IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2014

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.……CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH…….....ASSOCIATEJUSTICE
BEFORE HER HONOR: JAMESETTA HOWARD-WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……...ASSOCIATE JUSTICE

Subah-Belleh & Associates, Inc., represented by its Partners, Willie Belleh And Pewu Subah all of the City of Monrovia, Montserrado County, Republic of Liberia……..**APPELLANT**

VERSUS

Nelson Oniyama also of the City of Monrovia, Montserrado County, Republic of Liberia……**APPELLEE**

A P P E A L

GROWING OUT OF THE CASE

Subah-Belleh & Associates, Inc., represented by its Partners, Willie Belleh And Pewu Subah all of the City of Monrovia, Montserrado County, Republic of Liberia……..**PLAINTIFF**

VERSUS

Nelson Oniyama also of the City of Monrovia, Montserrado County, Republic of Liberia……**DEFENDANT**

ACTION OF EJECTMENT

DISSENT BY HIS HONOR FRANCIS S. KORKPOR, SR., CHIEF JUSTICE AND HER HONOR JAMESETTA H. WOLOKOLIE, ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

This dissenting opinion is issued by Madam Justice Jamesetta H. Wolokolie and me. Having tried assiduously to convince our majority Colleagues to see this case the way we see it but to no avail, and because our point of disagreement with them is based on principles of law which are fundamental, we decided not to compromise. We have therefore withheld our signatures from the judgment growing from the opinion issued by them.

The purpose of this Court and of any court of justice, for that matter, is to carefully review and analyze all cases properly brought before it, each couched in unique set of facts, and render the appropriate decisions. The ultimate focus of the Court is, and ought to always be to reach a decision that gives justice to the party that truly deserves justice, based on the overriding facts and circumstances which operate in favor of that party. Substantive justice is at the core of all such decisions. We believe that the majority of our Colleagues are mistaken in their analysis, and thus the conclusion they have reached in finding for the appellee, instead of the appellant based on the facts and circumstances of this case. Therefore, in our opinion, they did not do substantive justice.

This is an ejectment case. It is elementary law that two cardinal principles apply in ejectment cases. Firstly, in proving title the plaintiff is required to

rely and recover on the strength of his own title and not on the weakness of his adversary's title. In this respect, this Court has consistently held in a long line of cases that in ejectment suits the property in dispute will be awarded to the party whose chain of title is so strong as to effectively negate his adversary's recovery. *Duncan v. Perry*, 13LLR 510 (1960); Dunzo v. Tate, 39LLR 72 (1998); and Tulay v. Salvation Army, 41LLR 262 (2002). Of the two parties before us in this case, we hold that the appellant has by far the stronger chain of title. We hold, therefore, that the perspective of the appellant is correct on the basis of the evidence presented.

The second principle is that where the contending parties in a land dispute obtain their respective title deeds from the same grantor, as in the instant case, the party with the older title, barring fraud and uncertainty, is considered vested with superior title. In other words, the establishment of prior title is a material element in an ejectment case. *Johnson et al v. Beysolow,* 11LLR 365 (1954); *Sloan v. the Administrators of the Intestate Estate of Parbai, Supreme Court Opinion* (May 11, 2007).The majority decision has declared that Subah-Belleh & Associates, the appellant, plaintiff in the court below, though having a deed more than two decades older than Nelson Oniyama, the appellee, issued by a common grantor, cannot prevail in this case. The reasons advanced by them are principally that the appellant did not proffer, along with its deed annexed to the complaint, letters of administration issued to its grantor, and that the appellant's deed was not probated and registered in four months as required by law.

To the contrary, we believe that the appellant proved title. We believe that the appellant's chain of title is so strong that it is entitled to recover against the appellee. In this jurisdiction, proof of title in ejectment cases means that the plaintiff must proffer title instrument showing that he/she lawfully acquired the property in dispute from the real owner and that plaintiff's title can be traced to the state, the original owner of all land. This requirement was met by Subah-Belleh in this case. Hence, the verdict of the jury finding for Nelson Oniyama, appellee, defendant in the lower court, being contrary to the weight of the evidence, and not being in the interest of justice, should have been be set aside, the judgment of the lower court based on said jury verdict should have been reversed, and this Court should have entered judgment in favor of the appellant.

Here is a brief summary of the facts certified to us in the case:

The appellant, Subah-Belleh & Associates, is a partnership of Liberian professionals which provides management consultancy and research services to the Liberian Government, international non-governmental organizations, and private enterprises. In 1985, the Monthly and Probate Court for Montserrado County, upon the petition of John G.T. Nagbe, administrator of the intestate estate of G. Koffa Nagbe, issued a court

decree of sale of real property which authorized John G.T. Nagbe to sell 6.5 acres of land situated at Bushrod Island, which the late G. Koffa Nagbe died seized of. Based on the authority of the court decree of sale of real property, John G.T. Nagbe, in his capacity as the administrator of the intestate estate of G. Koffa Nagbe, sold to the appellant a certain parcel of land containing approximately 2.9422 acres of land on November 4, 1986. The 2.9422 acres of land was sold to the appellant subject to an existing lease to Lemminkaninen O. Y., a Finnish Construction company, then doing business in Liberia.

As the new owner of the land, the appellant, on March 6, 1989, wrote a letter to Lemminkaninen O.Y. demanding that rents for the portion of the property occupied by Lemminkaninen O.Y. be paid to the appellant. Lemminkaninen O.Y., by and through its legal counsel at the time, Maxwell & Maxwell, by and through Christian D. Maxwell, replied that the lease from the G. Koffa Nagbe Estate to Lemminkaninen O.Y. had been assigned to BAO Construction Company, another foreign-owned construction company and that the said lease was due to expire on December 31, 1989. The records show that upon the expiration of the lease, the appellant wrote a letter to BAO Construction Company demanding that the property be released to it as successor in title to the G. Koffa Nagbe Estate.

The records show, also, that following the death of John G.T. Nagbe, administrator of the intestate estate of G. Koffa Nagbe, Agnes B. Nagbe, the wife of John G. T. Nagbe, petitioned the Monthly and Probate Court for Montserrado County for letters of administration to administer the G. Koffa Nagbe Estate. The petition was granted and in July, 2008, Agnes B. Nagbe was appointed administrator of the intestate estate of G. Koffa Nagbe. After her appointment as the new administrator of the G. Koffa Nagbe Estate, Agnes Nagbe sold to the appellee the identical parcel of land previously sold by the late John G. T. Nagbe to the appellant in 1986.

After obtaining deed to the property, the appellee began to assert ownership to and authority over the same land covered by the appellant's deed. On learning of the appellee's claim to the land, the appellant protested to the appellee directly and later to Sherman & Sherman, Inc., owing to the client-lawyer relationship Sherman & Sherman, Inc. had with both appellant and appellee. In 2010 Sherman & Sherman, Inc. offered to mediate the dispute and the parties accepted and submitted to Sherman & Sherman, Inc.'s mediation efforts. After a full scale investigation, based on documentations and representations made by the parties, Sherman & Sherman, Inc. prepared and submitted an advisory opinion dated July 12, 2010, in which it stated that as a matter of the facts and the laws, the appellant has primary title to the land in dispute. Based on discussion held during and after the mediation efforts by Sherman & Sherman, Inc., the appellant offered to sell the subject property to the appellee, but it appears

that the parties could not reach an agreed purchase price. Meanwhile, the appellee continued to develop the property; he erected a concrete fence around the land and proceeded to build structures thereon.

Following efforts to effect out-of-court settlement but to no avail, the appellant instituted an action of ejectment against the appellee at the Sixth Judicial Circuit, Civil Law Court, Montserrado County, praying the court to oust and evict the appellee from the property and adjudge him liable to appellant in the amount of US$*100,000.00 (One Hundred Thousand United States Dollars)* for wrongfully withholding the subject property and depriving appellant of its quiet enjoyment. The appellant attached to its complaint, a copy of an administrator deed dated November 14, 1986,signed by John G. T. Nagbe, administrator of the Koffa Nagbe Estate for and on behalf of the Koffa Nagbe Estate; a copy of court decree of sale of real property issued in 1985 by the Monthly and Probate Court for Montserrado County to John G. Nagbe, administrator of the Koffa Nagbe Estate, to sell 6.5 acres of land situated at Bushrod Island, which Koffa Nagbe died seized of; and several lease agreements which appellant executed with a number of leasees covering portions of the land in question.

The appellee filed an answer to the complaint in which he averred substantially, that he is the owner of a parcel of land lying and situated at St. Paul Bridge, Bushrod Island, Monrovia, Liberia, comprising 3.13 acres of land; that he purchased the subject property from the intestate estate of Koffa Nagbe on the 11th day of July, A.d. 2008, and that the administratrix of the estate, Agnes B. Nagbe, executed a deed in his favor, which was probated and registered. The appellee also said in his complaint that when he attempted to develop the property there were some squatters residing on the land including Mr. Isaac WlehTugbeh, who claimed ownership to the subject property and displayed a title deed; that he instituted an action in ejectment against Mr. Tugbeh at the Sixth Judicial Circuit, Civil Law Court for Montserrado County, and got judgment in his favor from which Mr. Tugbeh announced an appeal to the Supreme Court of Liberia. He said that while the case was pending before the Supreme Court, some group in the Borough of New Kru Town claimed the property and offered it to the President of the Republic of Liberia but the President was informed about his ownership to the property and the President decided to shelve the "earth-moving exercise" pending the outcome of the case from the Supreme Court; that the Supreme Court subsequently rendered decision in his favor in the case; that it was only after he entered and commenced developing the property that the appellant instituted this ejectment suit against him.

The appellee contended that the conveyance of the subject property to the appellant by the same intestate estate of Koffa Nagbe was defective because the then administrator of the intestate estate of Koffa Nagbe, John

G.T. Nagbe, had no letters of administration, and that where there is no letters of administration issued by a probate court, any conveyance made cannot be supported by law. He further contended that appellant's decree of sale was issued on July 11, 1985, followed by an administrator deed which was probated on the 11th day of December, 1987 more than one year after the issuance of the court decree of sale and outside of the one-year statutory period for the closure of the estate; that as the estate was not closed in one year as required by law, the entire conveyance to the appellant was illegal. The appellee further contended that since the conveyance to the appellant was not legal, title did not pass to appellant, thus rendering the complaint dismissible. The appellee therefore prayed the trial court to dismiss the action of ejectment filed by the appellant and rule the cost of the proceedings against the appellant.

To the answer, the appellant filed a reply in which it confirmed its complaint and further contended that: a) by the probation and registration of the administrator deed issued to the appellant, notice had been given to all persons, including the appellee that appellant had acquired title to the property covered by the said administrator deed; b) that there has been no open and notorious possession of the property uninterruptedly by the appellee for more than 20 continuous years, which is the minimum period for adverse possession to lie; c) that it protested appellee's occupancy of its property immediately after appellee took open possession of said property as this was the only time appellant became aware that the appellee had acquired any interest in the property; and d) that it did not consider it necessary to proffer the letters of administration issued to its grantor when it had proffered the court decree of sale, which fully described the letters of administration issued to its grantor.

The appellant further contended that it is a principle of law that when an act is done, presupposing the existence of a prior lawful act, the law presumes the validity of that prior lawful act. In other words, the existence of the court decree of sale presupposes that there was letters of administration duly issued by the Probate Court for Montserrado County to the appellant's grantor. The appellant admitted that the court decree of sale upon which he purchased the property in dispute was issued on July 11, 1985, and the administrator deed was issued in December 1987, outside of the statutory period when the Koffa Nagbe Estate should have been closed. The appellant however, said that as the Koffa Nagbe Estate was not closed, only the Probate Court for Montserrado County which issued the letters of administration could question the authority of John G.T. Nagbe to issue an administrator deed; that instead of questioning the issuance of the administrator deed it is that very Probate Court for Montserrado County which accepted the administrator deed, entered same into probate, probated and ordered it registered according to law. The appellant maintained that the appellee obtained its own administrator deed under

"*Extended Letters of Administration",* an expression in recognition of the issuance and existence of some earlier letters of administration; that the only letters of administration which had been issued before this *"Extended Letters of Administration"* is the letters of administration issued to the appellant's grantor, John G.T. Nagbe; that technically, if the letters of administration issued to John G.T. Nagbe had expired and had no legal effect in 1987, when the administrator deed was issued to the appellant, then that same letters of administration could not be extended in 2008; and that to question the legality and efficacy of the letters of administration issued to John G. T. Nagbe in 1987, is to similarly question the legality and efficacy of the extension of that same letters of administration in 2008 upon which the appellee obtained his own administrator deed. Finally, the appellant contended that the appellee, in a bid to surreptitiously obtain title to appellant's land, did not follow the rules of the Probate Court in probating his deed.

When pleading rested, law issues were disposed of and the case was ruled to trial by jury. At the trial, the appellant produced five (5) general witnesses and one (1) rebuttal witness, while the appellee produced five (5) general witnesses. At the close of the trial, the jury returned a verdict in favor of the appellee.

The appellant noted exception to the verdict of the jury and filed a motion for new trial, arguing that the verdict was contrary to the weight of the evidence and the well-settled law in this jurisdiction that where two parties have a common grantor, the first in time prevails. The trial Judge, His Honor J. Boima Kontoe, denied the motion for new trial and entered final ruling confirming the verdict of the jury. As done in the case of the jury verdict, the appellant again noted exception to the trial judge's final ruling and announced an appeal to this Court.

Several issues most of them similar, were raised in the briefs filed and argued before this Court. The majority opinion "condensed" the issues into a single issue: "Whether, where the contending parties to a land dispute secure their title deeds from the same grantor and the deeds purport to convey the identical parcel of land, the party who first secured his or her title or who holds the older deed to the land automatically is vested with a superior title to the property and is therefore entitled to ownership and possession of the property?" There are other collateral and related issues which this case presents, but we agree that the lone issue of prior title as identified by our Colleagues is cardinal and decisive of this case. However, we state the issue in a slightly different way as follows:

> Whether, where the contending parties to a land dispute secure their title deeds from the same grantor and the deeds convey the identical parcel of land, the party who first secured his or her title or who holds

the older deed to the land, barring fraud and uncertainty, is vested with a superior title to the property and is therefore entitled to ownership and possession of the property?"

We have stated the deciding issue in the manner seen above to reflect our point of disagreement with our majority Colleagues. They are of the opinion that the appellant's title is doubtful and uncertain because the appellant did not proffer, along with its deed annexed to the complaint, letters of administration issued to its grantor, and that the appellant's deed was not probated and registered in four months as required by law. We do not agree that under the facts and circumstances of this case, these are grounds to divest the appellant of property which the records clearly show the appellant was the first to genuinely purchase, took possession thereof, and openly controlled for more than twenty years before the appellee purchased the same property from the same grantor.

It is not disputed that the parties in this case purchased the same property from the same grantor, that grantor being the intestate estate of Koffa Nagbe. This is one of the typical cases in which different administrators from the same family and of the same intestate estate sell the same property to different buyers. As clearly seen from the facts, G. Kofa Nagbe died seized of the real property in question. Upon his demise, his surviving heir, (most probably his son), John G. T. Nagbe, became the administrator of his estate. It was John G. T. Nagbe, in his capacity as administrator of the G. Koffa Nagbe Estate, who, after obtaining a decree of sale from the Monthly & Probate Court for Montserrado County, sold the property to the appellant, Subah-Belleh & Associates, Inc. on November 4, 1986 and issued administrator deed to the appellant. After the death of John G.T. Nagbe the first administrator of the G. Koffa Nagbe Estate, his wife, Agnes B. Nagbe became the next administrator of the same G. Koffa Nagbe Estate; she sold the identical property to the appellee, Nelson Oniyama on July 11, 2008. This subsequent sale, in our view, is utterly illegal in law and cannot stand because having previously sold the same property to the appellant, the G. Koffa Nagbe Estate had parted with title and was no longer the owner of the property.

During the trial of this case in the lower court, Samuel Nagbe, the present administrator of the G. Koffa Nagbe Estate, who is the son of John G. T. Nagbe and Agnes B. Nagbe, took the witness stand and testified on direct examination as follows:

Q. "Mr. Witness, please tell us your name and where you live?"

A. "I'm Samuel Nagbe, I currently live in Barnesville."

Q. "Are you employed, and if so with whom and in what capacity?"

A. “I am the current Administrator of the G. Koffa Nagbe estate.”

Q. “Do you know the Plaintiff in the case?”

A. “Yes I do.”

Q. “Mr. Witness, do you know Agnes B. Nagbe and if so who is she to you?”

A. “Agnes B. Nagbe is my mother and former Administratrix of the G. Koffa Nagbe Estate.”

Q. “Who was John G.T. Nagbe to you?”

A. “John G. T. Nagbe [was] my father.”

Q. “Do you recall the time when Agnes G. Nagbe was serving as administratrix of the intestate estate of Koffa Nagbe that she sold a piece of land to the Defendant in this case?”

A. “Yes I do.”

The same witness, while on the cross-examination, testified as follows:

Q. “Mr. Witness, you just told this court that Agnes B. Nagbe is your mother and former Administrator of the Koffa Nagbe Intestate Estate. Is that correct?”

A. “Yes.”

Q. “You also indicated that John G.T. Nagbe the late [was] your father?”

A. “Yes.”

Q. “Mr. Witness am I correct to say [that] the late John G.T. Nagbe [your father] was the first administrator of the G. Koffa Nagbe Intestate Estate?”

A. “Yes.”

The foregoing testimony of the appellee’s own witness who currently administers the G. Koffa Nagbe Estate is clear that the property in question was owned by one person, the intestate estate of G. Koffa Nagbe; that the first administrator of that estate was John G.T. Nagbe who was succeeded by his wife, Agnes B. Nagbe and currently by their son, Samuel Nagbe. The Intestate Estate of G. Koffa Nagbe is not denying that it was duly administered by John G. T. Nagbe and that during the time John G. T. Nagbe administered the Estate he sold portion of the estate’s property in his capacity as administrator. The estate is not denying that the signature of John G. T. Nagbe which appears on the administrator deed he issued to the appellant is authentic, true and indeed the known signature of John G. T. Nagbe. So, this is not a case in which the contention is that fraud was

perpetrated against the estate. Rather, the contention raised by the appellee to which our Colleagues are in agreement is that the appellant did not proffer letters of administration to show that its grantor, John G.T. Nagbe was indeed appointed as administrator of the intestate estate of G. Koffa Nagbe, therefore the appellant's title is in doubt. But as seen from the testimony of Samuel Nagbe, the present administrator of the G. Koffa Nagbe Estate, his father, John G. T. Nagbe was the first administrator the Estate. The sale of the property in question by John G. T. Nagbe to appellant has never been questioned by the estate.

On the issue, whether letters of administration was issued to John G.T. Nagbe, here is what witnesses for the appellant said:

Willie Belleh testified in response to a question put to him on the cross-examination as follows:

Q. "Mr. Witness according to your deed you purchased said property on November 14, 1986, and had same probated 1987, almost a year thereafter the purchase; Mr. Witness, please tell this Court whether or not you were presented a letters of administration from your grantor and a decree of sale prior to the purchase of this land by you?"

A. "I can't recall the facts but I know there was letters of administration we saw, there was a decree of sale that in fact authorized the sale, without those two instruments, we could not have purchased the land from them."

Pewu Subah testified as follows:

Q. "Mr. Witness though on your deed instead of letters of administrator, it is letters of authority; but prior to buying a property, as reputable and educated as you are, did you have an opportunity to see the mother deed, the letters of administration and the decree of sale?"

A "… [I]n the process of buying the property, we bought based upon the instruments that were exhibited to us. Mr. Nagbe showed us his letters of administration; Mr. Nagbe showed us his decree of sale."

Q. "Mr. Witness, you told this court and jury that like any other person you were shown a deed, letters of administration and a decree of sale; but in your complaint, the documents you referred [to] are totally absent. For the benefit of the trial, could you say why?"

A**.** "Well, we've gone through a long and difficult time in this Country, where things have been looted, mislaid, and it is even lamentable that in many circumstance[s] we have gone to clients, [and] individuals to retrieve documents, which normally should be with state institutions…We lost a number of documents, but unfortunately some were mislaid; either they were looted or got destroyed."

And Forkpa D. Karmon testified in response to a question on the cross-examination as follows:

Q. "Mr. Witness, you told this court that Mr. John G. T. Nagbe presented to you certain documents to convince Subah-Belleh to purchase this land and among those documents were letters of administration [and] decree of sale, were you privileged to see those documents?"

A. "Yes"

Q. "Can you tell this court if you know the where about of those documents now if you know?"

A. "The three documents that I mentioned, the deed, the letters of administration and the decree of sale; the decree of sale he give us a copy like I said, the letters of administration right now I don't know where are the letters of administration and the deeds he give us, we have [the]deed."

The foregoing testimonies of the appellant's witnesses, which were not rebutted or even denied, show that at the time the appellant purchased the property, the then administrator of the G. Koffa Nagbe Estate had letters of administration which he exhibited and gave copy to the appellant. But the copy of the letters of administration given to the appellant could not be found, therefore, it was not annexed to the appellant's complaint. The appellant has attributed its inability to introduce into evidence the letters of administration due to the lapse of time, (25 years since the purchase of the land) as well as to the civil war in Liberia during which documents were lost, mislaid, looted or destroyed. However, the appellant pleaded and proffered the decree of sale issued by the Monthly & Probate Court for Montserrado County which authorized the appellant's grantor, John G. T. Nagbe to sell the property in question to the appellant.

The records show that on its face, the decree of sale issued by the Monthly & Probate Court for Montserrado County presided over by Her Honor Luvenia Ash-Thompson expressly acknowledged that John G. T. Nagbe was the administrator of the G. Koffa Nagbe Estate at the time, and that the decree of sale was issued based on a petition he filed in his capacity as administrator of the G. Koffa Nagbe Estate. We quote excerpt from the preamble of the decree of sale:

> "WHEREAS, MR. JOHN G. T. NAGBE, PETITIONER/ADMINISTRATOR OF the Intestate Estate of the late G. Koffa Nagbe Estate, having come into Court and filed a Petition praying this Honorable Court to authorize him to sell 6.5 acres of land out of the 96.5 acres of land owned by the late Koffa Nagbe…" [Emphasis supplied.]

To our minds, the availability of the decree of sale creates the presumption that the letters of administration was indeed issued by the Monthly &

Probate Court for Montserrado County. Letters of administration is a formal document issued by a probate court appointing someone, most often the surviving spouse, or next of kin or both, to conduct the affairs of an estate where a person, the owner of the estate, died without leaving a will. The normal procedure is for letters of administration to be issued before a decree of sale. It is after a person has been authorized, through the issuance in his/her favor of letters of administration, that the same probate court can, upon good cause presented in a petition, issue to that person a decree of sale authorizing the sale of portion or even the whole of the estate. In other words, it is only to a person duly recognized and authorized by a probate court to administer an intestate estate that the probate court can issue a decree of sale. The presumption which must operate in favor of the appellant, therefore, is that John G.T. Nagbe, appellant's grantor, was issued letters of administration by the Monthly & Probate Court of Montserrado before he sold the property in question to the appellant, since the very Monthly & Probate Court of Montserrado County deemed it necessary to issue a decree of sale authorizing him to sell portion of the G. Koffa Nagbe Estate to the appellant.

The appellant has relied on the case: *S. G. Saleeby v. Eli G. Haikal,* 14 LLR 537, text at 543. In that case this Court upheld the principle of law that "When an official act has been done which can only be lawful and valid by the doing of certain preliminary acts, it will be presumed that said preliminary acts have been done". We agree that that principle of law is applicable in the instant case. By the issuance of the decree of sale to the appellant's grantor in this case, the presumption is that the letters of administration was duly issued.

But more than this, the records show that the Monthly & Probate for Montserrado probated the administrator deed issued by John G. T. Nagbe. This, in our view, is a tacit affirmation and ratification that letters of administration was issued to John G. T. Nagbe as administrator of the intestate estate of the G. Koffa Nagbe Estate based upon which he issued the administrator deed to the appellant. Had the Monthly & Probate Court for Montserrado County found problem with the administrator deed for reason that the appellant's grantor was not issued letters of administration therefore he had no authority to issue administrator deed covering portion of the G. Koffa Nagbe Estate, the Monthly & Probate Court would have refused probation of the appellant's administrator deed either because of the Probate Court's own knowledge of the fact, or based on objection from interested person(s) that John G.T. Nagbe lacked authority and therefore could not issue administrator deed to the appellant for property belonging to the G. Koffa Nagbe Estate. But no objection was filed and the Monthly & Probate Court of Montserrado County, as we have said, probated the appellant's administrator deed.

The appellee has contended that the appellant did not probate its administrator deed within four months as provided by law, therefore, the appellant's title is void against him. The relevant statute on this point provides:

> "If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered." *Section 5, Chapter 1, Property Law, Title 29, Liberian Code of Laws.*

We are aware of the many decisional laws of this Court upholding the above quoted statutory provision. In all of them the Court has held that if any person shall fail to have any instrument affecting or relating to real property probated and registered within four months after its execution, that person's title to such real property shall be void as against anyone holding a subsequent instrument affecting or relating to such property, which is duly probated and registered. The early as well as recent cases, all continue to be the standing law in this jurisdiction and we are in complete agreement. However, we interpret the statute to mean that in order for the first buyer's deed to become void for failure to probate in the time allowed by law, the second buyer must "duly probate" and register his/her deed before the first buyer.

But this was not what happened in the case before us. The appellee in this case did not probate and register his deed before the appellant. The undisputed fact is that the appellant bought the property in question in 1986 and registered its deed in 1987, about 21 years before the appellee purchased the same property in 2008. So, as we see it the appellant's title cannot be void as against the appellee. We do not believe that the quoted statute was intended to divest a genuine purchaser of title to real property whenever that purchaser is late in probating and registering his/her deed, even when the first purchaser subsequently takes step(s) and probates his/her deed long before the second purchaser, though against the time of four months provided by statute. Were this to be the interpretation, this would give ground for unscrupulous property sellers to sell the same property over and over again. Or, they would, on receiving valuable considerations, issue as many deeds as possible to buyers at the same time and any of such buyers who first probates and registers his/her deed would be considered the rightful owner. Surely this was not the intent of the proponents of the quoted statute. In fact, this is exactly what the recent Criminal Conveyance Law enacted August 26, 2014, and printed into law September 2, 2014, was intended to guide against.

The majority opinion has relied on a number of cases in support of the position they have taken. We should note, however, that in all of those cases the facts are not analogous to the case before us. In other words, the cases do not present situations wherein, the first purchasers, though late in probating and registering their deeds, subsequently registered the said deeds before the second purchasers could probate and register their deeds.

One of the cases relied on by the majority opinion is *Wilson v. Wilson & Ivy*, 37 LLR 420 (1994). In that case the petitioners, children of former Chief Justice, A. Dash Wilson, sought to cancel two deeds held by their stepmother for 750 acres of rubber farm on the ground that said deeds were not probated in four months from the date they were issued. This is what this Court said:

> "Regarding the probation and registration of the documents, the real known legal requirement is that a deed conveying realty should be probated and registered within a period of four months from the date of execution and delivery to the grantee. Even in the absence of such probation, a conveyance is not *ipso facto* void but may become void under the statute where a third party, who has for valuable consideration, received a deed executed in his favor for the same property and from the same grantor probates and registers his title within the four-month period prescribed by the statute, and the prior grantee had failed to register his title within said four-month period. This statute is sometimes referred to as the "race" statute. The first grantee to register his title within the prescribed period prevails."

As a "race" statute as indicated in the opinion of this Court quoted above, it was meant that the first grantee who runs the fastest and reaches the probate court and probates and registers his/her deed would prevail. However in the case before us, the appellant, the first grantor, ran and reached the probate court long before the appellee; the appellant probated and registered its deed 21 years before the appellee bought the property in question. So, the instant case is quite distinguishable from the Wilson case.

Now, we are aware that it is not in every case that an older deed will prevail. In a recent case, *Momo Kiazolu v. Doris Cooper-Hayes* decided July 22, 2014 during the March Term of this Court, we held that "While it is true that in an ejectment action where the parties' title are derived from the same grantor, the party with the older title is preferred, an older title whose procurement is shrouded in doubt and uncertainty cannot prevail."

The majority opinion has relied on the Kiazolu case. But again, we say that the facts in that case are not analogous to the facts in the case before us.

In the Kiazolu case, Doris Cooper-Hayes, the plaintiff, sued Momo Kiazolu, defendant, for encroaching on and selling land belonging to her. Kiazolu exhibited a title deed that was older than the deed exhibited by Doris Cooper-Hayes. The parties claimed to have obtained their respective titles from the same grantor, the Republic of Liberia. By their consent the lower court ordered arbitration. The arbitration report showed that "the bearings and distances of the starting as well as successive lines on the deed exhibited by Kiazolu were in no way in harmony with those on the ground, whereas the bearings and distances of the starting line in the deed exhibited by Sarah Cooper-Hayes were in harmony with those on the ground."

Passing on the issue of older deed raised by Kiazolu, the Court held that the deed exhibited by him was in doubt because its metes and bounds did not correspond to the ground location of the property in dispute he was claiming. This is not the same situation in the case before us. Here, the parties are laying claim to the same property with the same metes and bounds they obtained from the same grantor. So clearly there being no doubt, this case, in our view should have been decided on the doctrine of prior ownership.

In our view, the facts in this case are analogous to the facts in the case: *Watson v. Oost Afrikaansche Compagnie*, reported in 13LLR 94 (1957). In that case, J.B. Watson, Sr. and A. Benedict Clarke leased two lots of land in Robertsport, Grand Cape Mount County to Oost Afrikaansche Compagnie for the period of twenty years. While the lease was still in progress, the two lots were subsequently sold to J.B. Watson, Jr. As the new owner, Watson Jr. filed an action of ejectment praying the lower court to remove Oost Afrikaansche Compagnie from the premises. The company filed answer refusing to move on the ground that it was occupying the land based on a valid lease which was still in force and effect. In reply, Watson Jr. attacked the answer objecting to the lease agreement proffered by the company on the ground that it was not probated and registered within four months of its issuance. The lower court held, and this Supreme Court agreed, that while it is true that all instruments relating to realty must be probated and registered within in four months of its issuance, otherwise it would be voidable against anyone holding an instrument duly probated and registered within four months, yet that point of law could not inure to the vendee of Clarke and Watson, Sr. This was because, Watson, Jr. purchased from Clarke and Watson, Sr. and as such, Watson, Jr. "being privy of the vendor, no court of law or equity should permit him to benefit by their doing. Said objection can only be made by a third person armed with an instrument duly probated and registered." In the case before us, the appellee is privy of the grantor, the G. Koffa Nagbe Estate, by and through Agnes Nagbe, hence, no court of law or equity should permit him to benefit by their doing.

There is another important point not considered by the majority opinion in this case. The law requires that the title of a purchaser of land who fails or neglects to probate and register his/her deed can only be void against a party holding a subsequent instrument affecting or relating to such property, "which is duly probated and registered". And here we emphasize the phrase "which is duly probated and registered" quoted directly from the statute. What this means is that the subsequent purchaser of property, in order to prevail against the first purchaser, must follow the rules of the Monthly and Probate Court in probating and registering his/her instrument of title. That rule provides:

> "All instruments, documents and other papers other than wills, necessary to be probated, shall be ordered in open court and recorded by the clerk in the minutes of the day's sitting; after which it shall be bulletined for at least three (3) days in the local daily newspaper of general circulation, before being cried by the sheriff. This order shall only be in the absence of objections interposed to the probation of the document. In case of objection given orally, time will be allowed as in the case of caveats, for written objections to be filed in keeping with statute. Bulletin of these matters shall be placarded on the door of the courthouse for the required three (3) days, to give public notice to the profferer's intention."

The appellant contended in counts 21 and 22 of its reply that the appellee did not comply with the Probate Court Rule quoted above in that the administrator deed issued to the appellee on July 11, 2008 was not offered in the minutes of the Probate Court as required, and no notice was placed on the bulletin of the Monthly & Probate Court of Montserrado County where the probation of said deed was done. And no bulletin was published for three days in any local daily before the appellee's administrator deed was published.

An inspection of the records before us reveals that the Monthly & Probate Court of Montserrado County issued court decree of sale to Agnes Nagbe on July 10, 2008. On July 11, 2008, a survey was conducted and on the same day, that is, on July 11, 2008, Agnes Nagbe sold the property in question to the appellee. The records further show that the deed was probated and registered on July 14, 2008. In keeping with the Probate Court rule quoted above, the deed should have been presented in open court and recorded by the clerk of the Monthly & Probate Court of Montserrado County in the minutes of the day's sitting after which it should have been bulletined for at least three (3) days in the local daily newspaper of general circulation before being cried by the sheriff. Had this procedure been followed, certainly the appellee's deed would not have been probated on July 14, 2008. So, clearly the appellee was in violation of the Probate

Court rule. To prevail against the first purchaser (the appellant) the appellee must have duly probated and registered his instrument of title. So, here we have two buyers of the same property from the same seller who did not follow the law in probating their respective instruments of title. The question, in such a case, is who should prevail? In our view, the obvious and proper thing for a court of law and equity to do is to rule in favor of the buyer who first bought and openly administered the property twenty one years before the second buyer.

The appellee has contended that he instituted an action of ejectment against squatters on the land and obtained judgment in his favor at the level of the Supreme Court; that one of the partners of the appellant, Willie Belleh, lived in close proximity to the disputed property and knew or ought to have known of the suit in ejectment but failed to intervene, hence, the appellant must suffer waiver and latches. The appellant denied knowledge of the ejectment action filed by the appellee. On this issue, we say, first of all, that in the absence of proof that the appellant had notice, actual or constructive regarding the said ejectment action, the appellant could not be bound by it. In this jurisdiction, no one can be concluded by a judgment to which he/she was not a party. In law, the party alleged to have waived a right must have had knowledge of the existing right and the intention of forgoing it. Reliance: *Black's Law Dictionary, Ninth Edition.*

Secondly, we hold that obtaining a judgment against third party claimants, who did not have good and genuine title like the appellant in this case, cannot bar recovery by the appellant. According to the appellee himself, the premises were occupied by squatters. Squatters do not hold title, so, the appellee, with some semblance of title naturally would and did prevail against the squatters. But as against the appellant, who has good and genuine title, we do not agree that the appellee should prevail.

Finally, the appellee has contended that the letters of administration issued to John G.T. Nagbe had expired and had no legal effect in 1987, when the administrator deed was issued to the appellant, thus the appellant's deed is of no legal effect. We are in full agreement with the appellant's response on this point, that is, that the appellee obtained its own administrator deed under "*Extended Letters of Administration",* an expression in recognition of the issuance and existence of some earlier letters of administration. From the records, we note that the only letters of administration which had been issued before this *"Extended Letters of Administration" is* the letters of administration issued to the appellant's grantor, John G.T. Nagbe. So, technically, if the letters of administration issued to John G.T. Nagbe had expired and had no legal effect in 1987, when the administrator deed was issued to the appellant, then that same letters of administration could not be extended in 2008. To question the legality and efficacy of the letters of administration issued to John G. T. Nagbe in 1987, is to similarly question

the legality and efficacy of the extension of that same letters of administration in 2008 upon which the appellee obtained his own administrator deed.

As we have indicated, there are many collateral and related issues which this case presents, but we agree, and our majority Colleagues agree, also, that the deciding issue involves prior ownership. However, they take the position that the appellant, though having title which is 21 years older than the appellee, cannot prevail because the appellant's title is in doubt. For reasons stated herein, we do not agree, hence we have withheld our signatures from the judgment in this case.

Filed: January 8, 2015

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Francis S. Korkpor, Sr.
CHIEF JUSTICE, SUPREME COURT OF LIBERIA

_____
Jamesetta H. Wolokolie
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA