Ophelia Swen-Kennedy, of the City of Monrovia, Liberia APPELLANT VERSUS **Fred Cooper**, also of the City of Monrovia, Liberia APPELLEE

APPEAL. JUDGMENT CONFIRMED WITH MODIFICATION

Heard: March 25, 2008 Decided; June 27, 2008

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

This real property dispute was heard and decided in the Civil Law Court of the Sixth Judicial Circuit, sitting in its December Term 2006. Judgment by default was rendered in favor of the Plaintiff, Fred Cooper. The Defendant, Ophelia Swen Kennedy is now before this court on appeal from judgment.

The facts are the following: The Plaintiff in the Court below filed an action of Summary Proceedings to Recover Possession of Real Property consisting of one lot of land with a two-story building thereon against the Appellant/Defendant. The realty is located in Oldest Congo Town near Monrovia. According to the records certified to this Court, the Appellee/Plaintiff alleged in his complaint that he acquired title to the said property through a lawful purchase from the owner, one Mr. Pitman W. Swen and to substantiate that allegation, the Appellee/Plaintiff made profert of a warranty deed executed to him by the said owner, Mr. Pitman W. Swen. He also made profert of an additional document, a payment receipt issued by Mr. Pitman W. Swen to Fred Augustus Cooper in the amount of $5,000.00USD (Five Thousand United States Dollars) as initial payment with a balance amount of $35,000.00USD (Thirty Five Thousand United States Dollars) to be paid as per stipulations contained in yet another document referred to as an Agreement for the Sale of Real Property lying and situated in Oldest Congo Town, City of Monrovia. Because of the importance of this land sale agreement to the determination of this dispute, it is necessary to quote the said agreement word for word:

"IN RE: AN AGREEMENT FOR THE SALE OF REAL PROPERTY LYING AND SITUATED IN OLDEST CONGO TOWN, CITY OF MONROVIA

This agreement for the sale of Real Property owned by Mr. Pitman W. Swen, lying and situated in Oldest Congo Town is made and entered into in this 20th day of October A. D. 2003 by and between Mr. Pitman W. Swen of the City of Monrovia, hereinafter known and referred to as the seller, and Mr. Fred Augustus Cooper, of the United States of America, hereinafter known and referred to as the Buyer, hereby.

WITNESSETH:

1. Whereas, the seller, Mr. Pitman W. Swen, has informed Mr. Fred A. Cooper, the Buyer, that he has real property for sale and that he is the bonafide owner of said property as per the warranty deed exhibited, and is offering same for sale.

2. Whereas, the buyer has agreed and accepted the fact that the property belong to the seller, and has agreed to purchase the offered property for an agreed amount.

3. Whereas, the parties, Buyer and seller, hereto agreed that the purchase fee for the offered property is US$40,000.00 (Forty Thousand United States Dollars) as described in the warranty deed exhibited.

4. Now, therefore, the parties hereto agreed as follow:

a. The parties mutually agreed that the Buyer will make an initial payment of US$5,000.00 (Five Thousand United States Dollars) to the seller upon the signing of the contract of sale. Receipt thereof is hereby acknowledged.

b. The parties further mutually agreed that the balance of US$35,000.00 (Thirty-Five Thousand United States Dollars) will be paid upon request over a period of 18 (Eighteen) months commencing as of the 1 st day of November A. D. 2003 and ending on the 1st day of April, 2005.

c. The parties also further agreed that at the conclusion of the final payment, the buyer will serve notice of eviction upon the seller, said notice will be given for the seller to have sufficient time to have the purchased property turn over without delay.

d. Clearance Warranty Transfer Deed pertaining to the purchase property will be made available to the buyer.

e. It is also understood by the parties that in the "Event of a Default," on the part of the buyer the seller reserves the right to sell the offered property to a third party and refund the buyer or his heirs.

f. It is also finally mutually agreed by the parties that this agreement for the sale of real property is binding upon the parties themselves and shall extend to their heirs and administrators etc.

In witness hereto we the undersigns have affixed our signatures to this contract of sale, this 20th day of October A. D. 2003

In presence of Not legible
As to Pitman W. Swen
Seller

Elvita Ross-Gbollie
As to Fred A. Cooper Buyer"

It is stated in the records that at the time this land agreement was entered into between Mr. Pitman W. Swen and the Appellee, the Appellant herein Ms. Ophelia Swen Kennedy was also residing on the premises along with her uncle Pitman W. Swen, the property owner. There is also an unrefuted allegation in the records that the Appellant was well informed by her uncle Mr. Pitman W. Swen that the property was sold to the Plaintiff.

Mr. Pitman W. Swen subsequently died in 2005 according to the records. At some point subsequent to Mr. Swen's demise, the Appellee, Fred A. Cooper allowed the Appellant, Ms. Ophelia Swen Kennedy to remain in occupancy temporarily because of her inability to pay her rent at the time. However, after the expiration of the period of the free accommodation, Appellant/Defendant refused to vacate the premises, in complete disregard of Appellee/Plaintiff s several demands on her to do so which refusal to vacate led to this suit. In his Summary Proceedings to Recover Possession of Real Property complaint, Plaintiff also prayed for an award of **US$50,000.00** as damages for wrongful withholding. As justification for the amount prayed for, Appellee/Plaintiff theorized that had Appellant/Defendant vacated on demand, Appellee/Plaintiff would have renovated and then leased the building, but because she failed to turnover his building, he was deprived of the opportunity to do so.

The Appellant/Defendant filed an Answer to the complaint on November 10, 2006 by and through her Counsel Francis Y. S. Garlawolu in which she claimed title to the property through lawful purchase and gave notice that during the trial she would produce the title deed. We shall let the Answer speak for itself by quoting it word for word as follows:

Defendant's Answer

1. "That the deed under which Plaintiff claims title to the Property situated in Congo Town does not convey legal title to the subject property to Plaintiff; in that, the

purported receipt and property sale document appended to Plaintiff's complaint clearly suggests that the alleged sale was never concluded between Plaintiff and the late Pitman Swen.

Defendant Prays court to take judicial notice of the dates of issuance of the subject deed, receipts and the land sale agreement pleaded with Plaintiff's complaint.

2. That by virtue of an honorable purchase, Defendant is the legal and lawful owner of the parcel of land on which the house which she occupies is erected. Defendant gives notice that she shall produce her title deed for the subject property at the trial of this case. Defendant further submits that she shall produce her mother deed at the trial of this case.

3. That Defendant is also the administratrix of the Intestate Estate of the Late Pitman W. Swen who died seized of several real and personal properties both in Montserrado and Sinoe Counties.

4. That assuming without admitting that the late Pitman Swen conveyed the subject land to the Plaintiff, defendant avers that under the doctrine of older title, Plaintiff cannot prevail since Defendant's title is older than plaintiff's.

5. That the entire action is dismissible; in that summary proceeding to recover possession of real property will not lie where both parties claim title to the land, as it is in the instant case."

Pleadings having rested the trial judge issued Notice of assignment dated March 8, 2007 for disposition of the law issues on March 10, 2007. According to the records, Counselor Garlawolu was absent from the Republic when the assignment was taken to his law firm and his partner, Counselor J. D. Baryogar Junius refused to accept same. The Judge nevertheless call the case on March 10, 2008 as per the assignment. At the call of the case, Counsel for Appellee/Plaintiff made a submission in which he stated that since no issues of law were raised in the complaint and answer the case should be ruled to trial by jury on the merits. The Judge so ruled and subsequently ordered issuance of notice of assignment for hearing on March 28, 2007. Same was returned served on all parties including Counsellor Garlawolu. But upon receiving the notice of assignment, Counsellor Garlawolu for Appellant/Defendant filed a Motion for Continuance on March 27, 2008 on the grounds that he was traveling to the United States of America on March 30, 2008. He attached a copy of his airplane ticket and the travel schedule. An inspection of the ticket revealed to the trial court

and also to this bench that Counsel's departure date from Monrovia was April 1, 2008, four days subsequent to the date set for hearing the case. He also filed on that same day a Motion to Intervene on behalf of another client residing in the United States who also claimed title to the same property, also filed an Intervenor's Answer.

Motion to Intervene

1. "That Movant and the late Pitman Swen jointly purchased one lot of land in Congo Town, Monrovia. And subsequently erected a storey house thereon, as will evidentially appear from photocopy of a deed hereto annexed as exhibit "A" hereof.

2. That while Movant was in the United States of America, the Coowner, Pitman Swen died in 2005, thus reverting the entire property to your Movant as the sole survivor and joint owner.

3. That your Movant has just learnt that Respondent Fred Cooper is claiming ownership of the subject property under pretext that he bought same from the late Pitman Swen.

Under the joint-tenancy law, no one owner can sell a joint property without the approbation of the other.

4. That Movant seeks intervention in this case as Defendant party so as to protect her property right, as any judgment rendered in this case in favor of Respondent Fred Cooper will absolutely deprive her of her hard-earned land and house."

Intervenor' Answer

1. "That the entire purported transaction concerning the one lot is dubious, fraudulent and illegal; in that:

a) The so-called warranty deed pre-exists the sale Agreement; in other words, notwithstanding the alleged execution of the deed, the illegal Grantor and Grantee thereafter executed a sale Agreement which superceded the said Warranty deed; and

b) The alleged conveyance of the joint property was done without the knowledge and consent of the co-owner, intervenor hereof.

2. That Summary Proceeding will not lie; in that intervenor has title while Plaintiff is also claiming title.

3. That intervenor is the legal and lawful owner of the subject land, as will evidentially appear from photocopy of the deed hereto annexed as exhibit "A" and **"B".**

4. Intervenor hereby denies every and singular the allegation of fact contained in the complaint and not specifically traversed herein."

To substantiate here allegation of ownership to the property, Elizabeth Swen, the intervenor, exhibited a warranty deed executed to Pitman W. Swen and Elizabeth J. Swen in 1966 by one Elizabeth C. Gibson. The intervenor, whether deliberately or inadvertently failed to state whether she was the widow of the late Pitman W. Swen in which instance she would have been a joint owner by the, entirety. Her Counsel instead simply stated that she was joint owner of the property. However, during his argument before this Court, Counsel for the intervenor stated categorically that the intervenor was the widow of Pitman Swen. The said Counsellor being very sure that the intervenor is the widow and not the daughter of the late Pitman W. Swen, volunteered to file an affidavit to that effect in order to vindicate his good name as a Counsellor of this Supreme Court Bar. Unfortunately the promised affidavit has not yet been submitted to this Court.

The Plaintiff in his Resistance to the Motion to intervene stated (a) that the intervenor, Elizabeth Swen, the one now residing in the United States, is not the co-owner of the property; instead, the Elizabeth Swen named in the deed was the wife of Mr. Pitman Swen who pre-deceased her husband (b) that the intervenor is the daughter of Pitman W. Swen and Elizabeth J. Swen (c) that because Mr. Pitman Swen became sole owner after the death of his wife and sold the property there was nothing left for the intervenor to have authorized the Defendant, Ophelia Swen Kennedy to occupy, (d) that the intervenor was fully made aware of the sale of the property by her father during his life time, (e) that there was nothing fraudulent about the land deal as said transaction was done in the presence of Mr. Pitman Swen's lawyer, the then Cllr. Benedict Holt, Sr., now Resident Judge for the Second Judicial Circuit, Grand Bassa County who in fact prepared the legal documents leading to the sale of the property with the knowledge and approval of Mr. Pitman Swen.

When the case was called on March 28, 2008 as per assignment, Counsel for Appellant/Defendant did not appear to pursue his request for continuance or for the trial. Counsel for Plaintiff therefore made a submission for default and also for consolidation of the Motion to Intervene and the Motion for Continuance. The Judge granted the submission for default proceeding. He then consolidated the Motions and denied both and proceeded to trial as per assignment. In his submission

for a default judgment proceeding against the non-appearing Counsel, Counsel for Appellee/Plaintiff also requested for a jury trial. The Judge ignored and heard the case without a jury.

The trial became exparte because of the failure of Appellant/Defendant to attend. Witnesses for Appellee/Plaintiff were placed under oath and the first witness took the stand and testified to the authenticity of the Warranty deed stating that said deed was issued by the grantor, Mr. Pitman W. Swen; that the sale agreement made profert of was also authentic and the partial payment receipt was also genuine. Court's marks were placed on the said documents. The records reveal that this particular witness was an attesting witness to the documents.

The second witness for the Plaintiff took the stand and testified as follows:

Q. Mr. Witness, please state your name and where do you live?

A. My name is Ford A. Cooper and I live in the City of Monrovia, Liberia

Q. Mr. Witness, do you know the Defendant and if so what relationship the Defendant bears with the Plaintiff?

A. Yes, I do know the Defendant and that the Defendant lives on the Plaintiffs premises.

Q. The Plaintiff by and thru its legal Counsel filed an Action: Summary Proceedings to Recover Possession of Real Property, against the Defendant and you have been called to testify for on behalf of the Plaintiff.

A. The Plaintiff and the Defendant got into sale agreement, and case receipt for the sale of the house and/property lying and situated in Congo town, Montserrado County, Monrovia, Liberia, and a Warranty Deed was executed in favor of the Plaintiff by the late Pitman W. Swen. A notice to vacate the premise but she has refused, neglected and deliberately failed to move. This is what I know about this case

Note: the above answer though not so cogent in some parts; nevertheless, we understood what was intended. We believe the clerk must have incorrectly recorded and the counsel in the case neglected to correct the records.

Q. I passed you the document that you testified to, please look at them each and say what you recognize them to be?

A. This is the sale agreement I hold in my hand, cash receipt, a Warranty Deed as well as Notice to vacate the premises written by the Plaintiff, which I spoke about in my general testimony.

After the conclusion of his direct examination, the witness identified the previously marked documents thereby confirming them. The Judge ruled in favor of the Plaintiff and awarded him $50,000.00USD as general damages for wrongful withholding of the premises by the Defendant. The Judge also ordered the eviction of the Appellant/Defendant. A court appointed counsel noted exception to the ruling and announced an appeal therefrom.

On April 2, 2007, the Trial Judge ordered the issuance of a Writ of Possession pursuant to the ruling of March 28, 2007. When the Sheriff attempted to execute service of the Writ of Possession, Counsellor Garlawolu, still in the bailiwick of Monrovia filed a Motion for relief from judgment on behalf of his client, the Defendant. The Trial Judge then and there issued a Stay Order on the execution and issued notice of assignment for hearing of the Motion for relief from judgment to be had on May 2, 2007, some 30, days after the ruling. On April 4, 2007 Counsel for Appellant/Defendant filed his Bill of Exceptions. Upon approving this Bill of Exceptions, the Judge revoked the notice of assignment for hearing of the Motion for relief from judgment and ordered the Sheriff to proceed to execute the Writ of Possession. But same could not be served on the Appellant/Defendant's because "she and her family were hiding" as stated in count 4 of Counsel for Appellant/Defendant's Petition for a Writ of Prohibition filed before the then Justice in chambers. Note: The Chambers Justice, your humble servant, did not issue the Writ. When the Appellant/Defendant could not be served with the Writ of Possession, the Judge ordered that the Sheriff should be accompanied by a police officer to take an inventory of the belongings of the Appellant/Defendant and to preserve them elsewhere and put the Appellee/Plaintiff in possession of his property; and so it was done.

Counsel for Defendant having completed his appeal is now before this Court of last resort on a five count Bill of Exceptions.

Bill of Exceptions

1. "That your Honor ruled the case to trial without disposing of the law issues raised in the pleadings.

2. That eventhough your Honor ruled the case to a jury trial, your Honor proceeded to try the case without a jury and awarded general damages in the sum of $50,000.00USD (Fifty Thousand United States Dollars), which has no basis in law.

3. That notwithstanding the Motion for Continuance (filed by Defendant) Intervention filed by Elizabeth Swen including her Intervernor's Answer, were pending undetermined, your Honor proceeded with the trial of the case

4. That on March 28, 2007, Defendant was physically present in Court but there was not hearing of this case because a jury trial was on.

Hence, the judgment was made out of Court.

5. That the Judgment is against the weight of evidence adduced at the trial (see minutes of the purported trial, March 28, 2007)."

In count one of the Exceptions, Counsel contends that the Judge ruled the case to trial without disposing of the issues of law. It is a cardinal rule of our practice that a judge must first dispose of issues of law before issues of fact are ruled to trial. Few of the cases in which the Supreme Court has reiterated this concept are: **Stubblefield V. Nassah, 26 LLR153.& 158-59 (1977), Johns V. Johns and Witherspoon, 11 LLR 312, 315 (1952).** Failure on the part of a Judge to dispose of the law issues raised in an Answer to a Complaint is a ground for reversal of a judgment. In view of the importance the Court has attached to the requirement that issues of law should first be disposed of before trial of the facts, and since indeed the Appellant/Defendant in count one of the bill of exceptions has stated that the trial Judge failed to pass on the law issues and proceeded to trial on the facts, we deemed it necessary to peruse the complaint and the Answer to determine whether law issues were raised therein. Our perusal of the records revealed that there were no issues of law. But rather, only mixed issues of law and fact were raised in the Answer. We must note here that just because pleadings are exchanged between parties is no reason to assume that issues of law are raised therein. We hold therefore as to count 1(one) that the Trial Judge rightly ruled the Summary Proceedings to Recover Possession of Real Property to trial. However, there were issues of law in the Motion for Intervention and the Resistance thereto. But according to the records the Appellant/Defendant having failed to appear on the assignment for trial at which time he would have prosecuted

his Motions, before the trial, the Judge upon Motion of counsel for the Plaintiff consolidated the two Motions, denied, and dismissed both. The Motion having been abandoned by failure of Defendant's Counsel to appear, dismissal of same was not in error. We hold that dismissal of a motion is an adjudication thereof. It can no longer be said to be pending as was claimed in count three of the Bill Exceptions.

We shall, nevertheless the dismissal of the two motions on the ground of abandonment, review the judge's action to determine whether the Motion for Continuance was erroneously disposed of. The statutory provision with respect to continuance states that:

"At any time during trial, the court, on Motion of any party, may order continuance or a new trial in the interest of justice on such terms as may be prescribed." **1 LCR Section 263 p.300**

The operative word "may" in this provision of law means that the granting of a Motion for continuance is discretionary except in cases where it is prescribed. When the discretion is abused by the Judge then in that case the Supreme Court may so declare. But in this case we see no abuse of discretion. What is glaring here is an abuse of the judicial process by a counselor of the Supreme Court Bar. We revert to the Motion for Continuance in support of our position. A notice of assignment was issued and returned served on counsels for both parties for hearing on March 28, 2007. The moving counsel filed for continuance of the case because and only because he was traveling to the United States on March 30, 2007, 2 days after the trial would have been had. To add insult to injury, he attached an air plane ticket that showed his departure day from Roberts International Airport to be April 1, 2007. He made no effort thereafter to ascertain whether his Motion for continuance would be granted or denied. He failed to attend the hearing even though he was yet in the City of Monrovia on the day of said hearing. We hold that, one of the grounds for which a judge would be said to have abused his discretion for denying a Motion for Continuance is not that counsel for a party has travel plans that would take effect several days subsequent to the hearing date. We also hold that filing a Motion for Continuance does not serve as a stay to further proceeding. The motion must first be granted. We therefore hold that the trial Judge committed no reversible error nor did he abuse his discretion when he denied the Motion. It is the opinion of this Court that the Motion was unmeritorious and clearly filed to delay the trial and baffle justice.

As to the Motion to Intervene, we hold that dismissal of same is not a bar to intervener's right to file an independent action to recover possession of the property on the strength of her title, said Motion to Intervene having been dismissed on the ground of abandonment and not on its merits. We shall comment a bit more on some aspect of the Motion to Intervene elsewhere in this opinion.

In count two Counsel for Appellant/Defendant noted exception to the fact that the trial Judge proceeded without a jury even though he had ruled the case to trial by jury as per the submission made by counsel for Appellee/Plaintiff and awarded general damages in the amount of $50,000.00 which he argued had no basis in law. To verify the allegation with respect to the first part of this count, we took recourse to the records. We found that when the case was called for hearing on March 28, 2007 and no representation was noted on behalf of the Defendant, counsel for Plaintiff made a submission requesting for an imperfect judgment of default and stated further that there were mixed issues of law and fact, but no law issues. We however, clearly saw that Plaintiffs counsel did request for a trial by jury. But equally so, we were able to see that the judge ruled that the case would be tried under the direct supervision of the Judge thereby overruling or denying that portion of the submission in which counsel requested for a jury trial. The fact that the Judge proceeded to hear the case with out a jury was not a reversible error in this particular case. It must be noted that in a summary proceeding to recover possession of real property, it is not required that the facts be submitted to a jury for trial. This is in fact the good reason why this proceeding is referred to as a summary proceeding. It is heard and decided under the direction of the Judge without a jury. So the fact that counsel for Plaintiff requested for a jury in a summary proceeding trial was not a compelling reason for the Judge to thus proceed. We therefore assign no error thereto.

The point must be made that although trial by jury is a right under the civil procedural law, the statute state how that right should be exercised. **Chapter 22Trial by jury, 1LCR Section 22.2 states that:**

"Any party may demand a trial by jury of any issue triable as of right by a jury by serving upon the other parties a demand therefore in writing at any time after commencement of the action and not later then ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties."

The proceeding in this case did not conform to the mandate of the provision quoted supra. First of all there was no issue triable as of right, by jury in this case. There was no written demand made and reviewed by the Plaintiff or the Defendant ten days after the service of the pleading. The request for jury trial which should have been a written request was only made in a submission at the commencement of this summary proceeding trial. The Judge being recognizant of the law as provided, and been fully aware that after denying the Motion to Intervene and granting a submission to proceed by default because of failure of Defendant to attend court for the hearing of the main case, the only matter for adjudication was for the Plaintiff to prove the allegations in his complaint. The Judge committed no error in proceeding summarily to dispose of the case.

Now, as to the award of $50.000(USD) damages by the judge to the Plaintiff which counsel for Defendant has raised in his Bill of Exceptions as being baseless in law, we hold that the said counsel having failed to raise said issue in his answer when it was properly raised in the complaint cannot now raise same for Appellant review. It has been said over and again in several Supreme Court cases that, except the issue of jurisdiction over the subject matter, all issues must be raised in the court below before they can be cognizable for review by the Supreme Court. See Forestry Development Authority (FDA) v. Nimlev et al. and the Bureau of Labour Standard, 35 LLR 658, 660 (1988), Karoat v. Peal, 28 LLR 255, 260 (1979) Fish et al. v. Artis et al. 11 LLR 334, 336 (1953). It is also a statutory requirement under our Civil Procedure Code that averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. 1LCLR-Civil Procedure, Section 9.8 (3) page 186. This provision of law has been upheld in many opinions of the Supreme Court: see for example: Vincent Harding v. Hilton and Harding, 32 LLR 86 (1984), Express Printing House, Inc. and Shaibani v. Reeves and the Bank of Credit and Commerce International (BCCI) 35 LLR 455 465-466 (1988). It is our opinion that a responsive pleading was required to counter or traverse Plaintiff's demand for $50,000(USD) as damages for wrongful withholding of his property by the Defendant. Defendant's failure to challenge in his Answer the legality of the amount claimed in the complaint was an admission thereof and cannot now be made an issue for appellate review. The adage often quoted in a lot of Supreme Court cases applies in this case also which states that, "courts will not do for parties what they ought to do for themselves." Defendant having neglected to specially traverse in the answer Plaintiff's claimed damages for wrongful withholding of his property and thereafter abandoning the case, the said Defendant can not now assign his neglect or failure as an error committed by the Judge below. The records revealed that there were only two major issues raised in the complaint: (1) that the Plaintiff was owner of

the property through a lawful purchase and (2) that the Defendant was wrongfully withholding it. He therefore demanded damages in the amount of $50,000(USD). In the Answer the Defendant denied that Plaintiff had legal and better title as against that of the Defendant. The said Defendant made no mention of, or comments on the issue of damages in his Answer. Counsel for Defendant now expects the Supreme Court which has authority only over issues that have been passed upon in the lower court, exception noted thereto, and an appeal therefrom announced and granted, to now perform the job of the lower court by taking evidence on the issue of damages and then determining the legality or illegality of same? We hold that we have no such authority. So whatever discussion the court may have on this issue later in this opinion will not be based on Appellant's contention but on the court's own decision to do so since the complaint contains said issue, and the case was heard exparte.

In count four of the Bill of Exceptions Appellant/Defendant says that on March 28, 2007, Defendant was physically present in Court. We will take it that it was the Defendant, Ms. Ophelia Swen Kennedy, and not her counsel, who was physically present in court and perhaps decided to leave because there was another jury trial in progress. We opine that there was nothing presented to us in support of the averment thus made for our consideration. We shall hereby simply dismiss that count of the Bill of Exceptions.

The final count of the Bill of Exceptions states that the judgment is against the weight of the evidence adduced at the trial. In support of his position, Counsel referred us to the minutes of the trial of March 28, 2007. We took notice of the minutes, but we think differently because when counsel for Defendant abandoned the case, the Plaintiff presented his case by producing two witnesses who testified to the authencity of the deed, and the other documents. We have earlier in this opinion quoted portions of the testimonies that were presented in support of the Plaintiff's complaint. We hold therefore that the evidence adduced at the trial was sufficient as far as proving his averment that he was owner of the property by lawful purchase and that Appellant/Defendant was wrongfully withholding same. It was a surprise to us however, that the Plaintiff in testifying made no mention of the damages for wrongful withholding which he had included in his complaint. Nevertheless that omission from the testimony, the Court had the complaint before it and the law which mandates and allows an award for wrongful withholding of property whether alleged or not.

General damages as defined by **Black's Law Dictionary** are damages that the law presumes follow from the type of wrong complained of. General damages need not

be alleged or proved. General damages need not to be specifically claimed. General damages are also termed as direct damages; necessary damages. **Black's Law Dictionary, Eight Edition General Damages, Page 417.**

Although general damages need not be proved, it can be helpful to the Judge or a jury in making an award of damages to have some information on the basis of which the damages can be justly determined. Plaintiff alleged in the complaint that had the Defendant vacated his premises, he would have earned income by leasing the premises. The question that arises is whether the $50,000(USD) awarded by the trial Judge was for wrongful withholding, in which case, the award would have been punitive only, or whether the award represented the anticipated amount of the lease or whether it was an award contemplated under **section 62.22 of the Civil Procedure Law Revised.**

Section 62.22 of 1 LCLR Entitled: **Rent due and damages,** states: "the relief granted by the court may include a judgment for rent due and for damages for wrongful entry on or withholding of the property which is the subject of the action if the citation contains a notice that a demand for such a judgment had been made." In this case there was no allegation or demand for rent due. But the citation or complaint did include a demand for damages for wrongful withholding. The court was satisfied that the Plaintiff was entitled to possession of the premises. Awarding him damages for the wrongful withholding was therefore legal. The question however is did the Judge award the amount of $50,000USD because the Plaintiff asked for it or because in his own best judgment he considered the amount to be equitable and just taking into consideration the facts and circumstances of the case? In our opinion an award in this case should have been punitive only and not compensatory. The fact that the Plaintiff alleged that he had plans to renovate the building, fence it in, and then lease it to a future unidentified lessee should not serve as a compelling factor in granting his demand for $50,000USD. Such a claim is only a speculation. We hold therefore that as punitive damages for wrongful withholding of the premises, the amount awarded is, in our opinion, considering the facts and circumstances in this case, excessive. We therefore modify the judgment and award $10,000USD to the Plaintiff as punitive damages pursuant to the statutory provision cited supra, for the embarrassment, frustration, anger, and aggravation the Plaintiff suffered due to the wrongful withholding of his property which award will hopefully serve as a deterrence to a repetition of such had faith behavior on the part of the Defendant and others, which bad faith behavior compelled the Plaintiff/Appellee to seek redress in a court of law.

We shall now revert to the Motion for Intervention pursuant to our promise earlier to do so. We have grave concerns that a Counsellor of this Supreme Court Bar would represent two clients who are claiming adversely, title to the same property. The Defendant in this case, Ms. Ophelia Swen Kennedy, client of Counsellor Francis Y. S. Garlawolu, stated in her Answer to Plaintiff's complaint and we quote this paragraph:

"That by virtue of an **honorable purchase, Defendant is the legal and lawful owner of the parcel of land on which the house she occupies is erected.** Defendant gives notice that she shall produce her title deed for the subject property at the trial of this case. Defendant further submits that she shall produce her mother deed at the trial of this case." (Our Emphasis)

That Answer was filed 10 November 2006. On 27 March 2007, the self same Counsellor Frances Y. S. Garlawolu filed a Motion to Intervene on behalf of another client named Elizabeth Swen who claimed title to the same premises. We shall quote the relevant count as follows:

"That Movant and the late Pitman Swen jointly purchased one lot of land in Congo Town Monrovia, and subsequently erected a storey house thereon, as will evidentially appear from photocopy of a deed hereto annexed as exhibit "A" hereof."

There were three additional counts in which the Movant elaborated her claim, but we have limited ourselves to the first count since we have earlier on in the opinion already quoted word for word the entire Motion to Intervention. So according to representations herein made by these clients of Counsellor Francis Y. S. Garlawolu in this one and same case, both clients claiming title to the same property, the question that arises is, which one of them is the real owner? Is it his first client, Ms. Ophelia Swen who was in occupancy who claimed to be a lawful purchaser of the land who gave notice to produce her title deed during the trial and that said deed was older than that of the Plaintiff, or his second client, Elizabeth Swen, the intervenor? By these claims there were now three claimants for the same property, namely Fred Cooper, the Plaintiff, Ophelia Swen Kennedy the Defendant, and now Elizabeth Swen, the intervenor. Notwithstanding these facts, Counsellor Garlawolu decided to represent two of these three clients of opposing or conflicting interests in violation of two provisions of the code of Professional Ethics: Rules 8 & 9 of the code provide respectively that:

Rule 8

"It is the duty of the lawyer at the time of retainer to disclose to the client all of the circumstances of his relation to the parties, if there be any, and any interest in or connection with the controversy, which might influence the client in the selection of counsel. It is unprofessional to represent client of conflicting of interests." (our emphasis)

Rule 9

"Within the meaning of this rule, a lawyer represents conflicting interests when, in behalf of one client, it his duty to contend for that which duty to another client requires him to oppose. The obligation to represent the client with undivided fidelity, and not divulge his secrets of confidences, forbids also the subsequent acceptance of retainers or employment from others in matter adversely affecting any interest of the client with respect to which confidence has been reposed." (Our emphasis)

Counsellor Francis Y. S. Garlawolu, for some reason that finds no support in our law and practice, decided to file opposing claims to the same piece of property and by so doing, breached the rule against the Counsellor representing parties of opposing interests in the same case. And for so doing, we adjudge Counsellor Galawolu in contempt. Counsellor Francis Garlawolu is therefore hereby fined the sum of $300.00USD (Three Hundred United States Dollars) to be paid into government revenue in 48 hours following the rendition of this judgment and a government flag receipt presented to the Marshal of the Supreme Court. In addition, the said Counsellor is warned against a repetition of this or any act that will cast a dark shadow on his professional image thereby giving the impetus for more stringent measures to be taken against him by the Court. It is so ordered.

Counsel for Defendant contends further in his argument that legal title to the property in issue was never concluded between the Plaintiff and Mr. Pitman Swen. He has called our attention to the dates on the supporting documents Plaintiff exhibited with his complaint. The $5000USD receipt as partial payment is dated October 17, 2003, the warranty deed is dated October 17, 2003 and the sale agreement is dated October 20, 2003. Counsel for Defendant would have us say that the sequence of the documents' execution dates would be the determining factor of legality; in other words, he was of the opinion that the agreement of sale should have been executed first, the partial payment next and then the deed, last. Counsel provided no citation in support of that contention. Let's suppose the three documents were signed by the parties on the same date, would counsel still hold his position that the transaction was illegal? We shall take recourse to the sale agreement with special reference to clause 4. A, B, C, D, E, + F.

In clause 4. A. Plaintiff and Defendant agreed that partial payment of $5,000.00USD would be a prerequisite to execution of the agreement. That was done because as indicated, the receipt formed part of the agreement. It means the payment was made on October 17, 2003 and the agreement was entered into three days thereafter. We also know that the deed was signed by the grantor on the same day the advance payment was made not only because the said deed is dated as such, but also because reference was made in the sale agreement to the said Warranty Deed been exhibited with the sale price of $40,000(USD) indicated therein. It means the deed also was executed before the agreement was signed. See clause 3 of the agreement. In clause 4. B. The parties stipulated and agreed that the balance of $35,000.00 USD would be paid over a period of 18 months. In 4. D. there is stipulation that after installment payment had been fully settled, the buyer would serve notice of eviction on the seller.

We undertook the above perusal of the sale agreement to arrive at this point, which is whether the Plaintiff was in possession of the deed on October 17, 2003, the date of the execution of the deed as counsel for Defendant seems to assume or infer? The answer to that assumption or inference by counsel is found in clause 4. D. which states that after a full payment clearance, "the Warranty transfer deed pertaining to the property would be made available to the buyer." It was also stated in clause 4. F. that should the buyer default in his payment the seller reserves the right to sell the offered property to a third party and refund the buyer or his heirs. Now if the seller had delivered the deed on October 17, 2003, the date of its execution, how could the seller reserve a right to sell the same premises to a third party should the buyer default in following the payment schedule? We wonder whether counsel herein read and digested the sale agreement before contesting its legality? In our opinion, based on the facts herein, there was nothing illegal or shady in the transaction. We know that the seller executed a deed on the date he received the partial payment but withheld delivery of the deed until the conditions precedent to its delivery were met. We know that those conditions were fulfilled because the buyer was in possession of the deed at the time he filed this action. We hold that from the transaction records before us, the prepared and executed deed was only an offer. The buyer's acceptance was his fulfillment of the payment schedule after which the deed was delivered to him by the seller. We hold therefore that Mr. Pitman Swen the seller concluded business with Mr. Fred Cooper, the buyer, and that the conveyance of that title is legal and binding on the maker.

We must emphasize here and now that a challenge to the Plaintiff's title in an action to recover possession of real property must be real and supported by proof. It is not

proof in such cases for the Defendant to state merely that he or she has title and then the court automatically freezes in action. A Defendant who states in an Answer to a Complaint in a real property case that he also has title must be prepared to produce proof. The fact that notice was given does not **per se create** a right. It is only a notice to produce proof of that allegation to challenge the Plaintiff's right to possession. So in a case such as happened here, a Defendant who states that he or she has title and offers to produce it during the trial, but then avoids appearing for the trial to proof his or her allegation of having title, which appearance and production of proof alone would have changed the course of action, that is from Summary Proceeding to Recover Possession of Real Property to that of an Action of Ejectment, we wonder whether he or she could legally claim that the case was heard under the wrong form of action. We hold not. We are of the opinion that when the Defendant failed to appear and produce her title deeds as promised, the action remained that of Summary Proceeding to Recover Possession of Real Property. We hold further that the Plaintiff having proved his case was legally be placed in possession of his property and awarded damages for the wrongful withholding of same.

The issues that are determinative of this matter having been dealt with in various parts of this opinion, it is our decision that the judgment from the Court below awarding the Plaintiff possession of the premises be and the same is hereby confirmed; that the award of $50,000(USD) for wrongful withholding of the property, being punitive only is hereby modified to $10,000(USD), in the interest of justice. And it is hereby so ruled. The Clerk of this Court is ordered to send a mandate to the trial court from whence this appeal emanated, instructing the Judge therein to resume jurisdiction in this matter and give effect to this judgment. AND IT IS HEREBY SO ORDERED.