

The **Tower of Faith Church** represented By its Head Pastor, Jacob H. Harris of the city of Monrovia, Liberia APPELLANT VERSUS The **Intestate Estate of the late Wheagar Blaygbor** by & thru its Administrators Cephus Morris & Robert Blaygbor also the City of Monrovia, Liberia APPELLEES.

LRSC 28

Heard: March 29, 2010 Decided:

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The administrators of the intestate estate of Wheagar Blaygbor instituted an ejectment suit against the Tower of Faith Church and the National Housing Authority for a piece of property lying and located in the vicinity of the Stephen Tolbert Estate Project in Gardnersville. The subject property is a structure that was built by the National Housing Authority to serve as a market hall for the convenience of its tenants. Because of the war, the tenants, like other citizens of Liberia at the time became displaced or dispersed rendering the market hall commercially unviable.

In February 1996, the co-defendant/appellant, Tower of Faith Church, entered into a lease agreement with the National Housing Authority for use of the market hall for their worship services. While the church was in occupancy and possession of the hall, the plaintiff/appellee informed them that the premises was being illegally occupied by them because the said premises was built on their estate property and not on that of their landlord, the National Housing Authority.

While the National Housing Authority and the administrators of the Blaygbor estate were bickering about ownership to the land, the church, fearing eviction by the administrators, entered into a purchase agreement with the administrators. The church made an initial payment of US\$2000.00 to the administrators with the understanding that if the administrators, in the final determination of the land dispute, came out victorious then the land purchase would be concluded between the parties.

In an effort to resolve the land dispute, the National Housing Authority wrote a letter to the Ministry of Lands, Mines, and Energy requesting for a team of public surveyors to be dispatched to the area in dispute and conduct an investigative survey. The concerned parties submitted their deeds and the survey was conducted.

Below is the survey report that was submitted by the Ministry of Lands, Mines and Energy:

"LAND DISPUTE INVESTIGATION REPORT NATIONAL HOUSING
AUTHORITY VERSUS THE HEIR OF THE LATE WHEAGAR BLAYGBOR

INTRODUCTION:

This report presents findings of investigation and recommendations relative to a Land dispute case. National Housing Authority versus the Heir of the late Wheagar Blaygbor. The property in question is situated in Gardnersville, near the Stephen A. Tolbert Estate.

On January 7, 1999, Management of the National Housing Authority wrote the Minister of Lands, Mines and Energy requesting the Ministry to dispatch a team of Surveyors to conduct an investigative survey into a land dispute involving the National Housing Authority and the Heir of the late Wheagar Blaygbor, Robert Blaygbor.

Three (3) deeds were presented to the Ministry to facilitate the survey investigation:

a. One Public Land sale deed from the Republic of Liberia to National Housing Authority; lot N/N Probated the 24th day of July A. D. 1978; Registered in Vol. 303-78; Pages 74-777.

b. One Public Land sale deed (certified copy) from the Republic of Liberia to Wheagar Blaygbo; recorded in vol. 143-75, Pages 25-26; date of probation not recorded on deed; but on a certificate of correction from the Center for National Documents and Record,; carries a probation date of December 18, A. D. 1925 comprising 3.95 acres of land.

c. One Public land sale deed (certified copy) from the Republic of Liberia to Judge Koowon, probated the 7th day of March A. D. 1960; Registered in Vol. 82, page 554.

INVESTIGATION METHOD:

- 1. Detailed survey and cadastral mapping*
- 2. Scrutiny of deeds relative to their metes and bounds so as to ascertain the relationship between the deeds and land claimed by the contesting parties.*

FINDINGS:

The findings of the survey investigation are as follows:

A. "National Housing Authority"

- 1. That the grantor of the National Housing Authority is the Republic of Liberia.*

2. *That the deed in favor of the National Housing Authority has a linear misclosure and as such its actual acreage is not computable.*

3. *That the deed of the National Housing Authority is not in conformity with the boundary points that are erect ed; that is, the metes and bounds do not correspond with ground situation.*

4. *That even though the deed in favor of the National Housing Authority has a misclosure, its metes and bounds engulfed the area claimed by the heir of the late Wheagar Blaygbor (see map).*

5. *That the National Housing Authority's 112.92 acres fall within the industrial park according to available record at this Ministry.*

B. "HEIR OF WHEAGAR BLAYGBOR, ROBERT BLAYGBOR"

1. *That the grantor of Wheagar Blaygbor is the Republic of Liberia and said land was bought in 1925.*

2. *That the deed in favor of the late Wheagar Blaygbor commenced from the southwestern corner of Koowon's 5.17 acres of land which was bought in 1960.*

3. *That the deed in favor of Wheagar Blaygbor is not in conformity with boundary points identified by Mr. Robert Blaygbor that is, its metes and bounds do not correspond with ground situation.*

4. *That the parcel of land in question falls squarely within the perimeter of the industrial park in keeping with available record at this Ministry.*

C. "JUDGE KOOWON"

1. *That the grantor of Judge Koowon is the Republic of Liberia.*

2. *That the deed in favor of Judge Koowon commenced at the northeastern corner 25 feet from the edge of a river which name is not specified and so we are unable to state the rightful place in keeping with his deed.*

CONCLUSION:

1. *The deed in favor of the National Housing Authority is original and duly signed by the late President William R. Tolbert.*

2. *That National Housing Authority's 112.92 Public Land Sale Deed does not form a closed geometric figure.*

3. *Considering the certified copy deed presented in this investigation by Mr. Robert Blaygbor heir of the late Wheagar Blaygbor, it is not technically possible for said deed to commence from Judge Koowon's parcel of land, in that Judge Koowon's land was bought in 1960 whereas that of Mr. Wheagar Blaygbor was bought in 1925, thirty-five (35) years earlier.*

4. *The claim of the Blaygbors creates serious doubt in our mind relative to their actual ownership of land within the disputed area.*

RECOMMENDATION:

In view of the above, we recommend the following:

a. *That the National Housing Authority seeks to correct the 112.92 Public Land Sale Deed in a court of competent jurisdiction to form a closed geometric figure, and*

b. *That since the Blaygbor's 3.95 Public Land Sale Deed certified Copy Creates a serious doubts in our mind relative to its legality the contesting parties should seek redress through a court of competent jurisdiction to adjudicate the matter and take the necessary legal action*

Singed: The Ministry of Lands, Mines and Energy"

The foregoing investigative survey report being unsupportive of the administrators' claim to ownership of the land, they condemned portions of it and proceeded to the Civil Law Court of Montserrado against the codefendants, Tower of Faith Church and the National Housing Authority by filing an ejectment action against them on June 19, 2001. They alleged in their complaint essentially that the co-defendants were in illegal possession and occupancy of the property, same being part and parcel of the estate of decedent Wheagar Blaygbor; of which property they were the administrators. That despite all warning to them to desist from further occupancy and construction on the said estate property, co-defendants have paid no heed. Plaintiffs demanded US\$100,000 as general damages for wrongful withholding and that said co-defendants be forthwith ejected from the premises. To this complaint plaintiffs annexed as exhibits the letters of administration and the decree of sale from the Monthly and Probate Court of Montserrado dated March and July 1993 respectively, and a certified copy of a public land sale deed to Wheagar Blaygbor, signed by C. D. B. King in 1925 and the map from the survey report.

The co-defendants filed separate answers. Tower of Faith Church denied being in illegal possession; that on the strength of a lease agreement it had concluded with the National Housing Authority who constructed the market building, the Tower of Faith Church was using it for its worship services. The co-defendant alleged further that the plaintiffs had in fact misled the Church through false representation that the structure was on their estate property. As a result of this misrepresentation they had entered into a purchase agreement with said administrators for the premises and had made a down payment of US\$2000.00 to said plaintiffs with the understanding to make final payment after the land dispute had been settled between plaintiffs and co-defendant National Housing Authority and consequently the estate had been proven to be the owner of the premises. Co-defendant stated further in their answer that an investigative survey was conducted by the Ministry of Lands, Mines and Energy on October 9, 2000 and a report was submitted to the National Housing Authority. Co-defendant quoted the following statement from said survey report, "Considering the certified copy deed presented to this investigation by Mr. Robert Blaybor, heir of the late Wheagar Blaybor, it is not technically possible for said deed to commence from Judge Koowon's parcel of land in that Judge Koowon's land was bought in 1960, whereas that of Mr. Wheagar Blaybor was bought in 1925, thirty five (35) years earlier." Co-defendant stated further that subsequent to the submission of the investigative report, co-defendant Tower of Faith Church demanded refund of its down payment but plaintiffs failed and refused to do so. This answer contained other issues but not necessary for a determination of this case. Co-defendant made profert of the lease agreement and a copy of the investigative survey report and a copy of a map showing the areas described in the three deeds that were submitted to the surveyors.

The other co-defendant, National Housing Authority, the lessor of Tower of Faith Church, filed an answer also. In essence it denied plaintiffs' claim to the disputed area. Co-defendant said that the Government of Liberia had deeded the area to the National Housing Authority, a public entity created by an act of Legislature and that the said National Housing Authority, as owner of the Stephen Tolbert Estate project, had constructed the market building for the commercial convenience of the tenants of the housing project, on its demised premises and not on plaintiffs' land. Codefendant stated further that in order to determine whether the leased premises was on plaintiffs' land or not, the Ministry of Lands, Mines and Energy dispatched competent surveyors to the area and they did an investigative survey and submitted a report with a map showing the areas claimed as per the deeds submitted. According to that investigative survey report, co-defendant said, plaintiff has no land in the area as the area leased to Tower of Faith Church is part of the property of co-defendant herein, and that the map plaintiffs had annexed to substantiate their claim to the premises was in fact the

map drawn by the surveyors of the Ministry of Lands, Mines and Energy. Co-defendant went further and said that assuming without admitting that the market building was constructed on plaintiffs' land, plaintiffs would be barred under the doctrine of adverse possession because said co-defendant has been in open, notorious and hostile possession for more than thirty years.

To counter the points raised in both answers, plaintiffs filed a reply consisting of 18 counts. We have chosen to comment only on those counts that are germane to a determination, of this case, and in essence only. Plaintiffs contended that government should have paid compensation for the private land in an expropriation proceeding according to law and failure to have paid said compensation, co-defendant National Housing Authority could not have leased premises it did not own. Therefore, the leasehold right on which co-defendant Tower of Faith Church relied was a legal nullity. Plaintiff also contended that the Ministry of Lands, Mines and Energy, being an administrative entity has no authority to investigate real estate matter in which titles are involved except if authorized by a court of competent jurisdiction. They further stated in the reply and we quote that:

"Further to count three (3) above, plaintiffs contend that in an action of ejectment, each contesting party recovers on the strength of his title but defendant had not exhibited any title to the land therefore, plaintiffs have every legal right to lease their property to anybody whatsoever, because they have exhibited title to their property, but NHLA lacks the legal capacity to lease plaintiff's property."

They said further in the reply that co-defendant Tower of Faith Church cannot ask for restitution of the down payment made to plaintiffs because National Housing Authority is not the owner of the property to whom a complaint could have been made: that National Housing Authority is on deception and attempting to mislead the court, and even the Ministry of Justice, same being an administrative agency has no authority to investigate legal matter involving title. We must also quote another count of the reply, count 17:

"That as to count 12 of the answer, plaintiffs maintain that First Defendant is encroaching on the intestate estate belonging to the plaintiffs and the first Defendant has no license and privilege by virtue of any leasehold because in ejectment action, this operates against a defendant who conveys realty without title or a basis for such conveyance."

The parties rested pleadings. The Judge disposed of the law issues and ruled the case to trial by jury on the mixed issues of law and fact. At the call of the case for trial, there was no representation made by or on behalf of the NHA. Counsel for co-defendant

Tower of Faith Church moved for separate trial which was granted and the trial commenced. One of the plaintiffs, Robert Blaygor, first took the stand and testified in chief as quoted herein:

"A. My father died in the year 1992, June 8, I began to come to the Court I maintained Letters of Administration, and Court's Degree of sale, after that I began to go on the land with my friends, when I got on the ground, I discovered that a church was on the land and I asked question how did you get here and the church said we have been placed on this land under the authority of the National Housing Authority and I told them that the property belongs to me. And they asked me for documents pertaining to the land in question and I did show them my title deed, Letters of Administration, Court's Degree of Sale, and they said well, we will go to the National Housing Authority. When they went to the National Housing Authority, they then went to the Ministry of Lands, Mines and Energy. When we got to the ministry of Lands, Mines and Energy a date was set-up for a survey of the property in question between the National Housing Authority and myself, the Church Tower of Faith, paid the amount of LD\$10,000.00 to the Ministry of Lands, Mines and Energy in favor of the National Housing Authority to do the survey, the survey was conducted but to produce the map it was not easy. It took almost seven (7) months to produced the map for the area in question. After that, the map was produced and the Ministry of Lands, Mines and Energy gave one map to the National Housing Authority and one copy was given to me. After we opened the map the deed read the ground flat, the National Housing Authority deed was not closed, the Church, Tower of Faith did deny me of the benefit of the land so I decided to come to court, so my land will be given to me and my title deed is closed. This is all that I know about the case."

On the direct examination the witness identified the letters of administration, decree of sale, public land sale deed signed in 1925 by President C. D. B. King, and the map of the survey that was conducted by the Ministry of Lands, Mines and Energy. Said pieces of evidence were marked by court and confirmed by the witness in support of plaintiffs' case.

On the cross examination several questions were posed to the witness including the following:

Q. Mr. Witness do you also confirm and affirm that an investigative survey was done in (2002)? by the Ministry of Lands, Mines and Energy?

A. Yes, we went to Lands, Mines, and Energy, and it was discovered that my land was on the ground.

Q. Mr. Witness, please say if you know when did your father die?

A. "My father died in the year 1992, June 8.

Q. Mr. Witness do you also confirm that this deed was the deed that was used for the investigative survey that was conducted by Lands, Mines and Energy of which you were an integral part?

A. "Yes, this is the deed they used, and I was present.

Q. How old was your father when he died?

A. My father was 65 years when he died.

Q. Mr. Witness, a recourse to the public land sale deed annexed to your pleadings show that the late Wheagar Blaybor acquired this property by honorable purchase from the Republic of Liberia in 1925. You further told this court that your father was 65 years prior to his death. From mathematical calculation, from 1925 to 1992 is 67 years. Are you still maintaining that your father died in 1992, is it feasible that he acquired this land prior to his birth?" The Judge disallowed the question on the grounds of immateriality, irrelevancy, and the best evidence rule. To which ruling counsel for defendant "vehemently excepted."

Q. Mr. Witness do you confirm or say that a report was written after the survey was conducted?

A. Yes, a report was made but the report was not represented (representative of) by the map. The report was rejected by us and we wrote the Minister of Lands, Mines and Energy, Jenkins Dunbar.

Q. Mr. Witness, in your answer just given you stated that the report was rejected by you and a letter was written to the Minister, please say what evidence do you have to show that the report was rejected by you, when you annexed the map that was drawn out of the report? The trial Judge disallowed the question on the ground that the answer sought was within the province of the jury.

Plaintiffs' second witness was Isaac M. Koowon (any relation to Judge Koowon?) who lived near Stephen Tolbert Estate. He was not employed. He knew the defendant Tower of Faith Church. He began his testimony thus:

"In the year 1993, Mr. Blaybor came to my house and he told me that his father died and he was having certain documents, such as letters of administration, and a deed and a Decree of Sale and he said his late father was having a land so he asked me to carry him there on the land and I followed to see the land. And we went on the land and met an organization, called Tower of Faith Church of God. And he asked them who put you people here and they said the National Housing Authority put them on the land and he said in which way? And they said they are leasing the land from the National

Housing Authority, and he said this land your are sitting on is for my father, and this the document for the land and they said we do not have a title deed to fight you but we will proceed to National Housing Authority our Grantor. So they went and gave money to National Housing Authority to do survey. After that we left that is to say, Mr. Blaybor and myself left. In the year, 2000, Mr. Blaybor came back to me and showed me a map that they had surveyed the area in question and the Ministry of Lands, Mines and Energy presented to him a map and same was given to the National Housing Authority. And in the map the Ministry of Lands, Mines and Energy told him that the land is for him, and he said he went to Tower of Faith Church of God and they told him that the place is not for Robert Blaybor but according to the surveyor told him that the place is for him and he said I will go to court so the court will decide because the property is for him. That how come we are here today. This is all that I know about this action."

On the cross examination the witness gave answers to the following questions:

Q. "Mr. Witness, am I correct to say that all that transpired relative to the investigative survey was information given to you by Mr. Robert Blaybor?"

A. "Yes, Robert Blaybor told me. I was not there when they were doing the survey. The witness was further asked whether when he accompanied Robert Blaybor and the Church authorities to the premises there was a building there?"

A. "Yes, we met a building there and it was a market building which they said they wanted to lease from the National Housing Authority because the marketeers were no longer there."

Q. "Mr. Witness, please say who constructed the market building?"

A. "I do not know who built the house there, only the owner can tell."

Jury question:

Q. "Mr. Witness, you said in 1993 plaintiff came to your house and asked that you carry him on the land that is now in question, can you tell us the period of time it took for him to come back and show you the map produced by the Ministry of Lands, Mines and Energy?"

A. "From 1993, he came back in 2000 to show me the map having informed me that the survey was conducted."

Q. "Mr. Witness, did not plaintiff further explain in detail to you whether his father informed him that people were on his land?"

A. "No, he did not tell me in detail about land issue. As usual, if you had a father, when he dies owning property and you get to know it as owner replacing your father, you go through the proper channel by getting letters of administration, decree of sale before you fight for that property."

Plaintiffs having rested the production of both oral and documentary evidence, defendant Tower of Faith Church's first witness, Rev. Jacob H. Harris of the Church of God as a pastor, took the stand and deposed as follows: that in 1993 the Tower of Faith Church was in search of a place for their worship services and came across the old market building in the Stephen Tolbert Estate; that the building was in a dilapidated state; that the church approached the National Housing Authority for permission to use the premises, that in 1996, the church concluded a lease agreement with housing authority and just in that time, Plaintiff, Robert Blaybor appeared and surprised them by saying that the premises belonged to him and not the NHA, their lessor, that from that point on plaintiff harassed them, there were times he took S.O.Ds to the premises while the church was conducting prayer services, plaintiff even had pastor's wife arrested on orders of the magistrate of the Paynesville Magisterial Court; that in order to stall the harassment, they decided to enter into some arrangement with the Plaintiff, but not a purchase agreement as he was suggesting because they believed the premises belonged to NHA. They therefore agreed to pay the sum of L\$3000.00 monthly to the Plaintiff; that they paid this amount to Plaintiff for some months and decided they needed to know the real owner of the premises; that they paid L\$12,000.00 to NHA to have the disputed area surveyed; that the surveyors made public announcement inviting all persons adjacent to the premises to be present with their deeds; that Robert Blaybor also appeared with his deed and that according to information witness received, when the survey was conducted, it was discovered that his (Robert's) deed was older than that of his (Robert's) grantor; that because of that revelation, the church ceased dealing with the Plaintiff. The witness identified the lease agreement with NHA and the signatures including his, the survey report, and the map and confirmed said marked documents.

Counsel for Plaintiff cross examined the witness:

Q. "Mr. Witness, you told this court and jury that you entered into a lease agreement with the NHA and later on purchased the premises (?); did your principal, NHA give you any title deed in your favor?"

A. "They did not give us the deed."

Q. "Mr. Witness, count four(4) of your answer filed July 2, 2001 states that the Plaintiff's deed was

obtained in 1925, 35 years earlier than that of the George Koowon's which was bought in 1960. Mr. Witness, do you confirm and affirm such count four (4) in your answer?

A. "Yes, I confirm and affirm that."

The second witness for the defendant was David Woods Baysay, a resident of the Stephen Tolbert Estate, employed by the AME University as instructor. He said he was acquainted with the Plaintiff Robert Blaybor and the defendant Tower of Faith Church. He said that in the early 1990s, the church, while in the search for a place of worship came across the market building in the Stephen Tolbert Estate which had been abandoned by the marketeers due to low business activities. The church learned that the building was constructed by NHA. His testimony corroborated that of the first witness, that the church and NHA entered into a lease agreement and after nearly four years of use, one Mr. Blaybor emerged and claimed ownership of a building he never built, a building that had been occupied by government for almost 20 years. In order to find out the real owner of the premises, the church contacted Mr. Blaybor so that he could agree to a survey by the Ministry of Lands, Mines and Energy. Mr. Blaybor agreed that the area should be surveyed by the Ministry, but that while the survey was pending, Mr. Blaybor demanded that the church pay him rent for the premises which proposal the church accepted. The survey result was that the Blaybors had no land in the area.

At the conclusion of all the testimonies and arguments, the parties submitted the case to the jury and the court. The special jury brought a verdict in favor of the Plaintiffs holding the defendant Tower of Faith Church liable. Defendant filed a motion for a new trial which was heard and denied. The trial Judge there after confirmed the verdict and handed down a ruling accordingly. To said ruling the defendant noted exception and announced an appeal to this Honorable Court of final resort, on a bill of exceptions consisting of three (3) counts. But because we do not consider the first count necessary for a determination of this case we shall therefore quote and address counts 2 and 3 of the bill of exceptions only.

In count 2 of the bill of exceptions, appellant noted the following exception:

"That your Honor committed a reversible error when on the 16th day of special jury sitting Friday, December 8, 2006 on page eight of the minutes, His Honor sustained an objection on the cross examination as follows: 'Q. Mr. Witness, thank you, a recourse to the public land sale deed annexed to your pleading shows that the late Wheagar Blaybor acquired this property by honorable purchase from the Republic of Liberia in 1925. You further told this court on the cross examination that your

father was 65 years prior to his death. From a mathematical calculation from 1925 to 1992 is 67 years. Do you still maintain that your father died in 1992, is it feasible that he acquired this land prior to his birth?"

Counsel for plaintiff objected on the grounds that the question was immaterial and irrelevant; the witness was not on trial; not the best evidence to say whether his father bought the land prior to his death(birth). The trial Judge sustained the objection presumably on all or none of the grounds stated since he did not specify on which of the several grounds he sustained the objection. In the brief, counsel for appellant argued that the question was intended to test the credibility of the witness and to do so he was using the witness's former statement to corroborate his testimony with the purpose of proving to the jury that the witness was not telling the truth within his certain knowledge. This cross examination question and the arguments advanced in the brief have suggested the following questions: What truth was the witness not telling, was it the truth about his father's age when the land was bought? The truth about whether it was feasible for his father to have bought the land before his birth? Or whether the land was bought in 1925, or that his father died at age 65? Because of these many questions embedded in a single question intended to discredit the witness's credibility, we hold that the objection was rightly sustained even though not on all the grounds stated, but that the question was indistinct and cumulative and also argumentative and asked for the mere purpose of entrapping the witness. The question was not however immaterial or irrelevant. On the question whether "it was feasible" that the father bought the land before his birth is a question the answer to which could not lie with the witness under the best evidence rule and also for the fact that the witness was not an expert on paranormal activities in order to be able to say whether his father could have bought the land before he the father was born. In his effort to prove that either the deed was not acquired in 1925 or that the father was not 65 years when he died in 1992, counsel should have rephrased the question after the objection to it had been sustained. The judge was not in error for sustaining the objection. A judge does not always have to give reasons or grounds for sustaining or overruling an objection to a question.

Although the cross examiner has a wide range and may ask questions for the purpose of discrediting and impeaching a witness's testimony, the rule in evidence is that a question should not be posed for the sole purpose of entrapping a witness. The counsel herein knew that it was impossible for the witness's father to have acquired the land two years before his (father) birth, yet he (counsel) solicited a yes or no answer from the witness, merely to entrap the witness.

In counts 3 of the bill of exceptions counsel for appellant stated that:

"Still further, co-defendant Tower of Faith maintains the verdict of the empanelled jury is not supported by the weight of the evidence adduced at the trial, in that plaintiffs deed annexed to the pleading is fatally defective; co-defendant request Your Honor to take keen judicial notice of the deed, in that it is not technically possible for the metes and bounds of Mr. Blaygbor's deed to commence at the southwestern corner of Koon's 5.17 acres of land when in fact Koon's land was acquired in 1960 and that Blaygbor's land was acquired 35 years earlier, hence the verdict abrogate the doctrine that plaintiff in an ejectment action must prevail on the strength of his title and not on the weakness of his adversary for which a reversal of the judgment would lie."

Although defendant raised this issue in the answer, in the bill of exceptions, and also in the brief, plaintiffs conveniently circumvented addressing it in their 18 counts reply, and in the brief. Plaintiffs decided that the best way to avoid addressing this all important issue was to remain silent regardless of how loudly the survey report and the defendants screamed about it. Plaintiffs refused and avoided explaining how was it possible for a deed signed by President C. D. B. King in 1925 could have commenced from a deed that was signed by President William V. S. Tubman in 1960. As glaring as the fact was written and spoken, the plaintiffs, the jury, and of all persons, the judge, decided to ignore it and to proceed to decide this ejectment action on the sole fact that plaintiffs had a deed and defendant had no deed but only a lease agreement. They all, knowingly or unknowingly, decided that it was not important to know whether plaintiff's deed was valid or defective, so long defendant had only a lease agreement and not a deed, plaintiff's deed was a better title. The Judge forgot that the law in this jurisdiction does not support that view. In our jurisdiction before a person in possession can be dispossessed by another, there must be proof, by the preponderance of evidence, in support of the plaintiffs right to possession. In other words the plaintiff who seeks possession has the burden to establish his right to possession even if the occupant of the premises is only a tenant of another such as in the instant case.

This brings us to the main issue that is determinative of this case: Did plaintiffs in this case prove, by the preponderance of the evidence, their to claim on the strength of their title deed that was submitted to the jury on the basis of which deed the jury brought a verdict in plaintiffs favor and the judge ruled upholding said verdict and ordering the dispossession of the defendant/appellant? We hold no. .

One hundred and forty years ago the Supreme Court sitting in its January Term said, "In an action of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title." The case was Bingham V. Oliver,

1LLR47, 49 (1870). This principle has governed all ejectment trials in this jurisdiction. The burden to prove the right to possession or to title to real property rests with the plaintiff and not the defendant, as such it does not matter whether the defendant has a valid, defective or any title at all. Plaintiff who claims title must prove that his/her title is good against the world, and that he/she has the right of possession. In all actions of ejectment suits decided in our courts the principle set forth in Bingham has been the standard.

On the above premise or principal of law which is hoary with age in this jurisdiction we perused the trial record, quoting some of the testimonies and answers that were given to questions posed by counsels for the parties, and we also took judicial notice of the plaintiff's deed, on the strength of which he instituted the action of ejectment and we discovered the following:

1. The deed was allegedly signed by President C. D. B. King in 1925. But we decided that President C. D. B. King could not have signed plaintiff's deed. We arrived at this conclusion because according to the metes and bounds of said deed, the perimeter of the land commenced from the southwestern corner of a deed that did not come into existence until 1960 allegedly signed by President William V. S. Tubman. However far human may try to stretch his imagination, there is no way anyone can explain how, the land commissioner, J. A. B. Ricks, the surveyor, and President C. D. B. King could have known in 1925 when this land was deeded to Wheagar Blaybor, that 35 years later, that is, that in 1960 a President called William V. S. Tubman would be signing off the land adjacent to plaintiff's to a man called Koon and that Koon would have 5.17 acres of land. Plaintiffs were challenged to explain but they chose to remain silent and rightly so because there was no explanation they could venture to provide. We therefore hold that President C. D. B. King did not execute plaintiff's deed. We believe that plaintiff's deed is one of the many trouble-shooting deeds coming from our national archives which criminal behavior if allowed to continue will lead to our next civil uprising or war. The sanctity of the National Archives must be protected and jealously guarded by those who dare enter into the records deposited there as service providers. Selling information, erasing documents and shredding volumes and pages and creating false ones in their stead is not only unpatriotic but highly criminal.

2. We also discovered that plaintiff's friend who was his lone witness is called Isaac Koonon and that he was a resident in the area. It is not stated whether he bears any relation to Judge Koonon, George Koon, or the Koon named in plaintiff's deed. But our curiosity was further aroused when the witness said that in 1993 when plaintiff visited him while searching for his deceased father's land, plaintiff already had his deed along with the Probate Court documents. We discovered from the deed exhibited that said deed bears a certification date of March 1994 by the Foreign Ministry. The witness did not testify truthfully. Plaintiff obtained his certified copy deed after, and not prior to his visit in 1993 to

Isaac *Koowon*.

As far back as in 1936, in the case *Salifu V. Lassannah*, 5LLR 152, the Supreme Court quoted a relevant portion of a revised statute which stated "...Any registrar who shall register any instrument relating to real estate before the probation of same shall be liable to be dismissed from office and to pay a fine of not less than ten dollars nor more than one hundred dollars." We have quoted this passage not because the case under review has relevance to the *Salifu* case in which the registrar of deeds at the time registered an unprobated deed but because of the fact that there was penalty attached to such malfeasance then, unlike now when criminals are allowed to remain in their positions even though they are known to be men or women of questionable character. Opposing counsels and parties must be wary of certified copies of deeds from the National Archives, regret to say, because the corruption that has seized this nation has no bounds, the National Archives where records are supposed to be reserved for future reference, not excluded.

In the case at bar, the deed on which alone plaintiff relied when he proceeded to court to have the defendant ejected from the land was certified by the concerned authorities at the Foreign Ministry to be a true and correct copy of the original deed signed by President C. D. B. King in 1925. But behold, this certified copy deed is false, contrived, and a classic example of the many certified copies of deeds that are "manufactured for pay" at our National Archives, all because of the love of money which according to those who indulge in such practices, transcends the rights of fellow citizens to have their legal documents preserved. We must all be wary of certified copies of deeds issued by the Foreign Ministry- until at such time, if ever, when the National Archives are administered by only men and women of integrity.

3. Plaintiff argued that the map showed his land was on the ground. What the map showed was the metes and bounds contained in the deed plaintiff gave to the surveyors. They plotted the area described and wrote the name Wheagar Blaygbor within the described area. By so doing, the surveyors were not in effect saying that the area indicated belonged to Wheagar Blaygbor. The surveyors showed a drawing of each party's claimed area according to the metes and bounds inscribed in each party's deed. It is therefore untenable to agree with plaintiff that because the survey map showed the area identified therefore said area belonged to plaintiff. If such was the case why would the said surveyors suggest to the parties to seek resolution of the land dispute in a court of competent jurisdiction, or say that the Wheagar Blaygbor deed created a doubt in their mind as to whether Wheagar Blaygbor had land in the area because of said land's commencement from a non-existent named neighbor? An investigative survey map showing the metes and bounds of the deeds used does not by itself confer title on any party. The map is only one part of the report. The written report is the other part.

4. Plaintiff contended in the reply that the Ministry of Lands, Mines and Energy being an administrative agency, has no authority to investigate or decide real estate matters. We find two things wrong with this contention. First plaintiff willingly agreed and participated by providing his 1925 deed and by being present on the site when surveyors from the Ministry of Lands, Mines and Energy did the investigative survey. Must he now condemn the Ministry's action simply because the result was not in his favor? In addition to that, said plaintiff stated that the survey map showed his land on the ground, which map he used as exhibit to substantiate his title to the land. It means then that plaintiff accepted a portion of the report the map, but not the accompanying literature or written report. We hold that the plaintiff having submitted himself by producing his deed and been present while the survey was conducted and then exhibiting the map resulting from said survey to substantiate his title is estopped from repudiating his own act. We have said this in passing only because the issue that is determinative of this case is not whether the Ministry of Lands, Mines and Energy exceeded its authority in this in his action of ejectment but rather whether plaintiff proved his title to the disputed land in his action of ejectment.

5. Counsel for Appellee/Plaintiff also raised the issue of older title and pressured the witness as to whether said witness would confirm and affirm that plaintiff's deed was older than that of Koon's. But was Koon's deed in contest? No. The only relevance of Koon's deed in this case is that it is from Koon's 1960 deed that plaintiff's 1925 deed commenced, if ever there could be such possibility, for an older title to land to commence from a deed in futuro. A deed may be as old as Metusula of Biblical days but if, its metes and bounds commence from a nonexistent title at the time of its execution, such as happened in this case, same aged old deed cannot override a younger title, or even a lease agreement in an action of ejectment. When a title to property is defective, its age will not serve as a panacea to cure the defect.

6. Plaintiff raised the issue of government's failure to acquire the land in dispute according to the law governing eminent domain. We decided not to expend time on said issue unnecessarily because it would have been an appropriate issue to be raised by a property owner and at the appropriate time, such as when the intrusion or trespass began and not many years after the land had been occupied and possessed without any proof that plaintiff's father objected or had a pending lawsuit at the time of his death 1992. According to unrefuted testimony, the National Housing Authority commenced construction of the Market building in 1975 and completed in 1976. During all that time, the alleged owner of the premises on which the market building was constructed and used up to the death of said owner in 1992, 17 years in all, he either must have received compensation for the expropriation of his property or had a pending claim against the government. But the ejectment action on review herein is not an old case being resurrected by the administrators in substitution for the deceased plaintiff. The

administrators filed their case in 2006 praying court to eject the defendants and put them in possession, 31 years after the commencement of the construction in 1975 to 2006 when the administrators filed their action of ejectment. In view of this delay or neglect to assert their right to the property, if any they had, within the statutory period of 20 years, when defendant National Housing Authority was in open occupancy of the premises, plaintiff's claim is barred regardless of any default or flaws in the defendant's title, legal or equitable. Plaintiff can therefore not eject the defendant, Tower of Faith Church, the lessee herein.

Our final observation from a perusal of the records was that plaintiff did not deny that defendant, Tower of Faith Church made an advance payment of US\$2000.00 on the basis of some special understanding between them pertaining to the disputed premises. Plaintiff's only argument was that defendant should not have lodged a complaint for refund with the National Housing Authority because said entity was not the owner of the property, plaintiff was. So now that plaintiff has failed to prove his title to the land because of the defect in his deed, it follows therefore that plaintiff collected payment for land he did not have title to. It is only fair and just therefore for said plaintiff to make a refund of the US\$2000.00 and any other amount he might have exacted from the defendant as rent, lease or purchase fees, so as to make defendant whole.

Wherefore, and in view of the fact that plaintiffs in the court below, now appellees herein, failed to prove by a preponderance of the evidence that the disputed area is part and parcel of the estate of Wheagar Blaybor, because of a defective title deed, on the basis of which the jury brought a verdict in favor of said plaintiffs/appellees, confirmed by the trial judge, we hold that said verdict was against the weight of the evidence. The judgment derived therefrom is therefore hereby reversed and vacated.

The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction and give effect to this judgment. IT IS HEREBY SO ORDERED.

JUDGMENT REVERSED AND VACATED. COSTS AGAINST APPELLEE

The appellant was represented by Counsellor Nyenati Tuan of the Tuan Wreh Law firm while The appellees were represented by Counsellor A. Kanie Wesso of the Kanie Koimuo Legal Redress.