

The **Puk Yang Fisheries**, Garworlohn Township, Burshrod Island, Montserrado County, APPELLANT VERSUS The **Buchanan Building Material**, Bushrod Island, Represented by its authorized personnel and the Monrovia City Corporation
APPELLEES

APPEAL

ARGUED: November 25, 2008 DECIDED: January 29, 2009

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE
COURT

The appellant, Puk Yang Fisheries brought an action of ejectment against the appellees complaining that it entered a lease agreement with the National Port Authority (NPA) for an undeveloped 0.975 acres of land lying opposite the area known and identified as Logan Town Rice Store in the Township of Garworlohn, Bushrod Island; that after appellant had cleared the area and assembled her materials for construction of a Cold Storage and while the foundation was being dug, the City Police from the Monrovia City Corporation interrupted the appellant's construction work on ground that the land in question was a government land being administered by the Monrovia City Corporation. While this interruption was being addressed, the appellant, Buchanan Building Material began to assemble materials on the same site that was cleared by the appellant with the aid of the Monrovia City Corporation. Within a few days thereafter, the Buchanan Building Material Store began construction on the appellant's leased property under the supervision of the Monrovia City Police upon the orders of the City Major of Monrovia, and against the objection of the appellant. The appellant had contended that the area in question was outside the territorial limit of the Monrovia City Corporation evidenced by an act of the National Legislature which created the Township of Garworlohn on the Bushrod Island.

Appellees in answer to the appellant's complaint, stated that the parcel of land under dispute is part and parcel of 30.3 acres of land that the National Port Authority refused and neglected to secure by a public land sale deed against the advice of the Ministry of Lands, Mines & Energy and therefore the said 30.3 acres of land fell within the administrative territorial spear of the Monrovia City Corporation, the legally constituted custodian of all government owned real property within the area of the Monrovia City. That the 30.3 acres of land was outside the 476.8 acres of land that the government of Liberia granted to the United States of America for the

construction of the Free Port of Monrovia and therefore the 30.3 acres of land, portion of which is the subject matter of the ejectment suit, is not and cannot be property of the National Port Authority (NPA).

In its reply, the appellant countered that the parcel of land is situated on the 476.8 acres confirmed by the appellee to be owned by NPA, appellant's grantor; that the appellant was willing to submit itself to a board of arbitrators to ascertain the exact area on which the disputed property was located. It also stated in its reply that the act of leasing by MCC was illegal as the Supreme Court of Liberia has ruled in several cases that the Monrovia City Cooperation has no authority to buy and sell, grant and convey to any persons part or portion of public land within the city bounds. In face of this law, any lease agreement executed by the MCC is void and has no legal effect. Besides, the MCC had its boundary up to the Mesurado River and the location of the disputed property was in the Township of Garworlohn and on January 9, 2006, the Attorney-General of the Republic of Liberia had clearly advised the authority of MCC that with the creation of the Township of Garworlohn on the Bushrod Island, the territorial limit of the MCC stopped at the Montserrado River as in keeping with the act creating the township of Garworlohn which was approved on October 8, 2003, and published into Hand Bill on October 17, 2003.

As the legal proceedings progressed with the parties filing various applications to the court below, which included a motion by the appellant for a Board of Arbitrators to be set up to ascertain whether in fact the land in dispute was situated on the 30.3 acres that the MCC is claiming as government property, the co-appellee, the Buchanan Building Material, requested the court below to join the MCC, appellees' lessors, as a party. This request was granted by the court. Thereafter, the MCC filed a motion to dismiss the appellees' complaint stating that according to our constitution, the Civil Law Court has no jurisdiction over the MCC and that if the appellant had any claim against the MCC it should be filed in the Claims Court in accordance with 1 LCL Revised, Section 5.18 and Chapter 66.

The judge heard the arguments on MCC' motion to dismiss and ruled granting the motion. It is for review of this ruling of the judge that the appellant has come to this Court. There are two issues that we find pertinent to deciding this matter-

ISSUES:

1. Whether the Judge of the Civil Law Court ruled wrongly when he dismissed the ejectment action for lack of jurisdiction over the MCC who subsequently was joined and agreed to be joined as party defendant in the ejectment action?

2. Whether the land in question is part and parcel of NPA's 476.8 acres?

The Buchanan Building Material Store, co-appellee, moved the court below during the hearing in proceedings of ejectment against it by the appellant to join the Monrovia City Corporation (MCC) as party defendant since its possession and enjoyment of the property, the subject of the ejectment action emanates from a lease agreement by and between it and the MCC. And since the Buchanan Building Material Store interest derives from the MCC which has undertaken in the lease to defend and protect movant's peaceful and quiet enjoyment of the said property, MCC was a fit and proper party defendant to the action of ejectment. The court ruled granting the motion to join MCC. The MCC filed a concession to the motion to join, simultaneously filing with its concession, an answer to the appellant's complaint along with a motion to dismiss. This motion to dismiss requested that the court dismiss the action for lack of jurisdiction since all suits brought against the government, in which category MCC is placed, originate in the Claims Court, with appeal therefrom made directly to the Supreme Court. The MCC cited Article 26 of the Constitution. The appellant in its argument countering the motion to dismiss stated that the MCC according to its Charter can sue and be sued and so the court had acquired legal jurisdiction over it and the subject matter.

The Judge heard the arguments and ruled that it was constrained to agree with the MCC/Movant that the Civil Law Court lacks jurisdiction over the MCC as well as the subject matter of the suit. The court held that whether the MCC could sue and be sued, it did not change the nature of the corporation being a wholly government entity.

This court says that this action of ejectment was originally between two private entities. The concession of MCC to join as a party defendant to protect its interest as grantor of one of the parties, and subsequently moving the court to dismiss the action asserting jurisdiction of its person—especially when the Claims Court relied on does not exist and has never been established—in our view is to work injustice and inequity. Property matters involving government or its entities have always been settled in our existing Civil Law Court and civil divisions of our circuit courts. If this ruling by the court below is upheld by this Court, we wonder where justice would be when the MCC can sue a party in any of our existing courts but insist that it can only be sued in a Claims Court that does not and has never been established.

This Court holds that in the absence of a claims court, all civil actions involving

government and its entity are properly cognizable before the Civil Law Court and civil divisions of our circuit courts.

There seems to be one germane issue of fact which runs through this matter as to whether or not the subject property is on the 30.3 acres of land said by the appellee to be public property. Excerpts from the Complaint, Answer, and Reply, read:

Plaintiff's Complaint: That the area leased to the plaintiff by the NPA is part and parcel of the NPA 1943 grant of 478.6 acres of land for which the Minister of Lands, Mines and Energy conducted a Cadastral Survey and produced a map thereof in the year 2004. (see count 2)

Defendant's Answer: That the defendant avers and says that its lease-hold right to the said property, subject matter of this ejectment suit, derives from portion of the 30.3 acres of land that the National Port Authority blatantly refused and neglected to secure a public land sale deed for in violation of the advice of the then Minister of Lands, Mines and Energy, and therefore the said 30.3 acres of land fell within the administrative territorial spheres of the Monrovia City Corporation, the legally constituted custodian of all government-owned real property within the limits of Monrovia. (see count 4).

...Further to count four (4) of this answer, defendant submits and says that the cadastral survey map referred to in the plaintiff's complaint was fraudulently secured, for in 1939 under an agreement, the Government of the Republic of Liberia granted 476.8 acres of land to the Government of the United States of America for the construction of the Freeport of Monrovia. After the survey of the said 476.8 acres of land, the Management of the National Port Authority (NPA) requested for an additional 30.3 acres of land. Even though the said 30.3 acres was demarcated, yet it was outside the agreement and predicated upon this, the ministry of Lands, Mines and Energy then advised the Management to lobby for same and secure a public land sale Deed which they neglected and refused to do. Therefore, the 30.3 acres of land portion of which is the subject matter of this suit, is not and cannot be property of the National Port Authority (NPA). (see count 6)

Plaintiff's Reply: ... (Plaintiffs) further says that the 30.3 acres that the defendant made reference to in count 5 of its answer lie outside the 476.8 acres originally owned by the NPA. More besides, plaintiff says that the defendant 's construction work is being carried out within the middle of the 476.8 acres owned by the NPA, plaintiff's grantor, which the defendant acknowledged. Plaintiff also says that she will be delighted and willing to submit this matter to arbitration to determine whether or not the defendant's construction work is being carried out on the 476.8 acres of the plaintiffs grantor 's property or on the alleged 30.3 acres which the defendant claims lies outside the plaintiff's grantor's 476.8 acres. plaintiff maintains and submits that as a matter of fact, the

construction works of the defendant is being carried out on its property leased from the National Port Authority and that the location is within it's the 476.8 acres owned by the plaintiffs grantor... (see Count 4) .

The dispute in this matter is that the property claimed by the parties is separate and distinct and not one and the same on which the parties rely. In this case where the appellant's grantor's land of 476.8 acres is not in dispute, the court simply has to ascertain whether or not the property in issue is on the 476.8 acres of NPA, or on the 30.3 acres not legally acquired by the National Port Authority.

This Court has said, that in order to expedite the numerous actions of ejectment brought to our courts, courts below should not hesitate to submit parties in an ejectment action to a board of arbitration to ascertain properties where each claims separate and distinct property.

The appellant having filed a petition for the setting up a board of arbitration to determine the exact location on which the construction work is being carried out, this Court feels that there is no better way for the court below to expedite this matter than to grant the petition forwarding the parties to a board of arbitrators to ascertain the exact location of the dispute property.

Because of the position we have taken, we do not pass on the issue of MCC's capacity to lease the property or its relationship to Garworlohn township.

In view of the foregoing, the ruling of the judge below is reversed with instructions to proceed in accordance with this opinion. AND IT IS HEREBY S ORDERED.