL OF LAND AND NO MORE."

On the other hand, the metes and bounds showing appellants' land as described in certified copy of an administrator's deed, indicate as follows:

"COMMENCING AT THE SOUTH WESTERN CORNER OF THE ADJOINING PARCEL OF LAND OWNED BY INITIALS S.T. THENCE RUNNING ON MAGNETIC BEARINGS: SOUTH 75 (DEGREES) WEST 82.5' FEET PARALLELS WITH 25' ROAD TO A POINT; THENCE RUNNING SOUTH 15 (DEGREES) EAST 132 FEET TO A POINT THENCE RUNNING NORTH 75 (DEGREES) EAST 82.5' TO A POINT; THENCE RUNNING NORTH 15 (DEGREES) WEST 132' TO THE POINT OF COMMENCEMENT AND CONTAINING ONE LOT OF LAND AND NO MORE."

Examining the metes and bounds detailed in the respective title instruments submitted by the parties, clearly one must wonder how a conclusive finding could be reached on such technical issues, as exact location and actual size of the land, in the absence of an investigative survey. In our considered opinion, the judgment under review leaves uncertainty as to these critical questions.

We have also keenly noted that all the judgment of the trial court says is that the appellees/plaintiffs be possessed of the "PROPERTY AT ISSUE". The records before us are also void of any findings as to the veracity of appellants' claim that they occupy only one lot, and not two, as sued for by appellees. In our opinion, the judgment under review is not supported by sufficient findings.

Further, this Court holds that submission of this kind of technical and legal issue as metes and bounds to a petty jury with little if any insight into such complex matter, as done in the case at bar, is not only un-insightful, but also inconsistent with the precedent set by this Court in **FREEMAN Versus WEBSTER,** reported in 14 LLR 493 (1961) and several other opinions of this Court. Aidoo versus Jackson, 24 LLR 306, 312 (1975), Cole versus Philips 29 LLR 125, 131 (1981).

In Freeman versus Webster, this Court set the standard rule for judicial determination of an ejectment cause. A review of the Freeman case shows that the President, acting on behalf of the Republic of Liberia as original grantor, executed in favor of the appellee (Webster) a new deed in substitution for 50 (fifty) acres of land in the then Marshall Territory. The substitute title instrument deed was in replacement of previous deed which the trial court had adjudged to be lost or destroyed.

It is further reported that following execution, probation and registration of the new deed, Webster, the appellee, instituted ejectment action against the appellants including Freeman and other inhabitants of Dolo Town. But the land as described in Webster, the appellees' deed was contested by inhabitants of the village. The

inhabitants questioned amongst others, both the legal validity of the deed as well as its exact metes and bounds. The contending villagers argued that the land area as occupied by the village, was not part of the land as described in Webster/appellee's deed.

Setting this principle as stare decisis, Mr. Chief Justice Wilson speaking for this Court, as far back as 1961, said:

"Faced with this situation, and because it was not possible for counsel on both sides to give the clarification that could make easy a final conclusion or solution of this matter, we will here remark that, whilst we must recognize as genuine and legal the deed executed by the President of Liberia in 1949, reviving the title of said property in the said Thomas L. Webster, son of the Late Daniel Webster, in view of the decree of court providing for said revival, it still remains to be sufficiently established whether or not the Town of Dolo, the village from which appellee seeks to evict appellants, actually falls within the 50-acre Lot Number 26B which, if it did, would place said Dolo Town within the property right of appellee and justify this eviction by ejectment if they cannot establish by title deed the right to continue in occupation of said Dolo Town."

The Supreme Court then concluded in these words:

"It is therefore our considered legal opinion, and this in the name of fair and impartial justice, that the case be remanded to the court from which said appeal was taken, with instructions that an impartial survey be made of the land described by metes and bounds in said public land deed from the Republic of Liberia to Thomas L. Webster for 50 acres of land in Lot Number 26B situated at Pennsylvania or Mount Oliver, to determine whether or not said metes and bounds take in and include the settlement of Dolo Town, now occupied by appellants."

The Supreme Court further decreed: *"This certificate of survey must be made through the Division of Surveys of the Department of Public Works and Utilities, and in the presence of the interested parties, on whom notice must be served, and in the presence of a disinterested party to be named by the court."* lbd. pp 506-7.

In yet another ejectment cause, Justice Henries speaking for this Court observed that: *"Because of the grave inconsistencies that we have discovered from the evidence contained in the certified records of the trial court, we find it unable to determine at this moment the main issue argued before us with respect to which of the parties has a better title."*

The opinion therefore held:

"...in keeping with Freeman versus Webster, 14 LLR 493(1960, we deem it to be fair and proper that the case be remanded to the lower court with instructions that an impartial survey be made of the lands described in both deeds, starting first at the same point and following the same course as the original survey in appellant's deed, which is older; and afterwards following the same procedure with respect to the description in Ape/lee's deed assuming that there is no difficulty in following the original lines of the previous surveys. AIDOO VS. JACKSON 24 LLR 306, 312 — 3 (1975).

We have detailed ejectment actions and their disposition by this Court in order to provide guidelines for handling future ejectment suits in this jurisdiction. In doing so, this opinion emphasizes that title disputes are generally technical and legal in nature. The doctrine of stare decisis, defined in the Black's law Dictionary (Eighth Edition, 2004) as the doctrine which makes it necessary "...for a court to follow earlier judicial decisions when the same points arise again in litigation" ought to guide judicial determination of all such cases in this jurisdiction.

Clearly, the hardships associated with this ejectment action notwithstanding and in the face of the insufficiency of evidence, this Court is bound to uphold and affirm the legal principle in **Cole versus Philips,** found in 29LLR 125, 131 (1981), stating: **"**where there is insufficient evidence in an ejectment action to support a finding, the Court will order the case remanded for an accurate survey by a board of arbitrators".

In view of the facts and circumstances as well as the evidence adduced at the trial and the laws controlling, and consistent with the precedent set in Freeman Vs. Webster, it is our considered legal opinion that the judgment of the trial court be, and same is hereby reversed and remanded with specific instructions to the Judge presiding therein to setup a board of arbitration to conduct an impartial survey of the land described by metes and bounds, and determine to what extent appellees' land is being wrongfully occupied by the appellants, and to render judgment on the report of the Board of Arbitration.

The Clerk of this Court is hereby ordered to send a mandate to the Judge presiding therein to give effect to this judgment. IT IS SO ORDERED**.**