

Joseph Surmie, Norwah Garkpor et. al to be identified all of the Township of Paynesville City, Montserrado County Liberia APPELLANTS Versus **Calvary Baptist Church** by and thru its Acting Pastor Rev. G. Larques Vay and Chairman of Deacon Board **D. Omarley Yeaboh** of 18th Street, Sinkor, Monrovia, Liberia
APPELLEE

ACTION OF EJECTMENT. CASE REVERSED AND REMANDED

HEARD: March 20, 2007A DECIDED: August 9, 2007

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

The Appellee/Plaintiff, Calvary Baptist Church, filed an action of ejectment against the Appellants Joseph Surmie, Nowah Garkpor, et al, alleging that the said Appellants/Defendants had wrongfully entered and were constructing buildings on land that was Appellee's bona fide property. As proof of title Appellee/Plaintiff attached a public land sale deed executed by the late President William V. S. Tubman in 1966 to one Solomon T. Edwards for land located in Paynesville containing 66 acres, and also a warranty deed from Eileen D. Edwards-Rogers to the Calvary Baptist Church, Plaintiff/Appellee herein, for 4.12 acres of land same allegedly a portion of 15. 56 acres of land which the grantor, Eileen D. Edwards-Rogers, had allegedly acquired from Solomon T. Edwards. Plaintiff/Appellee nevertheless failed to attach the deed for the 15.56 acres from Solomon T. Edwards to Eileen D. Edwards-Rogers out of which deed she could have passed title to another person or grantee.

In their Answer to the Complaint, Appellants/Defendants claimed title to the premises also, thereby joining issue with the Plaintiff/Appellee as to the ownership of the land. They attached a public land sale ,deed allegedly executed by the late President Daniel B. Warner in 1865 to one Jarbeh Mardeh for property situated on the Old Field, Montserrado County and another deed executed by one Charles B. S. Watkins, Sr., Administrator of the estate of Jarbeh Mardeh to one M. Nowah Garkpor, one of the Defendants/Appellants herein. Said parcel of land, containing 1.1 acres of land is allegedly located in Paynesville, Montserrado County. The other Appellants/Defendants, including Joseph Surmie and the others to be identified did not attach any deeds to establish their claims or titles, neither did they claim title by adverse possession, nor under the title of M. Nowah Garkpor, their Co-Defendant/Appellant. The only Appellant/Defendant in this ejectment case

should have therefore been and is M. Nowah Garkpor who attached a title deed to the Answer.

After the parties had rested pleadings, and hearing had, the jury entered a verdict of liable against the Appellant/Defendant and awarded the sum of \$500,000.00 in general damages in favor of the Appellee/Plaintiff, Calvary Baptist Church. Subsequent to the reading of the verdict, the Trial Judge asked the jury in open court for clarification of the verdict, referenced the amount of the general damages, as to whether the award was in Liberian or United States dollars, since the amount was simply written "\$500,000.00." The jury then and there clarified by saying, that the amount awarded was in Liberian Dollars. The Appellant/Defendant noted exception to the verdict and filed a Motion for New Trial. The Motion was heard and denied and the verdict confirmed by the Trial Judge. To this final judgment the Appellant noted exceptions and announced an appeal and has fled to this Court of last resort on a 5-Count Bill of Exceptions involving procedural issues which we consider not to be necessary for a determination of this land matter, momentarily.

We have perused the records in an effort to understand the basis for the jury's finding in favor of the Appellee/Plaintiff, Calvary Baptist Church. We noticed that two public land sale deeds were submitted into evidence, one by each side of the case. We also noticed that the Defendant's "mother deed" was older than the "mother deed" of the Plaintiff. We noticed also that the warranty deed from Eillen D. Edwards-Rogers to Calvary Baptist Church was older than the Administrator's deed from Charles Watkins to M. Nowah Garkpor. The public land sale deed to Jarbeh E. Mardeh is for land located on Oldfield, Montserrado County, and the public land sale deed to Solomon T. Edwards is for land located in Paynesville. What our perusal of the records failed to reveal is whether the two public land sale deeds out of which the two grantees' deeds grew are parts and parcels of the same land or whether Oldfield and Paynesville are the same. The good and sufficient reason why the records failed to reveal that fact is that there was no effort made by the Trial Court to make that determination. The Court instead concentrated on the issue of one title being older than the other, and in fact it was not the dates of execution of the "mother deeds" but the dates of the warranty deed of the Calvar'y Baptist Church which was issued in 1987 and the administrator deed of M. Nowah Garkpor issued in 2004. The Trial Court's handling of this case left much to be desired of a fair and just trial of an ejectment action. This trial ended with more questions than answers to the one issue, and that is, whether or not the two public land sale deeds issued by two former Presidents of Liberia cover the same premises or spot on the ground. All other issues that were raised in the briefs and argued before this court in this land matter are

subordinate to this single issue of fact, and until that issue is settled, the issues of dates and chain of title or defect in title cannot properly and justly determine that the parties are claiming one and the same land.

In the opinion of this Court, it is not enough in an ejectment suit that a party has an older title deed; nor is it conclusive that the older title holder ipso facto becomes the owner of the land. What ought to be enough and conclusive is that the land in dispute is the same parcel or portion of land. The method or process to arrive at such finding is to conduct a survey using the title deeds relied upon. In this case there was no survey done and yet the jury arrived at a conclusion, on the strength of which they entered a verdict against one contestant in favor of the other. We find no factual basis for the verdict. We are therefore persuaded in the interest of justice which alone will bring a finality to this land dispute, to reverse this judgment and remand this case for a new trial. We must here state that one of our reasons for reversing 'and remanding this case is not however the contention by the Defendant-In-Error that the Trial Judge allowed the jury to alter the verdict in open court. We opine that there was no alteration of the verdict, but rather, a clarification of the verdict without prejudice to either side. The judge in a trial may seek clarification or correction of a verdict when the correction or clarification does not affect the merit of the case or the right of the parties. Vianini, Ltd., V. Bcboureous, 19 LLR 39, 48 (1968). Appleton V. Republic, 11 LLR 284, (1952). In the case at bar the jury had omitted to state whether the amount of \$500,000.00 awarded was in US Dollars or Liberian Dollars. The jury clarification made in open Court stating that the amount awarded was in Liberian Dollars was beneficial to the contending party, the Appellant/Defendant, in that, instead of the very high amount of US Dollars \$500,000 to be paid by the said Appellant/Defendant if that were to be the case, the said Appellant/Defendant would now be liable for L\$500,000 only. The clarification also did not prejudice the right of the Plaintiff/Appellee either since it conformed to the amount prayed for as general damages in the complaint. Therefore, since there was no harm done to either party, the contention is baseless and unsustainable.

In view of the above, it is the opinion of this Court that the judgment be reversed and the case remanded for a new trial. The Clerk is ordered to send a mandate to the Judge below to resume jurisdiction, set up a board of certified public land surveyors to conduct a survey using the two public land sale deeds exhibited in the records herein. It is further ordered that after the court shall have received the survey report, it is only then that the Trial Court will proceed further into this case according to law, taking into consideration the other issues as may be legally and factually relevant to a just decision in this case. IT IS HEREBY SO ORDERED.

CASE REVERSED AND REMANDED