

David Kpadeh Sloan, the Administrator of the Intestate Estate of the late James M. Boley of Fendell, Mount Barclay, Montserrado County Liberia APPELLANT Versus
The Administrators of the Intestate Estate of the late Norbor Abdulai Parbai
of Montserrado County, of the Intestate Estates of the City of Monrovia, Liberia
APPELLEES

LRSC 30
APPEAL. EJECTMENT

HEARD: MARCH 23,2010A DECIDED: JUNE 29, 2010

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On November 18, 2004, the administrators of the intestate estate of Norbor Abdulai Parbai, the plaintiffs/appellees, filed before the Monthly and Probate Court of Montserrado County, a complaint alleging interference with their estate.

The complaint was filed against David Kpadeh Sloan, administrator of the intestate estate of James M. Boley, defendant/appellant, who also claimed ownership to the same property.

During the September, 2005 term of the Monthly and Probate Court, Judge J. Vinton Holder heard the matter and ruled in favour of the plaintiffs/appellees. The Judge held that of the two certified copies of public land sale deeds proffered by the two parties, the one presented by the intestate estate of Norbor Abdulai Parbai constituted and conveyed good title to the disputed property.

On appeal to the Supreme Court, this Court, in an opinion delivered on May 11, 2007, reversed the ruling of the Monthly and Probate Court on the ground that that court does not have the authority to decide title issue. The Supreme Court ordered the Monthly and Probate Court to send the matter to the Civil Law Court, Sixth Judicial Circuit, Montserrado County to determine the issue of title raised by the contending parties.

The Civil Law Court tried the case and on October 2, 2008, the empanelled jury brought a verdict in favour of the plaintiffs/appellees. However, the verdict was set aside and a new trial awarded as a result of a motion for new trial filed by the appellant. The records show that the plaintiffs/appellees announced exception to the ruling granting the motion for new trial and filed a petition for the writ of certiorari before

the Justice presiding in the Chambers of this Court. It appears, however, that the Chambers Justice declined to issue the alternative writ of certiorari. The law provides that the issuance of an alternative writ is at the sole discretion of a Chambers Justice; from his/her refusal there can be no appeal. § 2.2, New Judiciary Law.

With the refusal of the Chambers Justice to issue the alternative writ of certiorari, the plaintiffs/appellees settled for a new trial. A second trial was conducted during the September, 2008 term of the Civil Law Court which, like the first trial, also ended in favour of the plaintiffs/appellees. The defendant/appellant again noted exception to the verdict of the jury and filed another motion for new trial alleging jury tampering. We quote counts 1, 2, and 3 of the motion:

"1. Because the jury was bribed by the plaintiffs in the ejectment action with an amount of Four Thousand United States dollars (US\$4,000.00) out of the Five Thousand United States dollars (US\$5,000.00) paid to the plaintiffs by the principal of Booker Washington Institute (BWI) for ten (10) acres of land; movant hereby gives notice that he shall prove to this court this accusation of bribery during an investigation that will be conducted by Your Honour on the bribery issue."

"2. That one Morris Wright who happens to be associated with the plaintiffs' family exposed this information of bribery offered by the plaintiffs to the jury when he openly and boastfully said that the plaintiffs could not have allowed the case verdict to be brought against them when he had this amount of money with him; hence, he passed the money onto the jury for the verdict and therefore the verdict was brought in his favour as plaintiffs in the ejectment action, since indeed the jury was bribed with the Four Thousand United States dollars (US\$4,000.00)."

"3. The verdict being illegal and runs contrary to the facts and evidence of the case, especially so said verdict being a result of bribery, it should be set aside and a new trial awarded as required by law,

Simultaneous with the filing of the motion for new trial, the defendant/appellant filed a bill of information which alleged essentially that after the verdict in the case, the administrators and members of the late Parbai family who won the case had threatened to apply violence and the defendant/appellant will not live to tell the story, if they did not vacate their land. The judge of the Civil law Court, while acknowledging the seriousness of the allegation contained in the bill of information however observed that the Civil Law Court lacked jurisdiction and authority to investigate the matter. The Judge therefore instructed the clerk to inform the County Attorney of Montserrat

County to investigate the allegation in the bill of information. And we see in the records a letter dated October 7, 2008 under the signature of Ellen Hall, Clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrat addressed to Cllr. Samuel K. Jacobs, County Attorney of Montserrat County on the orders of His honor Yussif D. Kaba, Presiding Judge of the Civil Law Court to take charge of and investigate the allegation in the bill of information.

We are in full agreement with the position of the trial judge on this point and will not belabor the issue further, as it is trite law that the Civil Law Court, Sixth Judicial Circuit lacks jurisdiction over criminal proceedings.

The plaintiffs/appellees filed a resistance to the motion for new trial. Counts 1, 3, and 5 of the resistance state:

"1. That as to count 1 of movant's motion, respondents categorically deny the same and say that the said allegation is false, baseless, and without any legal foundation as at no time did respondents/plaintiffs ever attempt to nor bribe the empanelled jurors as alleged by movant."

"3. That as to count 2 of movant's motion, respondents say that the said count is false and misleading ... that any family member known as Morris Wright did expose or give information of an alleged bribery offered by respondents/plaintiffs."

"5. That as to count 3 of movants' motion, respondents say that the said count has no legal basis, because it has fallen short to enumerate or state as to how the verdict of the jury is illegal and how such verdict runs contrary to the facts and evidence of the case, especially so where it is within the province of the jury to conclude on the facts as are presented in the case at bar and to also conclude on the probative value of the evidence adduced; further, respondents say that movant's motion for new trial must be denied and dismissed in that the said movant is on fishing expedition and cannot and has not stated any one particular legal ground for which Your Honour should sustain the motion, hence the said count 3 and the entire motion for new trial must be denied, overruled, set aside and dismissed; and [respondents] so pray."

The trial judge, after conducting investigation into the allegation of jury tampering held that the defendant/appellant did not prove the allegation of jury tampering. The judge then confirmed the unanimous verdict of the jury brought in favour of the plaintiffs/appellees. The case has come to us for review on regular appeal.

We will consider two salient issues for the determination of this case:

1. Whether or not the defendant/appellant established proof of the allegation of jury tampering?
2. Whether the jury verdict and the court's final ruling based on said verdict are supported by the evidence adduced at trial?

We will address these issues in the order presented.

Allegation of bribery, no doubt, amounts to jury tampering; a situation of an improper influence on a juror or the panel of jury. A proper case of jury tampering vitiates the verdict.

This Court has repeatedly held that where an allegation of jury tampering is made, the trial court is under obligation to conduct full scale investigation and if jury tampering is established, it should set aside the verdict.

In the case: Gringer vs. Bai, 19 LLR 372 (1969), this Court held that when a charge has been raised by one of the parties of jury tampering, the trial court should suspend all proceedings and properly investigate this serious allegation.

As stated earlier, the trial judge conducted investigation into the allegation of jury tampering. Two witnesses were produced by the defendant/appellant.

The first witness called himself Tarnue Kollie Richard Dorbor. He testified that on October 2, 2008, at about 7:15 p.m. Morris Wright, Brima Parbai and Varney Parbai were on their way to Kakata when they stopped at his farm along the Kakata highway; he said that he was sitting where he usually sits to investigate town matters. Upon their arrival there, the witness claimed that Morris Wright made a boastful statement saying: "I told you people to move; in fact you people thought that you have money, but we got our money and used it on the case and I am leaving to see my client, when I come back, you people will see what will happen. After that he departed and went on Ms journey."

On the cross-examination, the witness informed court that he was not there when the jury was allegedly bribed; that the testimony he gave was what he heard from Morris Wright. He further informed the court on the cross-examination that he was one time attacked by the Parbai people in the same land dispute.

The second witness for the defendant/appellant was Lahun Sambolah. He testified that on the day of the verdict he gave ride to Varney Parbai and his son Jusu Parbai; that while they were in his car, Jusu Parbai informed him that they spent money, if not, "the case was going to fall on them". The following questions were posed to the witness on the cross-examination:

Question: "So you are telling this court and judge that the only thing you know about this bribery case is what you were told".

Answer: "Exactly so. This is what I was told."

Question: "But you as a person cannot say for a fact, who was bribed and how much was spent?"

Answer: "For me, I did not follow any case in this court. What I heard from Jusu is what I am saying here."

Question: "Mr. Witness, are you the same person, Mr. Sambolah, who bought land from David Kpadeh Sloan, who is also your brother?"

Answer: "Yes".

The plaintiffs/appellees also produced two witnesses. The first witness was Morris Wright, alias Franklin Wright, who testified as follows:

"I am very surprised to hear my name in this bribery allegation that I told some one that I spent money; this is very surprising. The very day the verdict came down; I slept in town here, [Monrovia] I never went to Fendell at their site, so I have no knowledge of what they are saying against me."

The second witness for the plaintiffs/appellees was Jusu Parbai who testified as follows:

"As far as I am concerned, on the 31 st day of May, 2007, we were attacked by some group headed by David Kpadeh Sloan on the land in question. From that time we left the land I have never been there, because I am afraid one of my brothers sustained serious injury from that attack. I have never ridden any car with someone who has threatened to attack me and my family. I am not aware of any bribery being made to the trial jury; that is not to my knowledge; I know nothing about this. So far I stop."

We observe that the witnesses, both for the defendant/appellant and plaintiffs/appellees who testified concerning the allegation of bribery were all parties to the land dispute. No disinterested person was brought by either party as a witness in the allegation of bribery. So as we see it, it is the defendant/appellant's words against the plaintiffs/appellees words.

Secondly, we note that Mr. Morris Wright who is alleged to have made the boastful statement of bribing the jury informed the trial court, while testifying, that he did not travel outside of Monrovia on October 2, 2008, the day of the verdict as alleged by Tarnue Kollie Richard Dorbor. So, if it is true that Morris Wright did not travel outside of Monrovia on the day of the verdict, how is possible that he could have made the statement at a farm on the Kakata highway that they bribed the jury? This leaves us in a in doubt, and this doubt could have been cleared had there been a rebuttal witness to establish that indeed Morris Wright was seen at the farm of Tarnue Kollie Richard Dorbor on the Kakata highway at about 7:15 p.m. and made statement that they bribed the jury. The burden of producing a rebuttal witness rested on the defendant/appellant; and the defendant/appellant did not carry that burden in order to shift the clear alibi set by the plaintiffs/appellees' witness.

Then there is the testimony of Jusu Parbai who categorically denied riding in the vehicle of Lahun Sambolah. He said that there had been violent altercations between the Parbai family and the Boley family and one of such altercations led to a serious injury sustained by his brother. As such, the witness said it was not possible for him to have sat in a car belonging to someone from the side of the Boley family who had threatened his life and the lives of his family members.

We hold that the testimony of this witness has some element of truth. As mentioned earlier in this opinion, when the verdict was brought in the ejectment case between the parties, the defendant/appellant filed a bill of information in which it is alleged that the plaintiffs/appellees had threatened the lives of members of the defendant/appellant's family. Counts 1 and 2 of the bill of information on this point state:

"1. Informant says since the verdict of the jury in the trial of the ejectment action referred to above, the administrators and members of the late Parbai family have been threatening the life of informant and that of members of the James M. Boley family by going in the village occupied by the Boley family and openly telling informant and members of the Boley family to vacate the premises as they, the Parbai family, have

won the case now before this Honourable Court and that upon the failure of the Boley family to leave, they the Parbai family will apply violence to destroy their lives and that they will not live to tell the story. Informant gives notice to prove this allegation at the appropriate time and investigation."

"2. Informant fears that this act of the family being the same thing they did when the first verdict was rendered in the first trial of this case, and the Parbai family wasted acid water on them and nothing came out of it. Informant says that the appropriate action should be taken as informant is afraid that at this time they will not wait and be killed by the Parbai family without defending themselves; hence this bill of information for appropriate action to be taken to avoid the act of violence against informant and his family planned by the Parbai family."

With these serious accusations and counter-accusations of threats on the lives and properties made by the two sides, we find it difficult to believe that on the very day the jury returned verdict against one of the parties, members of the successful party willingly entered in a vehicle belonging to a member of the defeated party and made a boastful statement of bribing the jury in the case. So, without further evidence from a disinterested party confirming that Jusu Parbai made the statement under consideration, it is hard for a reasonable mind to believe the story. Under our law, the burden is on he who alleges to prove; an allegation no matter how properly made does not amount to proof and without proof, an allegation cannot stand. Given the facts and circumstances narrated above, we hold that the defendant/appellant did not establish proof of the serious allegation of jury tampering.

We address next the issue whether the jury verdict and the court's final ruling based on said verdict are supported by the evidence adduced at trial.

During the course of the trial in the lower court, plaintiffs/appellees produced witnesses who testified essentially that the property, subject of litigation, was purchased by their father and grandfather, the late Norbor Abdulai Parbai from the Government of the Republic Liberia and a certified copy of the public land sale deed was executed for the property signed by C. D. B. King on May 8, 1928. The said certified copy of the public land sale deed was produced and introduced into evidence.

Defendant/appellant also produced several witnesses in support of the claim of title to the same piece of property. The defendant/appellant also produced and introduced into evidence a certified copy of the public sale deed said to have been issued by the Government of Liberia on August 5, 1930, and signed by President Edwin J. Barclay.

It is clear, therefore, that the two parties are claiming title to the same property from the same grantor, the Republic of Liberia.

We see from the records that each party has posed serious challenge to the other's title document.

The plaintiffs/appellees, during the trial of the case in the lower court, as well as during argument before us, vehemently stressed the point that the defendant/appellant's title cannot and should not stand because the certified copy of the public land sale deed which defendant/appellant relies on was said to have been conveyed to defendant/appellant's great grandfather, James M. Boley, from the Republic of Liberia and signed by President Edwin J. Barclay on August 5, 1930. The plaintiffs/appellees maintained and has urged upon us to take judicial notice that on August 5, 1930, Edwin J. Barclay was not President of the Republic of Liberia and as such, he could not have signed any public land sale deed.

Our courts are required to take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute. § 25.2, 1 LCL Rev., tit. 1, (1973).

It is not in dispute that on December 3, 1930, President C. D. B. King, along with his Vice President Allen N. Yancy was forced to resign as a result of the Fernando Po labour scandal and was succeeded by President Edwin J. Barclay. This important historical fact of our nation is known or ought to be known by every knowledgeable Liberian. It goes without saying, therefore, that any instrument purportedly signed by President Edwin J. Barclay prior to December 3, 1930, in the capacity as president of the Republic of Liberia is spurious and can only be a product of fraud, as he could not have signed such instrument about four (4) months prior to his ascendancy to the office of President of the Republic of Liberia. We therefore hold that the title instrument introduced into evidence by the defendant/appellant to the disputed land said to have been signed by President Edwin J. Barclay on August 5, 1930 cannot convey title, since Edwin J. Barclay was not president of Liberia on August 5, 1930.

The defendant/appellant in turn, objected to the certified copy of the public land sale deed from the Republic of Liberia said to have been issued in favour of the late Norbor Abdulai Parbai and signed by President C. D. B. King on May 8, 1928 on the ground that said public land sale deed was not verified and authenticated by the Bureau of Archives, Ministry of Foreign Affairs. .

The records show that on July 19, 2007, Counsellor J. H. Constance representing the

defendant/appellant requested the Bureau of Archives, Ministry of Foreign Affairs to authenticate and/or verify the two public land sale deeds in this matter, the one from the Republic of Liberia to Norbor Abdulai Parbai and the other from the Republic of Liberia to James M. Boley. The research report from the Bureau of Archives states as follow:

"REPUBLIC OF LIBERIA MINISTRY OF FOREIGN AFFAIRS MONROVIA,
LIBERIA RESEARCH REPORT

THIS IS TO INFORM That on July 19, 2007, J. H. Constance, Counsellor-At-Law of the Law Offices of Greene & Associates, Inc., Randall Street, Monrovia, Liberia, did request the Bureau of Archives, Ministry of Foreign Affairs, for the authentication or verification of two land deeds; public land sale deed from Republic of Liberia to Norbor Abdulai Parbai and a public land sale deed from the Republic of Liberia to James M. Boley.

In this connection, a diligent and thorough search from the Archives has shown the following:

1. That the public land sale deed from the Republic of Liberia to James M. Boley reportedly recorded in volume 48, pages 23 — 24 could not be found due to the deplorable state of mutilation of the said volume; and, that pages 23 — 24 are not apparent; and, therefore the Ministry is not in the position to state whether or not the said deed exists; and,
2. That the public land sale deed from the Republic of Liberia to Norbor Abdulai Parbai reportedly recorded in Volume 46, page 947 is not apparent on the said page, rather a different instrument: warranty deed from B. W. and M.B.H., Payne to Rachael Caranda. Further, the certified copy of the said deed presented to this office by Counsellor Constance was not issued by the Ministry of Foreign Affairs, but rather Center for National Documentation and Records Agency (CNDRA).

It is our hope that the information provided supra will satisfy your inquiries.

GIVEN UNDER MY HAND AND SEAL OF THE MINISTRY OF FOREIGN
AFFAIRS THIS 20TH DAY OF JULY, A.D. 2007.

Jackson K. Purser DIRECTOR OF ARCHIVES."

During the trial of the case in the lower court, the counsel for the defendant/appellant

used the foregoing letter to object to the certified copy of the public land sale deed of the plaintiffs/appellees on the ground that it was disclaimed by the Bureau of the Archives, Ministry of Foreign Affairs. He prayed the lower court to nullify the certified copy of the public land sale deed of the Parbais. This prompted Counsellor Lavela Koboi Johnson, representing the plaintiffs/appellees to also write to the Bureau of the Archives for authentication and verification of the certified copy of the public land sale deed in favour of the plaintiffs/appellees. We also quote below the findings from the Bureau of Archives, Ministry of Foreign Affairs in respect of this request:

"REPUBLIC OF LIBERIA MINISTRY OF FOREIGN AFFAIRS MONROVIA,
LIBERIA

October 11, 2007

Dear Counsellor Johnson:

This is to acknowledge receipt of your letter dated October 5, 2007, concerning a title contest between the administrators of the estate of the late Mr. James M. Boley and those of the late Norbor Abdulai Parbai.

Please be informed that, on July 19, 2007, Counsellor Joseph H. Constance presented to this office a photocopy of a certified copy of a public land sale deed in favour of Norbor Abdulai Parbai reportedly recorded in volume 46 page 947. The certified copy was issued by the Center for National Documents and Records Agency (CNDRA).

During our search, we found that the page afore-mentioned contained a different instrument mentioned in our research report dated July 20, 2007. However, further search of the Archives, after the source document (original certified copy of the deed) was presented to us, we found that the correct page on which the said deed was recorded is 945 (volume 46). Though the said page 945 could not be found due to the mutilation of the said volume 46, a deed index card was discovered reflecting information of prior recording of the said deed.

The clarification made above is worthy because Counsellor Constance presented to this office the correct volume (46) but a wrong page (947) as shown on the attached certified copy; also attached is the photocopy of the above mentioned deed index card.

We hope that the information provided will assist in the judicious determination of the matter in court.

Sincerely yours,

Jackson K. Purser
DIRECTOR OF ARCHIVES

Cllr. Lavela Koboi Johnson
The Century Law Offices
Broad Street
Monrovia, Liberia."

Based on the foregoing clarification made by the Bureau of Archives, Ministry of Foreign Affairs we do not agree with the defendant/appellant's contention that the plaintiffs/appellees title instrument should have been nullified by the lower court. It must be observed that the civil crises in this Country affected every area, and our depositories of public instruments were not spared. Many public offices, including the Bureau of Archives, Ministry of Foreign Affairs were left in ruins and public records were either totally destroyed, vandalized and/or mutilated. So it is not a strange phenomenon to hear now a day in our Country that instruments or copies of instruments deposited at the archives or at other public places are defaced, difficult to locate or cannot be located at all. Thus when initial effort in locating an instrument proves futile, as in this case, and the instrument is subsequently found, it must be accepted against the background of the crises we had.

The report from the Archives shows that even the defendant/appellant's copy of a certified public land sale deed relied on could not be found. This is what the report said in part:

" [T]he public land sale deed from the Republic of Liberia to James M. Boley reportedly recorded in volume 48, pages 23 — 24 could not be found due to the deplorable state of mutilation of the said volume; and, that pages 23 — 24 are not apparent; and, therefore the Ministry is not in the position to state whether or not the said deed exists; ..."

With respect to the public land sale deed relied on by the plaintiffs/appellees the clarification made by the Bureau of Archives, Ministry of Foreign Affairs clearly indicates that the counsel representing the defendant/appellant had provided the wrong page and this caused the difficulty in locating the copy of plaintiffs/appellees' public land sale deed. This is what the clarification said in part:

"The clarification made above is worthy because Counsellor Constance presented to this office the correct volume (46) but a wrong page (947) as shown on the attached

certified copy; ..."

We are satisfied that the plaintiffs/appellees substantiated their claim of title to the disputed property. Like the empanelled jury that tried the case below, we see no problem with the certified copy of the public land sale deed from the Republic of Liberia signed by President C. D. B. King on May 8, 1928 in favor the late Norbor Abdulai Parbai. This is because on May 8, 1928, C. D. B. King was president of the Republic of Liberia and therefore had full authority to sign public land sale deeds.

WHEREFORE AND IN VIEW OF all we have said above, we hold that the certified copy of the public land sale deed from the Republic of Liberia to James M. Boley purportedly signed by President Edwin J. Barclay on August 5, 1930 is spurious and does not convey title. The ruling of the lower court in favour of the plaintiffs/appellees which was based on the unanimous verdict of the jury is hereby confirmed. The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over this case and enforce its ruling. Costs against the defendant/appellant. And it is so ordered.

Judgment confirmed.

COUNSELLOR JOSEPH H. CONSTANCE OF LAW OFFICES OF THE GREENE & ASSOCIATES, INC., APPEARED FOR THE DEFENDANT/APPELLANT. COUNSELLORS, L. KOBOI JOHNSON AND SAMUEL W. NYAZEEGBUO OF THE CENTURY LAW OFFICES APPEARED FOR THE PLAINTIFFS/APPELLEES.