

Randall D. Solo of the City of Zwedru, Grand Gedeh County, Administrator for the Intestate Estate of the Late Garh Solo, Diah Gboley, Oldman Darlue, Oldman Sobu and Oldman Jolo Zulu, Formerly of the City of Zwedru, Grand Gedeh County, Republic of Liberia APPELLANT VERSUS **Ninneh Suah, Bill Mensah, James Dweh Weah, Bryant Wallace, Terry K. Kal, Zayenneh & Wife Garman, Elizabeth Doebah-Karmai, Anthony Tarwulu, Tarley Dweh, Mark Dormon, Comfort Dweh, Miss Puch Garlody Delaye, David S. Sluwar, Alfred Barbly, Levi** to be identified All of the City of Zwedru Grand Gedeh County, Republic of Liberia. APPELLEES

LRSC 24

Heard: March 31, 2011 Decided: July 22, 2011

This appeal emanates from an ejectment action filed on January 21, 2009 at the Seventh Judicial Circuit, Grand Gedeh County, sitting in its February Term, A.D. 2009.

Appellant Randall Solo, plaintiff below, acting as Administrator on behalf of the Intestate Estate of Garh Solo, Diah Gboley, Oldman Darlue, Oldman Soba and Oldman Jolo Zulu of the City of Zwedru, Grand Gedeh County, instituted a suit in ejectment against Ninneh Suah, Bill Mensah, James Dweh, James Weah, Bryant Wallace, Tery Kai, Abel Zayeneh & Wife Garmen, Eizabeth Doebah-Karmie, Anthony Tarwulu, Tarley Dweh, Mark Dormon, Comfort Dweh, Miss Pouh, Garlody Delaye, David W. Sluwar, Alfred Barblay and Levi to be identified, all of the City of Zwedru, Grand Gedeh County.

In a six count complaint, Administrator Solo averred that the named defendants, without the knowledge or consent of Appellant/Plaintiff, have entered and remained on the land belonging to the intestate estate; that the Defendants/Appellees are constructing dwelling houses and selling some large portions of the estate land; that despite several demands made by the Appellant/Plaintiff to the Appellees/Defendants to vacate the premises, the Appellees/Defendants still remain in wrongful possession thereof; that as it stands, the illegal selling particularly by Co-defendant Aaron W. Soohn, Jr. of portions of the land belonging to the estate, Appellant/Plaintiff has sustained monetary damages in the sum of USD400,000.00 (four hundred thousand United

States dollars/00).

The complaint further averred that in 1928, Garh Solo, Diah Gboley, Oldman Darlue, Oldman Soba et al whose estate Appellant/Plaintiff represents, acquired through purchase from the Republic of Liberia a total of 600 (six hundred) acres of land. A certified copy of the deed was attached to the complaint.

Appellant/Defendant therefore prayed court in the name of justice to eject, evict, oust and remove all the defendants from appellant/plaintiff's premises and award unto appellant/plaintiff the money damages sustained.

Appellees/Defendants filed a nine count answer to the complaint. They substantially contended that Appellant/plaintiff has no parcel of land as claimed; that the 600 (six hundred) acres of land being claimed by Appellant/Plaintiff are infact part of a one thousand two hundred and seventy five (1,275) acres of land actually belonging to the ZANWO family; that the ZANWO family owns in fee simple a total of one thousand two hundred and sixty (1,260) acres of land evidenced by a Public Land Sale Deed from the Republic of Liberia executed in 1969; that the Appellees/Defendants acquired said land firstly by obtaining a tribal land certificate in 1944; that in 1964 when the Eastern Province was declared Grand Gedeh County in 1964, the ZANWO family acquired a Public Land Sale Deed signed by the Late President William V. S. Tubman in 1969.

We must remark here that Appellees/Defendants have denied Appellan/Plaintiff's claims; infact they are challenging the genuineness or authenticity of the Certified Copy of Public Land Deed. Further, Appellees informed the court that prior to the institution of the current ejectment action, Appellant was involved in another ejectment action. But in that suit, Appellees submitted that Appellant proferted copy of a Public Land Sale Deed containing one thousand two hundred and sixty (1,260) acres of land. Copy of what was described as falsified Certified Copy of a Public Land Sale Deed containing one thousand two hundred sixty (1,260) was attached in support of Appellees' allegation. Appellees/Defendants have also reported that the land for which Appellant earlier filed an injunction against Deebah and Sluward is the same

land for which he allegedly falsified the current public land sale deed in favor of Garh Solo, et al., except that this time, Appellant is claiming 600 acres of land, purportedly probated on May 21 st, A.D. 1928 in Montserrado County.

Appellees have also invoked the benefits of statute of limitation, arguing at the same time that Appellant should have re-surveyed their purported 600 acres of land after allegedly obtaining the purported Certified True and Correct Copy of the Public Land Sale Deed from the Ministry of Foreign Affairs on May 20, A.D. 1974. Failing to do so, Appellant, according to Appellees, has suffered lashes.

Plaintiff filed a reply, substantially restating and confirming the averments contained in its complaint.

On February 10, 2009, a motion to intervene was filed by the ZANWO family, by and through its land agents, Aaron W. Soohn, Jr. and Ninneh Blaye. The motion was resisted by Appellant, argued by the parties and granted by the court, making the ZANWO family a party defendant in the case.

When pleadings rested, a jury trial was conducted under the gavel of Assigned Circuit Judge, His Honor, James W. Zotaa. Both parties introduced evidence in their respective favor. Thereafter, the empanelled jury returned a verdict of not liable in favor of the Appellees/Defendants.

Appellant/Plaintiff filed a motion for new trial which was denied by the trial court. His Honor, Judge James W. Zotaa, on June 24, 2009, entered final judgment in which he confirmed the verdict thereby ruling the case against the Appellant/Plaintiff.

In the final ruling, Judge Zotaa, amongst others, noted the following:

"...The defendants for their part, took the stand and testified that their parents in habited the land on which they now live throughout the ages and in 1963 after the birth of Grand Gedeh as a county, secured a public land sale deed which was executed by President Tubman, duly probated and registered. [During the trial] the defendants informed the court that they have built several houses on their land

by the permission of the head of the Zannvo family by whose authority they now live on the land. The defendants produced a June 2009 document from the National Archives stating that the transcribed deed of the plaintiff was a fraud and that no such deed was ever recorded as falsely represented by the transcribed instrument. The defendant also testified to a 1946 tribal certificate which they obtained for the land prior to obtaining the public land sale deed in 1949. These documents were placed into evidence and the defendants rested "

Appellant/Plaintiff has appealed the final ruling and consequently placed before the Supreme Court a sixteen (16) count bill of exceptions for appellate review and final determination.

Several questions are raised in the bill of exceptions. But because of the position we have taken in deciding this case, we shall direct our attention to the lone question we have determined to be dispositive of this case; that is: *"whether the final judgment confirming the jury verdict was justified."*

In count eight (8) of the Bill of Exceptions, Appellant has complained against the trial judge that: *"... Your Honor sustained defendant's counsels' objection to the question put to appellant's rebuttal witness; "Mr. Witness, please tell the court and the jury whether you know the signature of the late President William V.S. Tubman of Liberia,? To which appellant excepts."*

Another question was posed to one of Appellees/Defendants' witnesses during cross examination: *"Mr. Witness: The document in my hand, sale of public land deed in favor of your family was purportedly signed by the Late President William V.S. Tubman on the 12th of December, 1969. The same deed was purportedly probated and registered on September 10, 1969. Please explain to the court and jury how could the land deed be probated before it was signed?"*

Counsel for Appellees also objected to this question and the court, in sustaining said objection, ruled as follows:

"The court says that these matters shall be presented to the jury so that the jury will pass on same. It is the jury that has the responsibility to determine whether such deed was obtained by fraud."

Appellant has assigned error to this ruling. Being in regards to appellees' deed, Appellant is contending that the judge, in disallowing this question, committed reversible error.

We agree that allowing the witness to answer the questions posed probably would have provided some useful information for the jury consideration. Appellant's questions clearly sought to demonstrate weaknesses in the appellees' title. While answers provided to these questions could have brought into question the authenticity of appellees' title instrument, the showing of such weaknesses in Appellees' title in no way remove Appellant's burden to establish his title in an ejectment case as a matter of law. Pointing to the weaknesses in the appellees' title clearly does not entitle appellant to the property in dispute. By instituting an ejectment action, appellant has imposed on itself a legal duty to prove its title against all persons he desires to remove and evict from the disputed proper. We have therefore determined that disallowing the questions was harmless and non prejudicial as to Appellant's burden of proof to conclusively establish his title to the property in question.

Guided by the primary object of an ejectment action, we desire to state here that it is Appellant who instituted this ejectment suit. The main purpose of ejectment actions, firmly held by the overriding opinions of legal authorities in this jurisdiction, is to test the strength of titles of the parties. The property is then awarded to that party whose chain of title is so strong as to effectively negate any rights of the adversary party to recovery; *Duncan v. Perry*, 13 LLR 510, 515 (1960). It is a settled law in this jurisdiction that one instituting an action in ejectment always recovers on the strength of his own title, and never on the weakness in the adversary's title. *Donzo* 39 LLR 72, 80 (1998); *Cooper-King v. Cooper-Scott*, 15 LLR 390 (1963). *v. Tate*,

Applying this [principle, we must examine here the evidence Appellant produced in support of his ejectment action and then determine whether same could sustain an ejectment action as the laws require.

During the trial, Appellant introduced five witnesses. First taking the stand in support of his complaint, Appellant/Plaintiff Solo testified that his parents were the owners

of the 600 acres of land deeded to them in 1928. He claimed that prior to the demise of his parents, a true and correct copy of the original deed was signed by the Minister of Foreign Affairs, the late C. Cecil Dennis, Jr. Appellant also claimed to own additional 1260 acres of land on the southern part of Zwedru, Grand Gedeh County.

Former Land Commissioner, Samuel S. Pennoh, also testified in support of Appellant's claims. He told the court that the two parties to this dispute had land in the same area. He said that a creek called 'Dressing Creek' was the boundary between the two lands. During cross examination, the former land commissioner said that he could not say the number of acres each party owned and other than what he was told by one Oldman Farley, he also could not say with certainty that a survey had ever been done or when same was ever done. Appellant other witnesses testified in support of his claims. They largely said that they did not know the property except what was shown to them by Oldman Farley.

Defendants, in support of their case, presented four witnesses. The first witness testified that their ancestors owned the land in question. He also told the court that a tribal certificate was issued to their forefather which was subsequently transformed to a Public Land Sale Deed. The witness testified to said deed reportedly signed by President Tubman. Although Appellant gave notice to rebut this strong allegation, he woefully neglected and failed to do so.

Defendants' first witness, Co-defendant Aaron Soohn Yerlay told the court that he was seventy eight years old, was born and has always lived on the land in dispute. A tribal certificate along with a public land sale deed was identified by him and confirmed by the Court.

In support of their claim that plaintiff's carried fraudulent deed, the following instrument from Center for National Documents & Records, 96, Ashmun Street, Monrovia, Liberia, was testified to, marked, confirmed and admitted into evidence. Because of its probative value, we have quoted the document verbatim:

"TO WHOM IT MAY CONCERN: This is to inform all concern that following a thorough

check on volume 46 pages 78-79 of the records of Montserrado County to authenticate the certified copy of a Public Land Sale Deed from the Republic of Liberia to Oldman Darlue, Oldman Soba and Oldman Jolo Zolu lot no. N/N situated in Tchien, Tchien District, Eastern Province, it is discovered that the above named and described Public Land Sale Deed does not form part of the authentic records of Montserrado County filed at the Archives of the Ministry of Foreign Affairs.

It is further established from contact made with the former Acting Director General of this Agency, Mrs. Jane B. Barker revealed that her signature was forged and fraudulently placed on the concerned certified Copy.

In consideration of the above, the certified copy of a Public Land Sale Deed from the Republic of Liberia to Oldman Darlue, Oldman Soba and Oldman Jolo Zolu as recorded in Volume 46 pages 78-79 of the records of Montserrado County, situated in Zwedru, Tchien District Eastern Province is invalid, fraudulent and cannot be used for any legal business.

Given under my hands and seal of The Center for National Documents And Records/National Archives this 5th day of June A.D. 2009.

Shadrach M. Kanneh Deputy Director General/Technical Services.

As it can be clearly seen, Appellant/Plaintiff sued to recover 600 (six hundred) acres of land on the strength of a Public Land Sale Deed. The certified copy attached to the complaint shows that the deed was executed in 1928. But also in the records is an instrument from the Bureau of Archives to the effect that Appellant's deed "*does not form part of the authentic records of Montserrado County filed at the Archives of the Ministry of Foreign Affairs.*"

The Archives instrument further informed the trial court: "*It is further established from contact made with the former Acting Director General of this Agency, Mrs. Jane B. Barker revealed that her signature was forged and fraudulently placed on the concerned certified copy.*"

Counsel for Appellant was asked during argument before this court about the instrument from the Center for National Documents & Records which materially

defeats his ejectment suit. He was quizzed and asked to explain how Appellant could sustain an ejectment action in the face of the Archives document clearly indicating that Appellant's title instrument was a subject of fraud. In his answer, Appellant's counsel informed the Court that he personally visited the Center for National Documents & Records and was told that the Center knew nothing about the instrument presented by Appellees/Defendants, purporting to have been issued by the Center for National Documents & Records. A follow-up question to the Counselor was whether he thought such verbal representation was adequate to set aside the instrument bringing into serious question Appellant's title instrument. Counsel then accepted that he should have pressed for a written instrument as a means of correcting what he believed to be a false representation evidenced by the records from the Bureau of Archives. These answers were noted although we find them unsatisfactory to sustain this suit.

The case at bar appears analogous to: *Cooper, Sr. v. Gissie et. al*, 28 LLR 202 (1979). In *Cooper*, the appellant, Samuel B. Cooper Sr. instituted an ejectment action against Peter Gissie and others. In instituting the ejectment suit, Appellant Cooper relied on a Public Land Sale Deed executed in 1947. But appellees appeared and defended their title also on the strength of a Public Land Sale Deed acquired some 89 years earlier in 1858. Appellees in fact attacked Appellant Cooper's deed as being void. The Supreme Court in reviewing the appeal from the Cooper case, confirmed the trial court's final judgment, maintaining as follows:

‘Since in ejectment the plaintiff must as a general rule, discover upon the strength of his own title and not upon the weakness of his adversary's, where his title is controverted, the burden of proof is upon the plaintiff to establish title in himself, or at least such title to the premises in controversy as will entitle him to the possession thereof unless the defendant has a better title. Until the plaintiff has made a prima facie case by showing title sufficient upon which to base a right of recovery the defendant is not required to offer evidence of his title, and if the plaintiff fails in his proof of title, he cannot recover, however weak and defective the defendant's title may be.’

Having so stated this principle as the only legal basis for recovery in such circumstance, the Supreme Court, dismissing appellant Cooper's appeal, opined as follows:

"[it] does not seem to us to be any way in which the glaring and flagrant failure to have corrected the defective deed attached to the complaint could be effected according to our law, and therefore, we cannot see how the complaint in this case of ejectment can stand." Ibid. 210

The appeal at bar is substantially analogous to the Cooper case. Consequently, and in light of the facts and evidence adduced, and with the document from Center for National Documents & Records standing unimpeached, His Honor, James W. Zotta was legally justified when he confirmed the verdict and adjudged the Appellees/Defendants not liable.

Following a careful consideration of the facts and circumstances which obtained in the case at bar as well as the laws controlling, the judgment of the court below is affirmed *but without prejudice to the Appellant/Plaintiff.*

The Clerk of this Court is hereby ordered to send a mandate to the court below to the effect of this judgment. Costs disallowed. AND IT IS SO ORDERED.

Counselor David D. Gbala appeared for appellant while Counselor Theophilus C. Gould, of Kemp & Associates Legal Consultancy, Inc, appeared for appellees.