

The **People of Zinnah Town** and **Sayonkon Town** Montserrado County, Liberia
MOVANT APPELLANTS VERSUS **Alexander Konkai Freeman, Momolue S.
Freeman, Ecelo Elaine Freeman, B. Dixon, Monrolyn Dixon, and Moice Dixon,**
Heirs of the Administrators and Administratrix of the Intestate Estate of the Late
Alexander B. Mars, Jr., all of Montserrado County Republic of Liberia Plaintiffs.

MOTION TO INTERVENE

HEARD: April 7, 2009 DECIDED: July 23, 2009

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE
COURT

The appellees, Alexander Konkai Freeman et. al filed an action of Summary Proceedings to Recover Real Property against Mr. Ezzat N. Eid, in the Sixth Judicial Circuit Court, Montserrado County, during its June Term 2007. The Appellants, the People of Zinnah Town and Sayonkon Town, filed a motion to intervene stating that Ezzat N. Eid was their tenant and that the representation of their interest by Ezzat N. Eid is inadequate, and they will be bound by any judgment rendered in the summary proceedings action.

The appellees asked the court to take judicial notice that the very same court had previously, in 1978, ruled in a matter involving the same property between the appellees and appellants. The court ruled in that case that the appellants could not claim right to the property by adverse possession as they sought, since do so the appellants would be claiming against the state and one can not claim adverse possession against the state. The appellants announced an appeal from the Judge's ruling but withdrew the appeal.

Judge Youssif D. Kaba after hearing the argument on the motion to intervene ruled:

"This is a motion to intervene. Substantially, it is the contention of the movants that the defendant in the action out of which this motion grew is a tenant of the movants by virtue of a lease agreement executed by and between the said movants and the said defendant. Therefore, the movants contention is that they have interest in the subject matter of the main suit and that representation by existing party to the main suit is inadequate.

In resisting this motion, the contention of the respondent is that the movants have no interest that need protection in the main suit since the title of the movants was the subject of litigation in these

very same court and that their said title was declared null and void and of no legal substance. The respondent annexed to his resistance copy of judgment rendered by this court and by the Honourable Supreme Court touching on this matter.

It is certainly the law on intervention that the same become a matter of right where the representation of the applicant's interest by existing party is or maybe inadequate and the applicant is, or may be bound by a judgment in the action. The issue then is, whether there is an interest of the movants herein in this matter and whether the existing party does not have the capacity to protect the said interest.

To begin with, it is the law, in this jurisdiction that one can not convey that which he does not have. The Court takes judicial notice of the undisputed record of previous trial had touching on this very same property and involving the movants herein. The Court notes that the court in its final determination stated the basis of the movants' claim to the property does not find support in the law since according to the court in that opinion one cannot claim adverse possession against the state.

Additionally, the Court notes that in that opinion this court stated that title to real property or claim therefore, is not determined by a map but rather by title deed. It must be observed that while this judgment was appealed from and excepted to, the said appeal was never perfected since the same was withdrawn thereby bringing finality to the issue in dispute. If, therefore, the movants do not hold title, their conveyance has no basis in law and is void at the time it was executed. This issue became a legal issue considering that this court has made determination thereupon and by that the same cannot be a subject of relitigation before this court. Without title there can be no conveyance and without title in real property there should be no interest thereto. Therefore, this court does not see the interest of the movants that need to be protected in this matter.

Wherefore and in view of the foregoing, and giving due consideration to the pleadings and the records in this matter, it is the considered ruling of this court that movants' motion be and same is hereby denied. AND SO ORDERED.

Appealing this ruling of Judge Kaba, the appellants, movants below, filed a 5 Count Bill of Exceptions as follows:

"1. That under the law, an action to Recover Real Property or its possession shall be barred if the defendant or his privy has held the property adverse for a period of not less than twenty (20) years. Movant/appellants say that they and their privy have occupied the property subject of the Action of Summary Proceedings to Recover Possession of Real Property, for more than one hundred (100) years. Accordingly, movant/appellants own said property by virtue of adverse possession and have vested interest in said property. Your Honor therefore erred when Your Honor ruled that

movants/appellants have no vested interest in the property, subject of the Summary Proceedings to recover possession of real property, out of which the Motion to Intervene grew, for which error of Your Honor movants/appellants except."

"2. Movants/appellants say that they executed a Lease Agreement with defendant Ezzat N. Eid in respect of the property, subject of the Action of Summary Proceedings to Recover Possession of Real Property, and accordingly, defendant Ezzat N. Eid is in possession of said premises on the strength of the Lease Agreement executed by and between movants/appellants, as Lessors, and Ezzat N. Eid, as Lessee. Movants/appellants submit that under the law, the lessor is duty bound to defend and protect the lessee's peaceful use and enjoyment of the leased premises, and where the lessee is named as a defendant in an action of summary proceedings to recover possession of real property or ejectment, the lessor must be joined as a party defendant Hence, Your Honor erred when Your Honor denied movants/appellants motion to intervene for which erroneous and prejudicial ruling of Your Honor movants/appellants except"

"3. That under the law, where the representation of an applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action, a motion to intervene will lie. In the instant case, movants/appellants say that defendant Ezzat N. Eid in the Action of Summary Proceedings to Recover Possession of Real Property is their tenant, and that the representation of their interest by Mr. Ezzat N. Eid in said action is inadequate and that they would be bound by any judgment rendered against Ezzat N. Eid. Your Honor, therefore, erred when Your Honor denied movants/appellants' motion to intervene for which error of Your Honor movants/appellants except."

'4. That Your Honor, in ruling on the Motion to intervene, passed on the merit of the case when Your Honour held, without taking evidence, that movants/appellants do not have title and interest in the land, subject of the Action of Summary Proceedings to Recover Possession of Real Property. This holding of Your Honor being erroneous and prejudicial to the interest of movants/appellants, movants/appellants except to Your Honor's final ruling rendered on February 6, 2008."

"5. That under the law, the issue of adverse possession is a mixed issue of facts and law and cannot be determined without taking of evidence. Accordingly, Your Honour erred when your honor failed to take into consideration movants/appellants' claim of title over the land subject of the Action of Summary Proceedings to recover possession of real property by adverse possession, for which reason movants/appellants except."

Appellants' exception to the Judge's ruling is based on their alleged right to the property under adverse possession.

A review of the records in this matter shows that that Alexander B. Mars, Sr. deeded 175.5 acres of land to his son, Alexander B. Mars, Jr. The heirs and administrators of Alexander B. Mars, Jr., appellees, entered an agreement of lease with the Mensah Morgan Construction and K & H Construction Company to carry out rock crushing activity on this property in 1969 and 1970 respectively for twenty years. In 1976, the people of Zinnah Town, appellants herein, filed an action of ejectment against the tenants of the appellees claiming adverse possession of the property; proffering a map showing 88.61 acres, the area claimed by them under adverse possession. Appellants claimed then, just as they claim now, that their ancestors had occupied the property since 1904, more than a hundred years, which occupation has been notorious, continuous and overt without any molestation or hindrance or adverse claim whatsoever. That during the period in which they have exercised possession over the premises, they have made marked improvements thereon, their improvements include agricultural developments and other infrastructural developments; that the Mensah Morgan Construction and K&H Construction Company, appellees' tenants, without any color of right and without their permission had illegally and wrongfully entered upon the herein described premises and commenced carrying on excavations, crushing of rocks and other marketable products in violation of the rights of appellants. Appellants prayed demanding judgment against these tenants of appellees.

Intervening as defendants' lessors, the appellees, resisted the appellants right of title to said property and their lack of capacity to file an ejectment action against appellees' tenants. They challenged the map exhibited by the appellants as a legal title in the subject real property. The mere description of a certain piece of property, appellees argued, did not constitute a paper title. Besides, appellees alleged that it was the late Alexander B. Mars, Jr. who, many years ago, brought a paramour of his along with her family (parents and some relatives) from the Dai Tribal Section in the hinterland and permitted them to live on the parcel of land in question because of the proximity of the land to his home and the absence of transportation facilities to the Dai Tribal Section in the interior of Suehn. It was from that time that relatives of their grandfather's paramour continued to inhabit the premises as tenants of the Mars, without exerting possessory rights over or ownership to the said property; therefore, their offsprings were estopped from challenging the appellees or their tenants' ownership and right of possession of the property. The fact, appellees argued further, that appellants' parents or forebear lived on the property from 1904, did not vest legal title to said property in the appellants where their parents recognized the right of appellees forefathers to the land.

The appellees also alleged that the appellants were in full knowledge of the fact that appellees were the rightful owners of the property on which their tenants were operating because appellees and appellants had, prior to the institution of the suit, appeared before an Investigating Commission set up by the President of Liberia to look into appellants claim of title to the property in question. As a result of said investigation, and, in recognition of appellees' deed to the property, the late President William R. Tolbert made a finding that the Mensah Morgan Construction and K&H Construction Company continue to pay rents for the premises to appellees.

Evidence presented in this matter shows that both appellants and appellees have claimed title to this property since 1976, raising the identical issues now before us. This property litigation has been handled twice by the Circuit Court and at both times the rulings were made in favor of the appellees.

From the first ruling, in a summary judgment entered in 1976, the appellants took an appeal. This Court had the matter remanded. From the second ruling made on the 5th day of December, 1978, Judge, Emma Shannon Walser, dismissed the case stating that the adverse possession on which appellants relied could have only been brought against the government, and in which case adverse possession would not legally hold as the government enjoys the right of eminent domain. The appellants announced an appeal from this ruling, but later wrote the court as follows:

REPUBLIC OF LIBERIA, MONTERRADO COUNTY

In the Civil Law Court, Sixth Judicial Montserrado County, December 1978

Isaac Cooper, On behalf of himself and the Dagobe people of Zinnah Hill, Paynesward, Montserrado County Liberia Plaintiffs/Appellants Versus K & H Construction Company of P.O Box 1001, U.N. Drive Mensah-Morgan Construction and Industrial Corporation P.O Box 1595 Monrovia, Liberia Defendants/Appellees AND Ellen Mars-Melton, Caroline Mars-Bright and Catherine Mars-Freeman of Monrovia, Liberia Intervenors/Appellees. ACTION OF EJECTMENT.

NOTICE OF WITHDRAWAL

The Clerk

Sixth Judicial Circuit Montserrado County

Monrovia, Liberia

Mr. Clerk:

Upon receipt of this notice spread upon the records of the Court above, that the

plaintiffs in the captioned case have this 11th day of December 1978 withdrawn their announcement of appeal in the case with reservation.

Respectfully submitted, Plaintiffs by and thru their counsel:

Moses K. Yange

COUNSELLOR-AT-LAW

Dated this 11th day of Dec. 1978

FILED THIS 11th day of Dec. 1978 CLERK OF THE AFORESAID COURT

Our statute, 1 LCL revised, title 1, section 5.61 (1) states:

1. In general. Upon timely application, any person shall be allowed to intervene in an action:

(a) When a statute of the Republic of Liberia confers an unconditional right to intervene; or

(b) When the representation of the applicant's interests by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or

(c) When the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof.

Having written the letter of withdrawal of their appeal in 1978, can the appellant lease the same disputed property decided on in 1978 to Mr. Ezzat Eid, and then seek to intervene when the appellees filed an action of summary proceedings to recover possession of real property against Mr. Ezzat Eid?

Appellants allege that they will be so situated to be adversely affected by any disposition made by the court on the subject matter. How could Judge Kaba have ruled otherwise when this very issue of ownership to the property had been disposed of by his predecessor?

This Court has said, No judge has the power to review, modify, or rescind any decision or any point already passed on by any other judge who is of concurrent jurisdiction. The only remedy is an appeal to an appellate court. *Kpoto vs Kpoto* 34LLR, 371, 382 (1987);

This Court has also said, "*The withdrawal of an appeal and payment of cost is an indication of submission to and compliance with the judgment appealed from, and thereby finalizes the judgment with respect to the issues which it concluded*" *Brown Boveri Cie, AG., vs. Johnnie Lewis and Joseph Tamba, et al*, 26LLR, 170, 174 (1977).

The appellants having withdrawn their appeal and thereby put finality to the dispute over the land, we agree with Judge Kaba that the issue of title under adverse possession can not be a subject of re-litigation before the same court.

We affirm the Judge's ruling denying appellants' motion to intervene as there is no interest of the appellants in this matter that needs to be protected; considering that without title there can be no conveyance and without title in real property there can be no interest thereto,

The Clerk of this Court is ordered to send a mandate to the court below to give effect to this judgment, with costs against the appellants. And it is hereby so ordered.