MARY SHERIFF of the city of Monrovia APPELLANT VS. **Jessie K. Mulbah** and the **Intestate Estate of the late Chief Bah Bai** by the thru Foday Kamara, Morris Kaizulu and Morris Sonni, Administrators, de bonis Administratrix of the City Monrovia, Liberia APPELLEES

HEARD: April 26, 2011 DECIDED: July 22, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

Mrs. Mary Sheriff, appellant, filed before the Civil Law Court, Sixth Judicial Circuit, sitting in its December 1995 Term of Court, a complaint that she and her late husband Abdulai J. Sheriff purchased a town lot of land in fees simple and as tenants by the entirety on August 26, 1969. She attached to her complaint a certified copy of her deed to the property, being lot No. 8 G-4, sold to her by the late Sarah King Howard, sole executrix of the estate of E.G.W. King. The property being located and situated in Lakpazee, Sinkor, Monrovia, was probated May 2, 1969, and registered in Vol. 98-A page 92. The appellant alleges that since her purchase, she has openly and adversely occupied the property up to August 1995, and she had never been questioned by the defendants nor any action brought against her in connection with her ownership, use, and occupancy of the property.

In August 1995, however, the appellees wrongfully and illegally entered upon and commenced exercising right of ownership and possession of the property and refused to vacate and surrender the said property to appellant, which wrongful detention and withholding of said property, with the refusal to vacate, the plaintiff alleges she has suffered inconvenience and damages.

The appellees, Jessie K. Mulbah and the administrators of the intestate Estate of the late Bah Bai, answered to the complaint, stating that the grantor of the piece of property sold to appellant was never the owner and has never owned said land in law and equity and therefore appellant ownership of said land is in vacuity and the deed issued null and void. That the land in question was purchased by Jessie Mulbah from

the administrators of the Bah Bai Intestate Estate, said land forming part of the Intestate Estate located in Matadi. Further, plaintiff's contention that no action was taken by the co-appellant intestate estate since she occupied the property is false and misleading, in that in 1976, the co-appellee intestate estate instituted an action of declaratory judgment against the grantor of appellant's deed for land situated in Matadi and of which property the land in question is part. The Supreme Court having declared the property in dispute as part and parcel of Bah Bai intestate estate, co-appellant administrators of Bah Bai Intestate Estate had the right to enter said property, possessed it under the law, and sell same to co-defendant Jessie Mulbah. The appellees prayed that the appellant's claim of damages be dismissed since appellant had laid no foundation for damages; moreover, appellees had cause no damage to the appellant as they had entered upon a premises exclusively owned by them.

In reply to the appellees answer, appellant stated that she was not a party to the declaratory judgment. The parties against whom the declaratory judgment was instituted, were the National Housing Authority and the King Family. Since she was not made a party, the appellant says the decision is not binding on her. Besides, the appellant contents that the judgment against the Kings was rendered by default as the Kings did not appear to defend their title. It was the National Housing who appealed the matter and a judgment made on September 22, 1994. Our law in this jurisdiction provides that a person served a summons without personal delivery on him and who had no personal notice of the summon may appear and defend the action in five years; hence, the judgment is not final to the Kings and the grantees. Appellant reiterates her complaint that immediately upon purchasing the property in 1969, she built a temporary house and an outside toilet on the premises allowing a family to live there adversely and openly until 1995, when she decided to build her house and commenced digging in an attempt to construct her foundation. The allegation that the land was vacant when it was sold to co-appellee Mulbah is untrue as the toilet is still on the premises and the foundation of the original zinc structure is still on the premises.

The appellant filed along with her complaint a motion for preliminary injunction against the appellees, praying the trial court to order the Clerk to issue and place in the hands of the Sheriff a writ of injunction directed to the appellees, prohibiting and

restraining them from further entering upon the premises and erecting any structure thereon until and unless otherwise ordered by the Court in a final decree.

We note that his matter has appeared before this Supreme Court twice and each time it was sent back to be retried. This appeal before us stems from a mandate of this Court to the trial court to hear this matter anew based on a writ of error filed by the appellees who contended that they did not have their day in court.

During the March 2009 Term of the Civil Law Court, Sixth Judicial Circuit, the appellant was called on to take the witness stand and testified essentially to the facts stated in her complaint as summarized above. She stated that in August 1969, she and her husband bought the property from Sara King Howard; since they were not ready to build their dream home on it, they agreed to have a Carpenter, Mr. Kennedy and his family squat on it as care-takers. Mrs. Kennedy and his family lived on the property from 1970 to 1990 when he was killed by a strayed bullet as he was out looking for food for his family. The family thereafter fled the premises because of the war. She frequently sent to have the grass cut on the property and in 1985, decided to build her home on the property. Ready to build, she began to haul building materials, such as crush rocks and sand on the property to erect her foundation and it was when she noticed that her cornerstones were removed, thrown down and replaced by new ones with the initials J. K.M., and that some construction material lay near the land. She had these new cornerstones removed and her old ones put back and she instructed her mason to go ahead and dig her foundation. Much to her surprise, appellant said co-appellee Jessie K. Mulbah unauthorisingly entered the property, removed her markers and replaced same with his own, covered up the holes that she had dug for her foundation and proceeded to dig his foundation to the prejudice, damage and against the property right of the appellant. The appellant went back and removed his markers and cover the holes dug for his foundation and Jesssie Mulbah came back and again removed her markers and covered up the holes dug for the construction of her foundation. This drama between them went on back and forth, back and forth until the appellant decided to consult a lawyer to have this action of ejectment instituted.

Testifying for the appellant was one Theresa Gilderserve. The witness confirmed that

she and the appellant purchased the land from Sarah King Howard in the 60's and that the appellant had one carpenter living and taking care of her property. The witness said that unlike the appellant she has already built several houses on her land and lives there. That she left the country during the war but usual comes back and forth to Liberia and it was at one point that she saw a house being constructed on the land. She inquired and was told that the house was being constructed by one Jessie Mulbah. She thought then that it was the appellant that had sold the land to co-appellee Mulbah, but contrarily, the appellant narrated to her how the appellees had entered and illegally taken her land.

The appellees in their defense brought forth several witnesses who testified to the effect that the late Chief Bah Bai and the people of Matadi, Gboveh Town were granted 209.55 acres of land in 1908, and that the appellant's land form part of the 209.55. That they had won a case against the Kings, the appellant's alleged grantor. They put into evidence the case decided by this Supreme Court on February 16, 1995, in which this Supreme Court confirmed the ruling of the Sixth Judicial Circuit, Montserrado County, declaring the co-appellant Bah Bai and the People of Gboveh Town owners of 209.55 acres of land situated and lying in Matadi, portion of which had been expropriated for the Matadi Estate, and as the rightful owners, they, and not the Kings, were entitled to the expropriated amount of $75,000.00.

The appellees' second witness, Mr. Morris Kiazolu, testified in Chief that he was one of the representatives of the Bah Bai and the Gboveh Town People of Matadi who sued the Kings and they won the case below by default judgment. When the matter came on appeal to the Honorable Supreme Court, the Court ruled affirming the judgment below. After this Court's final ruling, a mandate was sent to the Civil Law Court to enforce the judgment that the portion of land being occupied by the National Housing be paid for to the Bai and Gboveh People. He stated further that after the Supreme Court's Opinion, they made an announcement for a period over the radio informing the public that the Bah Bai and Gboveh families won the case that was between the Kings and Bah Bai. This announcement, he said, was also published in the newspapers. After the announcement was made, he said they went to the Ministry of Lands, Mines and Energy and the Ministry ordered a survey team, thru the Honorable

Supreme Court's mandate to make a map of the entire area of 209.55 acres of land. When the survey was conducted, Government condemned 17 acres, which is equal to 68 lots and the National Housing Authority paid to the Bah Bai in accordance with the Supreme Court's ruling. The Kings do not have any land in Matadi area, he said, only the Bah Bai. He also testified that since the ruling referred to, they have made announcements that those who bought land from the Kings should come to negotiate with them since the Kings do not own land in Matadi. Those who have developed property in the area have been visited and asked to make payments and where the area is not developed, and they have decide to sell the vacant lots. Some of those outsiders who bought land from the Kings, he said, are coming to meet with them and some have refused to meet them. When vacant lots are decided to be sold, a notice to survey is placed out so that those that own the land can come up. He testified that is how they are operating in the Old Matadi area.

After the presentation of evidence, each party requested the judge in accordance with Section 22.9 of our Civil Procedure Law Revised to explain to the jury points of law in support of his case. Having heard the facts and evidence and the charge by the judge as requested, the Jury brought a unanimous verdict for the appellant, finding the appellees liable. Given this verdict brought against them, the appellees complained that the said verdict was against the weight of the evidence adduced at the trial, and so filed a motion for new trial. The Judge granted the motion and ruled setting aside the jury's verdict, awarding a new trial on the basis that:

"The appellant failed to produce her grantor's deed into evidence or her grantor to testify on her behalf; that action of ejectment should establish a chain of title and should not rely on the weakness of the defendant's title; the absence of the appellant's Mother deed does not establish sufficient evidence to prove to the court that appellant's one lot of land is within the property of her Grantor's deed.

The Opinion of the Supreme Court during its October Term, A.D. 1995, clearly states that the 209.55 acres of land is jointly owned by both the intestate estate of the late Bah Bai and the people of Gboveh Town. The issue before the Court is not to challenge the authority of one tenant to dispose of the subject property, but it also

challenges the appellant to sue one tenant to recover parcel of the 209.55 acres of land jointly owned by the intestate estate of the late Bah Bai and the people of Gboveh Town. The court says that the appellant should have sued both the intestate estate of the late Bah Bai and the people of Gboveh Town as defendants since both jointly own the 209.55 acres of land."

Excepting to this ruling of the Judge, the appellant filed her bill of exceptions and has come before us for our review, stating that the Judge erred when he set aside the empanelled jury unanimous verdict and awarded a new trial without any legal justification. Our 1CPLR, §26.4. relating to post trial motion for new trial states, "After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separate issue where the verdict is contrary to the weight of the evidence or in the interest of justice."

The appellant cited the case Patrick Nvandibo vs. Kiazolu et al, decided by this Court on December 18, 2008, in which we said the co-appellee Bai Bah Intestate Estate is unauthorized to sell any of the land of their aborigine grant except by permission of the government, and that the 209,55 acres are not part and parcel of Chief Bah Bai's Intestate Estate. Appellant is contending that based on this opinion it was illegal for the co-appellee Kiazolu, et al to have sold appellant's land to Jessie Mulbah, co-appellee.

We agree with the trial judge that the appellant in an action of ejectment should rely on the strength of her title and not the weakness of the co-appellee and that the Nayanibo's case is not applicable in this matter. However, we disagree with the ruling that in the absence of the appellant grantor's deed, or the appellant grantor, who was dead, coming to testify on her behalf, the appellant can not rely on her deed to eject appellee from the land since without her grantor's deed she can not establish sufficient evidence to prove that her one lot is within the property of the grantor's deed. In fact, we have difficulty following this reasoning of the judge, especially where the appellant has pleaded prior possession. That she bought the land in 1969, evidence by a duly probated and registered deed; that the property was occupied by her tenant up to 1990 when it was deserted because of the war, and in 1995, twenty six years later, the appellees illegally entered and possessed her land.

It is public knowledge that the Kings have laid claim to parcels of land in the Matadi Area often referred to as King's farm, and sold land to various persons in the area, some of the Kings grantees acquiring land from them as far as the Sixties. Some of these grantees have constructed on the land purchased, as testified to by appellant's witness, Mrs. Theresa Johnson Gildersleve, while others land remain vacant. The appellees witnesses themselves testify to the King claim to and sale of land in the area; and there is no evidence that the co-appellee Bai Bah and the Gboveh People of Matadi ever try to evict the Kings' grantees until the issue arose with the National Housing Authority in 1976, after which the court declared the Bah Bai and Gboveh People of Matadi as owners of 209.55 acres of land in the Matadi area.

In this case where the appellant had possessed the land with her tenant openly and notoriously living thereon up to 1990, and for 21 years, could the co-appellees who had done nothing to repossess the property and who did not join the appellant as party to the declaratory judgment, now dispossess the appellant of the property based on the courts judgment where appellant grantor who was out of the country had failed to appear, and appellant was not a party to the suit?

In Jackson vs. Mason, 24LLR, 97, 124 (1975), this Court said that "it would be untold disturbance to society if unduly belated demands were allowed to defeat long-established vested titles to real property, especially where the silence of claimants for long periods of time could be presumed as acquiescence in the previous disposition of the property, and where the status quo, having been long-established, could not be disturbed without hurt to the rights of innocent parties."

Besides, it is unclear from the record which of the Matadi area actually comprise the 209.55 acres under the aborigine grant since this Court is aware that the administrators of Chief Bah Bai are claiming and selling vacant land under this aborigine deed any and everywhere in Sinkor, even as far as New Airfield Road and beyond. It was therefore necessary for the survey map referred to by the appellees' second witness to have been put into evidence to show that the appellants land claim in her deed form part and parcel of the 209.55 acres. Section 25.5 of our CPLR states that, "the burden

of proof rest on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disprove by that party." We feel that it was not incumbent on the appellant to show that her deed formed part of her grantor's property but that having claimed the disputed property as that represented in her deed, the burden shifted to the appellees to show that the property was part and parcel of their aborigine grant of 209.55 acres of land.

The trial judge states that the issue before the court is not to challenge the authority of one tenant to dispose of the subject property, but it also challenges the appellant to sue one tenant to recover parcel of the 209.55 acres of land jointly owned by the intestate estate of the late Bah Bai and the people of Gboveh Town; that the appellant should have sued both the intestate estate of the late Bah Bai and the people of Gboveh Town as defendants since both of them jointly own the 209.55 acres of land.

We fail to see the legal point being made by the trial judge since the appellant was not challenging the grant of 209.55 acres of land. If the alleged illegal entry and possession was initiated by the sale of the property by the co-appellees, administrators of the intestate estate of Chief Bah Bai to Jessie K. Mulbah, under what principle of law is the trial Judge requiring that the appellant should have included all the grantees of the aborigine grant, especially when they were not part of the sale but the administrators of Chief Bah Bai Intestate Estate who have been selling land said to be part and parcels of the 209.55 acres of the aborigine grant, and this court has ruled that it is illegal since the aborigine grant does not form part and parcel of Chief Bah Bai's Intestate Estate and can not be sold without the consent of the government?

Our law provides that anyone who is rightfully entitled to the possession of real property may bring an action against any person who wrongfully withholds possession thereof ..." Sec. 62.1 CPLR. In this case it is the co-appellees, the administrators of Chief Bai Bah Intestate Estate who have entered and sold the appellant's property, and are along with Jessie K. Mulbah withholding the property from the appellant.

"When it is apparent that there has been a serious miscarriage or total failure of justice,

the trial court is under a duty to set aside the verdict and grant a new trial." 58 Am Jur, Section 62 page 130.

In this case, the appellant alleges that her tenant lived on the property from 1969 up to 1990 when he was killed during the civil crisis and others on the property fled the city. The appellees did not dispute that the appellant's tenant, lived and operated a carpenter shop on the disputed property up and until the war when he was killed. The co-appellees, administrators of Bah Bai Intestate Estate sold the land to co-appellee Jessie K. Mulbah in 1995, relying on the declaratory judgment declaring the Bah Bai and Gboveh People as the true owner of land that the government expropriated for the Matadi Housing Estate as part and parcel of the 209.55 acres of land of the aboriginee grant to the Bah Bai and Gboveh People.

The jury having heard all the facts and evidence adduced in this matter, and determined the weigh and credibility of evidence during the trial, brought down a verdict of liable against the appellees. From our review of the records in this matter, we do not agree that there was an apparent serious miscarriage or failure of justice to warrant the judge granting of a new trial. Accordingly, where the jury has reached a conclusion after having given consideration to evidence which is sufficient to support a verdict, its decision should not be disturbed by the court.

We must add here that there has been brewing in our society controversies relating to ownership of land and one of such matters constantly now appearing before us is this matter of an aborigine grant of 209.55 acres of land given under a communal holding by President Barclay on February 7, 1908, to Chief Bah Bai and the People of Matadi Gboveh Town. Complaints are being made against the administrators of Chief Bah Bai of claims and sale of vacant lots not only in the Matadi and Lakpazee areas but extending as far as the airfield area referred to as the Airfield New Road up to an including Tubman Boulevard towards the Atlantic Ocean. This Court is concerned that this communal holding of 209.55 acres to Chief Bah Bai and the People of Matadi, Gboveh Town if not dealt with adequately by the government, shall be a reenactment of the Vai Town Case. The Act of 1905 for the use of public land grant to various tribes states that

"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."

The grant to Chief Bah Bai, of Matadi and the People of Gbovo Town was said to have comprised thirty (30) heads of families. Who are these families and why have they not petition the Government for deeds granting them the land in fee simple. This Court has ruled that the Letters of Administration given to the heirs of Chief Bah Bai is not legally adequate to represent those entitle to the grant of property since the grant is a communal property and does not form part and parcel of the intestate estate of Chief Bah Bai.

This Court emphasizes the need for the grant property to be transferred to the families of the grant so as to give each family fee simple title to certain portion of the property under the grant.

Since we do not find that there was any substantial injustice done by the jury's verdict so as to warrant its overturn by the judge and awarding of a new trial, we are left with no alternative but to reverse the judge's ruling granting a new trial, and uphold the verdict of the Jury finding the appellees liable. AND IT IS HEREBY SO ORDERED.

THE APPELLANT WAS REPRESENTED BY COUNSELLOR JOHN E. NENWON OF THE TIALA LAW ASSOCIATES, INC. THE APPELLEES WERE REPRESENTED BY COUNSELLOR FREDERICK D. CHERUE OF THE DUGBOR LAW FIRM.