Barclay Teah of the City of Monrovia, Liberia DEFENDANT/APPELLANT VERSUS **Layssayo Kemokai** and **Sophia Kemokai** of the City of Monrovia, Liberia PLAINTIFFS/APPELLEES

APPEAL

HEARD: May 6, 2009 DECIDED: July 23, 2009

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The appellees, Layssayo Kemokai and Sophia Kemokai, filed an ejectment action in the court below complaining that the appellant, Barclay Teah, unauthorizingly and without any color or title or right, illegally entered appellees' premises and erected a structure thereon; thereby, depriving appellees of the use and enjoyment of their land to their detriment and harm, and causing damages, inconveniences and loss to them. Appellees alleged that they made several demands on the appellant to refrain and desist from further constructing and occupying their property, but the appellant totally ignored them. Attached to appellees complaint was an Administrator's Deed from Napoleon T. King, Boakai S. Zulu & Isaac D. Davies, the administrators of the Intestate Estate of the late King Peter.

Appellant, on the other hand, alleged that he is a lawful administrator of his late father's Intestate Estate. He stated that his late father purchased the land in dispute as far back in 1976, and started construction of a building in 1977. The construction went as far as window level when his father died in 1993. He stated further that co-appellee, Sophia Kemokai, being a gardener, used to plant greens around the unfinished building when appellant's late father was living. After the death of appellant's father, co-appellee Sophia Kemokai appealed to him, the appellant, to continue using the area to plant greens and he consented to her request. It was sometimes in December, 2003, when Sophia Kemokai requested him to allow her complete a room in the unfinished house so that she would not be far away from her garden. He refused her request, knowing that should he agree to the request, the co-appellee might not want to easily leave in the future. Appellant alleges that It is his refusal that made co-plaintiff Sophia Kemokai vexed and she made the comment that having used the property for many years, she would get it at all cost.

Appellant alleged further that the deed presented by the appellees is fraudulent. That appellees' deed is a "table deed", that is, a deed prepared without a survey been

conducted; that the appellees' grantors are well known fake land owners in the Logan Town area, who are in the constant habit of selling properties belonging to others under the guise of being administrators of King Peter Estate. To this extent, appellant requested the court below to take notice of the numerous land cases before the Civil Law Court caused by the unlawful actions of selling people's property by appellees' grantors. Appellees thereafter filed a reply denying appellant's allegation.

In the appellees' brief and in their counsel's argument before us, the appellees argued that having obtained a deed in 2004, for the subject property, the appellees decided to mold blocks for the construction of a building on the said land. The appellant, Barclay Teah, was contracted to mold several hundreds of blocks for the appellees and paid accordingly. The appellees then constructed a house up to roof level. In the interim, while the appellees were trying to amass funds for the completion of the house, the appellant bought some zinc and roofed a portion of the appellees' property and placed rentals therein. The appellees filed a complaint of criminal trespass against the appellant. At a conference called by Her Honour Amymusu Jones, the Presiding Judge of Criminal Court "B", the appellees presented their deed and the appellant failed to produce a deed, claiming that his brother had the deed for the disputed property; however, he exhibited Letters of Administration for his late father's estate.

The appellees also stated that since the appellant claimed paper title, the appellees proceeded to the Civil Law Court and filed an ejectment action on December 8, 2004. The appellant filed an answer to the complaint and again attached as exhibit, Letters of Administration granted to him, Barclay Teah, Jr. and his brother Otis Teah to administer the Intestate Estate of their father, the late Barclay Teah, Sr.. The appellant did not attach to his answer any title document for the property or give notice of the existence of one.

Appellees stated further that after the disposition of law issues and while the case was pending for trial, they filed a Bill of Information informing the Court that the appellant had moved on the property and began roofing the entire building. In the Bill of Information, the appellees alleged that when they approached the appellant about his action, especially the matter being pending in court, the appellant stated that it would be the appellees that would be running behind the case while he would continue building his house. He defied anyone to interfere with his house and roofing project; threatening that if anyone did, "Bamboo would divide cola", and while he is in jail, the appellees will be in the funeral home.

Although throughout the pleadings, the appellant had not proferted a deed nor given notice that he would produce one for the disputed property, the appellees went further to move the court to set up a board of arbitration to ascertain as to whether the property in question was the same property claimed by the appellant as being part of his intestate estate. The Presiding Judge, Emery S. Paye, granted the application of the appellees, and acting upon his order, the Clerk of the Civil Law Court, on November 23, 2006, communicated with the Ministry of Lands, Mines and Energy to submit a name of a licensed surveyor to serve as the Chairman of the Arbitration Board. The appellant and appellees were notified by the court to designate a surveyor each to the board. The Ministry named Surveyor James B. Johnson as requested by the court to serve as Chairman of the board, and the appellees named Mr. John Kai Gray as its surveyor to the board. Even though the appellant was served several notices to appear and appoint his surveyor for the setting up of the Board of Arbitration, he failed to appear or name his surveyor.

On January 10, 2007, the Judge called the case for the qualification of members of the board and for giving them instructions. Upon application made by counselor for appellees, citing the appellant's absence as an abandonment of the case, the court proceeded to qualify and instruct the members of the Board of Arbitration that were present, giving them their terms of reference as follows:

1. The surveyors are hereby ordered to use the deeds of the parties concerned as their working tools;

2. And that publication be made and aired for the awareness of all adjacent parties; that is to say, survey notice;

3. The Board of Arbitration is hereby ordered to conduct the survey within 30 days and thereafter make their report to this Honorable Court 35 (thirty five) days immediately after the exercise is completed;

4. And that the Chairman of the Board of Arbitration should be compensated and/or paid jointly by the parties in these proceedings, and the movants should pay his and/or their surveyor.

The board of arbitrators carrying out the judge's instruction, carried out the survey and on May 15, 2009, filed a report with the court stating, although the appellant was present he had no deed and a survey was carried out with only the appellees deed which was verified by their grantors.

The Civil Law Court, during its June Term presided over by His Honour Yusuf D. Kaba, delivered its final ruling on the matter, confirming the Arbitration Report. The Judge held the appellant liable and ordered the Clerk of the court to issue a writ of possession, to eject, evict and oust the appellant from the disputed property.

Three months later, during the September Term of Court, and after the confirmation of the Arbitration Report by the court, the appellant filed a motion to rescind judgment.. Counts 2, 3, and 4 of the Motion to rescind judgment reads:

2. "That the movant [appellant] registered his rejection to the report and filed same on June 1, 2007 on ground that his surveyor was not informed to attend the investigative survey for which they were appointed".

3. "That despite this rejection/objection to said report, Your Honour proceeded and affirmed said report ordering the eviction and ousting of movant".

4. "And that had the movant [appellant] and his surveyor being informed of the survey, his title deed could have been made available for the defense of his title, which could make the report different from what it was that went against movant [appellant]':

Our law requires that a motion to rescind judgment be made within the term during which the judgment was made; however, Judge Kaba, contrary to this practice, being assigned during the following term to the same Civil Law Court, entertained arguments on the motion to rescind. He ruled denying the motion to rescind, confirming his earlier ruling on the Board of Arbitration's report in favor of the appellees.

It is against this ruling on the motion to rescind that the appellant's counsel excepted and announced an appeal to this Honorable Supreme Court on a two (2) count Bill of Exceptions:

1. "That your Honour committed a reversible error when you denied appellant/defendant's motion to rescind judgment that was based on report of a Board of Arbitration whose investigative survey was conducted in the absence of appellant's surveyor, Appellant was never served with notice and for which an objection was filed before you by appellant/defendant by and thru his counsel against said report which objection you disregarded".

2. That your judgment based on a one sided investigative report affects the right of defendant to real

property which under our law deserves to be handled with care and caution."

Judge Kaba ruling from which this appeal was taken reads as follows:

This Court says that the file of this Court is replete with incidence of the counsel for the respondent/defendant ignoring and neglecting to attend to the assignment issued in the matter. This Court says that in spite of the fact that counsel for the defendant/respondent was served with notices of assignment for the hearing of the application for arbitration, and for the constitution of the Board of Arbitration, for the reading of report of the Board of Arbitration, and now for this Court's ruling on the report of the Board of Arbitration, Counsel for the defendant/respondent, has failed, refused, neglected and by that abandoned this case and the ruling contains in this case for the establishment and for the constitution of the Board of Arbitration whose report is the subject of this ruling.

This action by the respondent/defendant and counsel without any excuse and justification constitutes, in the mind of this Court, an abandonment of their interest, and documents filed by the said counsel is considered as nothing more than an attempt to baffle and delay the proceedings and adjudication of this matter. The Court says that at every point in this proceeding, where a counsel is dissatisfied with act of a court or a party thereto, the remedy is to except to that action, in the absence of an exception, the said action is deemed accepted by the party affected by the action. In the instant case, the records show no exception to the constitution of the Board of Arbitration. There is also no exception to qualification and instruction given to the Board of Arbitration.

There are also no legal exceptions interposed to the report of the Board of Arbitration, nor was there a representation on behalf of the respondent/defendant at the reading of the report of the Board of Arbitration in spite of the fact that all counsels were served notices for that purpose. At the point of the rendition of this ruling, Counsel for the respondent/defendant has failed to make an appearance and to legally state his point of objection to the Board of Arbitration report. The court, therefore, sees no justification to dispute the report of the Board of Arbitration.

The case file shows that of the two parties involved in this matter, it is only the plaintiff that attached to his pleading a copy of his title deed. The defendant, in his answer, attached only a Letters of Administration which does not and cannot constitute title. In spite of this fact, this Court, in its instruction to the members of the Board of Arbitration, requested all of the parties to submit to the Board copy(ies) of their instruments or titles relied upon to justify their contention in their pleadings and claim to the property, the subject of this litigation. According to the Board of Arbitration, the defendant/respondent failed to submit any instrument or title to them. The board reported that during their survey, they met the plaintiffs' grantor and that the plaintiffs identified their corner. The board concluded that indeed the Kemokais and /or the plaintiffs/movants have a

deed which was recognized by their grantor and that the respondent has no title instrument...."

In view of this report, and, all that have been said herein above, this Court hereby confirms the Board of Arbitration's report, and by that, render judgment in favor of plaintiff The defendant is hereby adjudged liable in this Ejectment Action. The Clerk of this Court is hereby ordered to issue a Writ of Possession in favour of the plaintiffs to have the respondent ousted, and evicted from the premises of the plaintiffs as indicated by the deed proferted by the plaintiffs. Costs of these proceedings are hereby ruled against the respondent, AND SO ORDERED.

On examination of the records before it on this matter, this Court has seen nowhere in the records where the appellant proffer a deed or give notice to the court that he would produce one. The Board of Arbitration report states that the appellant was present at the survey but showed no deed although the court and the board's announcement had instructed each party to present a deed to the Board of Arbitration to be used as a working tool.

In our jurisdiction, both parties to an ejectment suit are required to establish their claim of title to the disputed property, especially since the primary object of an ejectment action is to test the strength of titles of the parties, and to award possession of the property to the party whose claim is so strong as to effectively negate his adversary's right to recover. United Methodist Church and Consolidated African Trading Corporation vs. Cooper et al.; 40 LLR 449, 458, (2001). This Court has also said that the most important issue in all cases of ejectment is title, which must be established by proof of decent or purchase. Cooper vs. Davies et al. 27LLR, 310, 317, (1973).

The question then is, does Letters of Administration constitutes legal title to real property as against one who has a deed for the property?

"Property may be acquired by descent or by purchase." "Title is the evidence of a person's right or the extent of his interest; the means whereby he is enabled to maintain or assert his possession and enjoyment to property." 63Am Jur 2nd, Sections 24 and 25

In the case before us, the records show that appellees attached to their complaint a deed duly registered and probated, evidencing ownership of the disputed property by purchase. On the other hand, the appellant is claiming ownership by descent but attaches only Letters of Administration for his father's estate.

Letters of Administration is a formal document issued by the Probate Court appointing one an administrator of an estate. Blacks Law Dictionary describes estate as, "The degree, quantity, nature and extent of interest which a person has in real or personal property." 5th Edition, page 490. "Bare allegation of title of property, and particularly real property, unsupported by a valid deed or other instrument, or by any of those legal circumstances and conditions - as for instance undisturbed possession for the statutory limit requisite to bar an adverse title — and by which legal ownership is presumed, is devoid of legal efficacy and weight and can not by any rule of law be construed into a defensible title." Williams vs. Wynn, 2LLR, 148, 152-153, (1914). In our jurisdiction, title to real property must be proved with certainty and the land must be so described and identified so as to establish a right thereof to the immediate exclusive possession of others. In this case, mere Letters of Administration held by appellant with no evidence of conveyance of property ascribing said property as asset of the intestate estate being administered is insufficient to overcome appellees in this ejectment action who have established right to the disputed property by deed duly registered and probated, setting out metes and bounds of said conveyance.

We hold therefore that the appellant's Letters of Administration is not sufficient title as against the appellees title deed.

Appellant's Bill of Exception has alleged that the court made a judgment, relying on a one-sided report of the Board of Arbitration as he was never served with notice, and the investigative survey was made in the absence of his surveyor which affects his right to real property.

The court's file shows that a Bill of Information was filed by the appellees to the court informing it that despite the matter being in court, the appellant continued roofing the entire building, and when appellees approached him, he made remarks to them that he was finished with the case and it would be the appellees who would run behind the case while he continued building his house on the disputed land and roofing the unfinished building. The Sheriff's reports thereafter on service of notices of assignment for setting up of the Board of Arbitration, ruling on the arbitration report, etc, all show that notices of assignment were served on both parties but neither the appellant nor his counsel in each case showed up in court. The Judge even mentioned in his ruling that the file is replete with incidence of the counsel for the appellant ignoring and neglecting to attend to assignments issued by the court in this matter.

Part of Rule 7, of the Circuit Court Rules Revised states that, "...a failure to file a motion for continuance or to appear for trial after return by the Sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance, the court may proceed to hear the plaintiff's side of the case and decide thereon or, dismiss the case against the defendant, and rule the plaintiff to cost, according to the party failing to appear." Pg. 58, (1999). A party to a civil action, therefore, when duly informed or notified of the pendency of the action against him by service of summons, may, after receipt of the notice of assignment, decline to attend the trial; notwithstanding, where he is duly notified and willfully defaults in attending a trial to defend his rights, the trial court may legally proceed.

After the survey on March 13, 2007, the appellant did not appear or file a motion to the court alleging non service of notice of assignment. He, nor his counsel, appeared even thereafter when the sheriff on the 27th of July served a notice of assignment for the parties to appear for ruling on the Board of Arbitrators' report slated for the 8th of August 2007. The record shows that counsel for the appellant did sign for and receive all notices of assignments. Under the circumstances herein stated, what was the court supposed to do? We must commend the court for being generous in giving the appellant an opportunity to appeal, as the act and behavior of the appellant was contemptuous to the court. This Court has said, *"The return by the ministerial officer constitutes prima facie evidence of service and unless attacked or rebutted by a motion, stands unhindered.* "Rasamny Bros. Inc. et al. vs. Gardiner, 24LLR, 530, 532, (1976).

Note that our courts are under no obligation to compel a party litigant who waives his right to appear and be heard to appear and participate in a trial involving him. Any litigant who chooses to ignore assignments for appearance in court does so at his own risk as our courts will proceed to dispose of such matter before them without his participation. Our Civil Procedure law provides: *"If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any such failure to proceed, the plaintiff may seek a default judgment against him."* 1 LCL revised, title 1, section 42.1.

The signature of the counsel for appellant on the assignments has not been rebutted. This Court is convinced that indeed, notices of assignment were served and that the appellant and his counsel refused to honor the assignments, an indication that appellees' allegations in their Bill of Information filed were true.

After examination of the records in this case, and having heard arguments from counsels representing the parties in this case, we find no legal reason for disturbing the judgment of the court below. The appeal is therefore denied.

The Clerk of this Court is ordered to send a mandate to the court below to give effect to this judgment, with costs against the appellant. And it is hereby so ordered.