Posthumous Z. Benson of the City of Monrovia, Liberia, APPELLANT VERSUS **Mrs. Angela J. Sawyer Kamara** of the City of Monrovia, Liberia, APPELLEE

LRSC 42

APPEAL

HEARD: March 24, 2014 DECIDED: December 19, 2015

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT.

On September 6, 2010, Mrs. Angela J. Sawyer Kamara, appellee, filed an action of ejectment against Posthumous Z. Benson, appellant, in the 6th Judicial Circuit, Montserrado County. The appellee complained that she purchased two acres of land in the Township of Johnsonville, Montserrado County, from the Hines Estate, by and through Thomas C. H. Hines, Sr. and William L. Hines, Sr., Administrators, on February 18, 1996, for which she was issued a title deed; that the appellant, without any color of right, encroached on and constructed a structure on her said two acres of land. She therefore prayed the lower court to enter a judgment in her favor holding appellant liable, issue an order to have the appellant evicted, ousted, ejected and removed from the premises in dispute, rule the costs of these proceedings against the appellant, award her damages sufficient for the illegal and unlawful withholding of her property, and grant unto her all further relief deemed just and equitable.

The appellant filed an answer denying the appellee's complaint; the appellant Claimed · ownership to the land on which he constructed a building and attached a title deed from the same grantors (Thomas C. H. Hines, Sr. and William L. Hines, Sr., Administrators) who had also sold land to the appellee. The appellant's deed was issued on the July 3, 2001.

We quote verbatim, the four-count complaint filed by the appellee, plaintiff in the lower court as follows:

"AND NOW COMES PLAINTIFF and most respectfully prays your Honour and this Honourable Court and complains against the within named defendant as follows to wit:"

"1. Plaintiff complains and says that she is the bonafide owner of two (2) acres of land, situated, lying and being within the Township of Johnsonville, Montserrado County, Republic of Liberia, which was acquired through honorable purchase, as evidenced by an Administrator's deed executed by her grantors, Thomas C. H. Hines, Sr. and William L. Hines on the 18th day of February 1996, copy of which is hereto attached and marked as Plaintiffs Exhibit "P/1" to form a cogent part of this Complaint. The metes and bounds of .said property are described as follows:

"Northwestern corner of lot #4 and 8 owned by Valentine G. Sawyer, thence running on magnetic bearing as follows: North 64 degrees 00 feet west 247.5 feet parallel with a 25 foot proposed alley to a point; thence running South 26 degrees 00 feet West 264 feet parallel with a 25 foot proposed alley to a point; thence running South North 26 degrees 00 feet East 294 feet parallel with said lot Nos. 4 and 8 owned by Valentine G. Sawyer to the point of commencement and containing six (6) lots of land and no more."

2. Plaintiff complains and says that for the past few years, she has been working with an international organization outside Liberia, but during one of her visits to Liberia, she discovered that the Defendant was carrying on construction on her property. The Defendant was advised to stop yet he continued with his construction up to the filing of this complaint.

3. Plaintiff complains and avers that all efforts to have the Defendant to relinquish the property on which he had illegally and unlawfully encroached upon proved futile, as the Defendant has and continues to remain recalcitrant in his unlawful and illegal act to the detriment of the Plaintiff.

4. Plaintiff also complains and avers that an action of Ejectment is the proper remedy at law to evict, oust, eject and remove the Defendant from the Plaintiffs property, based on the facts and circumstances narrated herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, Plaintiff brings this action and prays Your Honor and this Honorable Court to adjudge the Defendant liable to the Plaintiff, issue an order to have the Defendant evicted, ousted, ejected and removed from the Plaintiffs property, award the Plaintiff damages sufficient for the illegal and unlawful withholding of the Plaintiff's property, rule the Defendant to costs in these proceedings and also grant unto the Plaintiff, all further relief that Your Honor may deem just, legal and equitable.

RESPECTFULLY SUBMITTED, PLAINTIFF, BY AND THRU HER LEGAL COUNSEL:

THE HENRIES LAW FIRM."

On September 21, 2013, the appellant, defendant in the lower court, filed a seven-count answer to the complaint which we also quote:

Defendant in the above entitled cause of action denies the legal efficacy and factual sufficiency of the Plaintiffs Complaint and respectfully prays Your Honor and this Honorable Court to deny, dismiss, set aside and overrule the unmeritorious complaint filed by plaintiff, and showeth the following legal and factual reasons, to wit:

"1. That as to count 1 of Plaintiff's complaint, Defendant says that same is totally false, misleading, untrue and incorrect, in that Defendant says that Plaintiff does not own any property in the same vicinity where Defendant owns and occupies his property, which fits the description or metes and bounds set forth and laid in count one of the Complaint. Therefore, count one should be denied, dismissed and overruled.

2. That as to count 2 of Plaintiff's Complaint, Defendant denies that he was carrying on or is carrying on construction on Plaintiffs property. [To] the contrary, Defendant says that the land on which he is sitting is his bonafide private property legitimately acquired by him from his grantor. Defendant further denies that he has ever been warned by Plaintiff to desist from his work on his own land. Defendant says the failure of Plaintiff to exhibit or annex a copy of any such notice only goes to show that Plaintiff is bent on lying and misleading this Honorable Court with the criminal intent to cheat and rob Defendant of his hard-earned property, which he has developed for his own purposes. For this woeful blunder, this count and in fact the entire Complaint ought to be dismissed, denied and overruled.

3. Further to count two of this Answer, and still responding to count two of the Complaint, Defendant says that he is the owner in fee simple of the parcel of land he occupies, as is evidenced by his title deed bearing the below described metes and bounds, by virtue of an honorable purchase. A copy of the Defendants title deed is hereto attached and marked Defendant Exhibit DF/1 to form a cogent part of this Answer. Since Defendant is occupying his own property, an Action of Ejectment cannot lie against him for said property and, as such, said Action must be dismissed, denied and overruled.

METES AND BOUNDS:

Commencing at the Southwestern Corner of the adjoining two (2) lots owned by Valentine and Martha Sawyer; marked by a concrete monument; hence running North 26 degrees East, 264 feet to a point; thence running North 64 degrees west, 132 feet parallel with another 25 foot proposed alley to a point; thence running South 64 degrees East, 165 feet to a point; thence running 26 degrees west 132 feet to a point; thence running South 64 degrees East, 82.5 feet parallel with a 25 foot proposed alley to the place of commencement and containing (4) four lots and no-more.

4. That as to counts 3 and 4 of Plaintiff's Complaint, Defendant repeats and insists that he cannot be evicted from his own property legitimately purchased by him and as such the Action of Ejectment cannot lie and must be dismissed. Defendant categorically denies that he has encroached and illegally entered upon Plaintiff's property, and repeats that the land occupied by him is his by virtue of an honorable purchase and therefore, he should not be disturbed in his quiet and peaceful enjoyment of his private property.

5. As to the entire Complaint, Defendant says Plaintiff has filed this suit in total bad faith for the mere purpose of harassing, molesting, and intimidating the Defendant, in that Plaintiff is fully aware that she rejected the land and was relocated by her grantor because some intruders invaded the land and began sand mining thereby defacing and undermining the land. Defendant says Plaintiff disliked the undermining of the land [so] she was relocated to new site thereby leaving the land free to the grantors to do what they, wanted to do with it; it was only at that po1nt that the grantors decided to sell the land and Defendant purchased the said land. Despite being relocated and seeing the level of development Defendant has carried on the land, Plaintiff became jealous and envious and went back to the grantors and insisted that she wanted her original land, by which time, it was already too late [since] Defendant had begun the development of his land. Defendant says there is no issue between him and the Plaintiff; if Plaintiff has any query she should direct same to her grantor and not molest and take advantage of him. Defendant says he is the wrong party sued and should be dropped as a party, and that, if at all there is any claim by Plaintiff, it should be directed to her grantors who sold the land to Defendant and not directly to the Defendant; as such the grantors should be joined as party Defendants. Defendant gives notice that at the trial, if there will one, he will produce evidence to prove that Plaintiff does not own the subject land and that she voluntarily gave it up because other intruders had invaded her land and were doing sand mining which undermined and defaced the land, for which she was relocated by the grantors.

6. That in response to the Prayer contained in the Plaintiffs complaint, Defendant denies that the Plaintiff has suffered any form of damages or injury for which Plaintiff is or [should] be entitled to any form of damages, whether general or special damages. Therefore, the claim for damages should be overruled, set aside, denied and dismissed for having no basis, whether in law or in fact. Defendant says and avers that the Plaintiff has not shown how she has been damaged by any conduct of the Defendant, and says further that even if it were true that the Plaintiff did suffer any harm or injury, which is not the case, that the Plaintiff is and should be considered the cause of her own debacle, not traceable or attributable to the Defendant for which an award of damages would justifiably lie. On the contrary, the Defendant herein hereby interposes a counterclaim for general damages against the Plaintiff for all the loss of time,

embarrassment and inconveniences to which the Defendant has been subjected by the wicked and malicious conduct of the Plaintiff. The claim of the Plaintiff must therefore be dismissed for being mere speculation and nothing more than an attempt to benefit from illegal and unjust enrichment, extortion and theft. Therefore, the claim must be dismissed.

7. Defendant denies all and singular the allegations of law and fact contained in the Plaintiff's complaint that have not been traversed specifically herein this Answer.

WHEREFORE AND IN VIEW OF THE FOREGOING, Defendant most respectfully prays Your Honor and this Honorable Court to deny and dismiss the unmeritorious complaint filed by the Plaintiff as there is no wrong committed against the Plaintiff by him; also, that the grantors should be joined as party Defendants and the Defendant be dropped as a mis-joined party; and that Your Honor would also deny Plaintiff all damages prayed for in her complaint, and grant unto Defendant any and all other and further relief, including an award of general damages in favor of the Defendant against the Plaintiff which Your Honor and this Honorable Court may deem legal, just and equitable under the circumstances.

RESPECTFULLY SUBMITTED: Posthumous Benson, DEFENDANT, BY AND THRU HIS COUNSEL:

KANIE AND KWOIWU LEGAL REDRESS AND WATCH LAW CHAMBERS".

On September 28, 2010, the plaintiff filed a reply consisting of five counts. The reply basically confirmed and affirmed the appellee's complaint and further averred in count three (3) thereof in part as follows:

"Under our law extant, when a party sells a real property to a third party, the party that has sold such property parts with title and ...the only way title can pass back to such person will be that the person who bought the property must issue a deed to the original owner for title to pass. Plaintiff challenges the defendant in these proceedings to produce any deed that was issued by the plaintiff to her grantors to give [them] the standing to sell the plaintiff's property. In the absence of any new title in the plaintiffs grantors, any sale of the plaintiffs property by the said grantors who had already parted with title is null and void..."

With the filing of the reply, pleadings rested. The law issues were heard and the case was ruled to trial on June 2, 2010. At the trial, two witnesses testified for the appellee, including the appellee herself.

She testified that she purchased the land in question in 1996 from the Hines family after Cllr. M. Wilkins Wright carried her to meet the land owners; that she paid for the land and the deed was subsequently prepared and probated by Cllr. Wright who gave it to her aunt. She also testified that while in the United States of America, she received a message from her brother that somebody was building on her land; that she came back to Liberia in 2000 and upon arrival she asked her aunt if she sold her land but her aunt said no. According to the witness, her aunt informed her that the appellant, Posthumous Benson, had asked her to allow him to take care of the land because of the many land disputes in the area; that her aunt said she consented to the request but warned Mr. Benson not to build any structure on the land as it was not hers. The witness further testified that she visited the land on a Sunday and met a mat structure on it and ask Mr. Benson, "...how come you are building on my land, you know that this land is for me?" She said he just laughed in her face and said: "Sis. Angela, you don't know the story behind this?" The witness said she told Mr. Benson "there is no story, what is the story behind it?" and she left the scene. She said

she sent money to Cllr. Wright to purchase another two acres adjacent to the land in question. She informed the court that because Mr. Benson continued to construct on her land she complained to the Ministry of Lands, Mines & Energy; that after an investigation, the Ministry of Lands Mines & Energy advised Mr. Benson to leave her land, but he did not pay heed. She also informed the court that she took the matter next to the Ministry of Justice, where an investigation was also conducted; that Counsellor Chattah who conducted the investigation at the Ministry of Justice concluded that Mr. Benson has no case because his deed was not the original deed and that the said deed was not legally executed but still, the appellant failed and refused to leave her land.

On the direct examination Mrs. Kamara was asked whether the people she bought the land from at any time issued any other deed to her besides the deed annexed to her complaint and she responded: "Never, never in fact at the time when they said I was being relocated the Hines brothers had died and it was this Cooper man who was administering the land in the area and neither Cooper nor anybody, nor surveyor, nor my aunt ever give me any other deed. I didn't find any document or turn my land over to anybody, I have not seen any deed that was given saying that I was relocated and I have not signed any papers.

When asked on the cross examination whether during the process of purchasing the land and the probation and registration of its deed, she assigned any role to Counselor Wright, the witness responded: "...I didn't give him any legal authority; I never give Counselor Wright any legal right to do anything with my property."

Another question was put to the witness while still on the cross examination: "Can you remember whether or not Counselor Wright received some authority from your aunty to act on your behalf ...?" The witness responded: "I am not aware of any such thing."

Finally, the witness was asked on the cross examination: "By permission of court, I show you this new deed that was issued by the Hines family based on your relocation ...and delivered to Counselor Wright. Can you remember whether Counselor Wright ever showed you this relocation deed?" The witness answered: "This is the very first time in my life that I am seeing this document. In fact, when I came back and [saw] Benson on my property I started with my aunt, went to the land seller and started going around. I even tried on several occasions to meet Counselor Wright and I never did, he never made himself available to talk to me or even show me any deed. I have never seen that document. The only other document, I have on the land issue that Counselor Wright had any hand in was in 1997, the document you have in your hand says 2001. In 1997, I was in the United States when my aunty told me that Counselor Wright had told her there was a piece of land adjacent to the first land. So over the phone I asked him and he said yes; to complete the block because he knew that I wanted to buy the land for development. So he told me that that piece of land will cost about USD2, 000 and I sent the amount to him by Western Union. Subsequently when I came back to Liberia on vacation, he gave me this deed which... was probated...in December 1997, that is the only land that I know of and that I sent money to Counselor Wright for. It is right next to the present property that is in dispute. If any other land was surveyed anywhere else in my name, I don't know about it. I have never seen that deed neither the original nor photocopy."

The second witness that testified for the appellee is Jack Boston. He testified that sometime back, his mother, Selina Doe Lartey was contacted to purchase land for Mrs. Angela J. Sawyer Kamara, who he called "Ma Angela Sawyer." He said that the transaction went on, the land was bought and the deed was

prepared. He said later on he was informed by someone living adjacent to the land that there was land dispute in the area and people were fighting with cutlasses; that when the information got to his mother, she informed Mrs. Kamara; that Mrs. Kamara told his mother to build fence around the land; that he spearheaded the team to build the fence; that because the land was big, they decided to build pillars around the land; and that they built about 10 pillars around the entire land. The witness also testified that during the time they were building the fence, Mrs. Kamara gave portion of the land to her brother; that one time, Mrs. Kamara's brother's wife went to their house and told them that people were digging sand on the land; that his mother, after informing Mrs. Kamara, contacted Mr. Posthumous Benson to mind the land; that Mr. Benson, had earlier requested to be allowed to enter the land and take care of it to prevent those who were digging sand on the land; that his mother told Mr. Benson not to build any permanent structure on the land as Mrs. Angela Sawyer Kamara could use her land at any time. He informed the court that during the Liberian Civil War, his mother left Liberia and sought refuge in the Republic of Ghana at the home of Mrs. Angela Kamara; that while there with Mrs. Kamara an "astonishing" communication went to his mother saying that she had given the land in question to Mr. Benson; that Mrs. Kamara was very annoyed; that later he heard that Mrs. Kamara put his mother out of her house so his mother moved to the Bududuram Refugee Camp in Ghana; that his mother who was a diabetic patient suffered and got blind while on the refugee camp in Ghana. The witness said they were all "ashamed," believing that that their mother had sold the land in question, but when his mother returned to Liberia they asked her, "were you the one that sold the place or authorized Mr. Benson to build on Mrs. Kamara's land and she said "no, I cannot do that, why should I do that? He asked me to be there to mind the land until Mrs. Kamara gets ready for her land." The witness further testified that his younger brother, Dr. Kai Lewis intervened in the matter between his mother and Mrs. Kamara; that they had a conference and he was at the conference; that his mother said even though she was ill and could hardly walk, she was willing to go anywhere to testify that she never gave Mr. Benson authority to build a structure on Mrs. Angela Sawyer Kamara's land; that his younger brother, Dr. Kai Lewis and himself accompanied his mother to court where she signed a document that she was not part of anything; that she never sold the land, and that indeed the land belongs Mrs. Kamara.

When the appellee rested with the production of evidence, the appellant took the witness stand and testified in his own behalf. He told the court that he purchased the land in question in 2001 from Thomas C. H. Hines, Sr. and William L. Hines, Sr., the same grantors from whom the appellee also purchased the identical land. The appellant maintained that he was told the appellee rejected the land because some intruders invaded the land and began mining sand thereon, thereby defacing and undermining the land; that the appellee disliked the undermining of the land due to sand mining [so] she demanded and was relocated to a new site, leaving the land free for the grantors to do what they wanted to do with it; that it was only at that point that he expressed interest in the land and the grantors decided to sell the land to him. Hence, he purchased the said land. Having been relocated and seeing the level of development the appellant had carried on the land, according to the appellant, the appellee "became jealous and envious" and went back to the grantors and insisted that she wanted her original land. On the cross examination, he admitted that the appellee had gone to him on the land while he was conducting church services in a mat house and told him to leave her land, but that he could not leave because the appellee had been relocated after which the

property was sold to him. He also admitted that the appellee took his complaint to the Ministry of Lands, Mines & Energy and the Ministry of Justice.

One Samuel Cooper also testified for the appellant. He informed the court that he was involved with the sale transaction for the land to Mrs. Kamara until the deed was prepared and delivered to her. He said that after the sale of the property to the appellee, the appellee rejected the property; that the same area was sold to the appellant after the appellee rejected the area.

Counsellor M. Wilkins Wright was the last witness for the appellant. He started testifying by saying that the case was "a bad case" for him to testify in because he knew both of the parties. He informed the court that he bought land from the Hines Family on which he built his residence in Johnsonville; that during the April 6th war in Liberian he travelled to Ghana and resided in the home of Mrs. Angela Sawyer Kamara; that Mrs. Kamara informed him that she intended to return home after the NGO work she was doing in Ghana and was looking for a piece of land to build on; that she requested him to help her purchase land in Liberia. The witness said when the war subsided and he returned to Liberia he went to the Hines family and told them that his sister wanted land similar to the land he bought from them and they agreed; that they showed him the area and told him the price. He said he called Mrs. Kamara and gave her the information; that when she came from Ghana he took her to the Hines family, introduced her to them and they finally negotiated the purchase price. He also said that the Hines family took Mrs. Kamara on the land in his presence and when she went back to Ghana, she sent the money to him through Western Union; that he signed for the money at Western Union and paid it on behalf of Mrs. Kamara. According to the witness, the appellee initially wanted 2 acres of land, or eight lots; that the land was surveyed and the deed given to him and he probated the deed and sent it to Mrs. Kamara in Ghana; that out of the first eight lots Mrs. Kamara purchased, she gave two lots to her brother and his wife and she kept six lots; that after a while, Mrs. Kamara wanted additional land, so he went back to the Hines family and they gave additional 2 acres, making a total of four acres; that there were two separate deeds because there were two separate transactions; the first transaction for two acres was carried out in 1996; while the second transaction for additional two acres were carried out in 1997. The witness said he received reports that people were digging sand on the land. He said he went on the land one Saturday morning and discovered that there was a dispute between a family called Gbeisay Family and the Hines Family; that the Gbeisay Family claimed that the Hines Family had encroached on their land and sold portion thereof to Mrs. Kamara; that since the land in question belonged to them (the Gbeisay Family they had sold same to different people- third parties and it was these third parties that were digging sand on the land. He said when he discovered this, he informed old lady Selina Lartey, aunt of Mrs. Kamara and took the old lady on the land; that they met the Gbeisay Family who told them as far as they were concerned, they had sold the land; that based on the position taken by the Gbeisay Family, he told the Hines Family to relocate Mrs. Kamara and they agreed; that a new site was selected, surveyed and Mrs. Kamara was relocated. According to the witness as a result of the new survey, a deed for 2 lots was issued in the name Mrs. Kamara's brother and his wife, and two separate deeds for fourteen lots were issued in favor of Mrs. Kamara totaling sixteen lots or four acres of land. He said he was given and still has in his possession deeds for the 2 lots issued in the name Mrs. Kamara's brother and his wife, and two separate deeds for fourteen lots issued in favor of Mrs. Kamara. He said he told the Hines Family that they were no longer interested in the original land bought by

Mrs. Kamara which the Gbeisay Family had sold to third parties. He said he gave the Hines Family back their original land, since Mrs. Kamara had been relocated. He said when he informed Mrs. Kamara who was then in Ghana through her aunt, she said she was not interested in being relocated; that she subsequently came to Liberia and said that she did not want the new land so she wanted her money back from the Hines Family. He said from his experience, land sellers do not keep, money "they eat the money, or they divide the money with the family." So, according to the witness, the Hines Family told him the only way they could give the money back is when they resell the land to third parties. The witness informed court that he decided to pay the money because he took Mrs. Kamara to the Hines Family; that he paid the amount of USD 2,000 to the old lady to be given to Mrs. Kamara; that when the old lady told her that he had paid some of the money, Mrs. Kamara told the old lady she had no business taking any money from him; that she did not authorize her to take any money from him. So, according to the witness, Mrs. Kamara stopped the old lady from collecting the balance of USD 2, 000 from him. He said he has in his possession e-mails from Mrs. Kamara in which she said she wanted her money back but that she did not authorize her aunt to collect her money; that the balance money with him, she will receive it herself; and that he is still keeping the balance of USD 2, 000 for Mrs. Kamara.

Both sides rested evidence, presented final arguments and submitted the case for final judgment. On May 9, 2012, the trial jury reached a unanimous verdict holding the appellant liable to the appellee. To this ruling the appellant noted exception and announced an appeal to the Supreme Court. On May 12, 2012, the appellant filed a motion for new trial which we quote:

"1. That the Movant is a defendant in the main suit, Action of Ejectment filed by the Respondent before this Honorable Court out of which this Motion grows. The essence of Plaintiffs complaint is that the Movant/Defendant unlawfully encroached upon the a piece of property which she acquired through honorable purchase and subsequently probated and registered in line with the laws of the Republic of Liberia;

"2.That the Movant/Defendant filed a nine (9) count answer of the Respondent/Plaintiff's complaint and denied encroaching on Plaintiffs land and contend that the land in question, according to the Movant/Defendant was acquired honorably from the Hines' family after the Attorney-In-Fact of the Respondent/Plaintiff rejected the said piece of land and sought relocation of the Respondent/Plaintiff on ground that the land was being undermined by sand miners and that a substantial portion of said land was sold by the Gbassey's family which resulted into Court litigation between both the Gbasseys and the Hines. Movant/Defendant requests court to take judicial notice of copy of the title deed for the relocation of the Plaintiff and the title deed issued to the Defendant by the Hines' family after the relocation marked "M/1" in bulk and attached to this Motion to form a cogent part thereof;

"3. That the Respondent/Plaintiff upon notice by her Attorney-In-Fact, Cllr. Micah W. Wright that a relocation deed was issued by the Hines' family upon his (CIIr. Wright) request thereby relocating her to a new site out rightly rejected the relocation and demanded the refund of the Four Thousand United States Dollars (USD4,000.00), she previously paid for the said land from the Hines' family through her Attorney-In- Fact, Cllr. Wright;

"4. That based on the Respondent/Plaintiff's demand for the refund from the Hines' family, said family

requested the Respondent/Plaintiff to exercise patience until they can identify buyers for the said piece of land after which they will be in the position to refund the Respondent/Plaintiff;

"5. That the Attorney-In-Fact not being satisfied with the delay of identifying buyers before refund, personally offered to refund his principal since he was the one who took the Respondent/Plaintiff to the Hines' family in order to protect his principal's interest;

"6. That further to count five (5) of the Movant's Motion, Cllr. Wright has paid Two Thousand United States Dollars against the Four (4) Thousand United States Dollars to the Aunty of the Respondent/Plaintiff, which payment was acknowledged by the respondent/Plaintiff through two separate E-mails dated May 4, 2004 and September 1, 2004, respectively, which in essence directed her Aunt not to take the balance of One Thousand United States from Micah and to tell Micah to keep it for her until she send for it or come to Liberia to collect it. This Court is requested to take judicial notice of copies of the two E-mails mentioned hereinabove marked "M/2" in bulk and attached to this Motion to form a cogent part thereof;

"7. That the refusal of the relocated land coupled with the acceptance of initial payment of Two Thousand United States Dollars and the E-mails instructing the Aunt not to collect her balance of One Thousand United States Dollars from Micah demonstrates that the Respondent/Plaintiff acknowledged the transaction and parted with the title for the said piece of land and therefore cannot under any parity of legal reasoning claim title to said land while at the same time receiving refund for same; this amount to unjust enrichment;

"8. That in the face of the evidence of rejection of the relocation and the payment of the Two Hundred United States Dollars to the Aunt of the Respondent/Plaintiff as can be more fully seeing from the faces of the two E-mails mentioned hereinabove, the jury ignored same and returned a verdict of liable against the Defendant, which act of ignoring the weight of the evidence and returning a liable verdict against the defendant makes the verdict contrary to the weight of evidence adduced in the case by the Movant/Defendant; this necessitating a new trial before a new jury; and

."9. This under the law, specifically Chapter 26, section 26.4 of 1LCLR, Title 1, it is clearly stated that where the verdict of the Trial jury is contrary to the weigh of evidence, as was done in the instant case, the remedy available to the liable party is a Motion for New Trial.

On May 17, 2012, the appellee filed resistance to the motion for new trial, which we also quote:

"1. That as to the entire Motion, respondent say that the unanimous verdict of the jury of liable against the Movant in these proceedings, is in keeping with the weight of the evidence that were adduced during the trail. There being no showing of any irregularity during the trial, the Movant's Motion should be disregarded and dismissed.

"2. That, as to count one (1) of the Movant's motion, Respondent says that the said count presents no traversable issue and therefore needs not be traversed.

"3. As to counts two (2), three (3), four (4). five (5), six (6), seven (7) and eight (8) of the Movant's Motion, Respondent says that these counts are false and misleading and should not claim the attention of this court in that, the Respondent in these proceedings, the plaintiff in the court below did not instruct anyone including Cllr. M. Wilkin Wright to relocate her from property that she had purchased, which deeds were duly processed as in keeping with law. The law in this jurisdiction is that, when one sells property to a third

party, the seller parts with title and the new owner has the right to make decision regarding his or her property. In the instant case, the respondent/plaintiff below bought four (4) acres, the deeds were probated and registered as in keeping with law, and the Movant in these proceedings, without any color of right or any permission from the Respondent, and in clear violation of law, settled on the Respondent's property. This fact was confirmed by the respondent and the witness before the jurors.

"4. Further to Count three (3) above, Respondent says that she went on record and told the court that she was being represented by her aunt, the late Selina Lartey and that Cllr. Wright was apparently the lawyer for the late Madam Lartey. In other words, there was no showing during the trial that the respondent in these proceedings ever nominated and/or constituted Cllr. Wright as her Attorney-In-Fact. The respondent is aware that under the statute of fraud, to nominate a person as your Attorney-In-Fact to handle the affairs of your real property, same must be done in writing. Cllr. Wright did not show any legal instrument by which the Respondent in these proceedings ever nominated him as her Attorney-In-Fact regarding the re-sale or relocation of the Respondent. Further, Respondent says that at no time did she ask Cllr. Wright to pay money to her aunt, no receipt was exhibited during the trial to substantiate such allegation, meaning that the jury verdict of liable in favor of the Movant/Defendant was in keeping with the weight of the evidence adduced during the trial. Counts two (2), three (3), four (4), five (5), six (6), seven (7) and eight (8) of the Movant's Motion should be disregarded and dismissed.

"5. Further to count four (4) above, Respondent further says that prior to the institution of the Ejectment Action, she has not seen any deed for her relocation for the property she purchased and that whatever document that the Movant/Defendant brought to court purporting to be Respondent deed for relocation was manufactured by the Movant to mislead the court and confuse the jurors. Thank God, the jurors should be confirmed and affirmed and the Motion for new trial denied as in keeping with the facts and circumstances of the case.

On May 22, 2012, the Civil Law Court of Montserrado County presided over by its Resident Judge, Yussif D. Kaba, after hearing arguments pro et con, denied the motion for new trial and entered a final judgment confirming the unanimous verdict of the jury. Here are excerpts from the trial court's final judgment: " ....that the motion of this nature calls for an assessment by the court as to whether or not, sufficient evidence were produced to support the finding of the jurors. This motion does not give the court the competence to re-weigh the evidence as weighed by the jury but only to determine whether the jury had sufficient evidence based upon which they reached the verdict as challenged by the Movant herein. The court says that after giving due consideration to the evidence adduced at a trial, in fight of the charge of the court and the pleadings of the parties, the court sees no legal justification to disturb the said verdict and by that and in view of the foregoing, this court hereby confirm and affirm the said verdict thereby denying and dismissing the motion for new trial."

The appellant noted exception to the final judgment of the trial judge and announced an appeal to the Supreme Court of Liberia. He filed a bill of exceptions containing 9 counts basically contending: a) that the trial judge erred when he confirmed and affirmed the verdict of the jury which ignored two e-mails dated May 4, 2004 and September 1, 2004, respectively which e-mails, according to the appellant, acknowledged

refund received by the appellee of the price paid to the Hines Family for the land in question; b) that the trial judge committed a reversible error when he denied appellant's motion for new trial and entered final judgment confirming and affirming the verdict of the jurors, which appellant maintained, was grossly contrary to the weight of the evidence adduced during trial; c) that in charging the jury, the trial judge did not explain that one cannot repudiate his/her own act wherein he/she accepted and retained benefit which, according to the appellant, the appellee did in this case when she received refund of US$2,000.00 (Two Thousand United States Dollars) for the parcel of land in dispute, kept the money and thereafter retained ownership and possession of the same parcel of land through an action of ejectment against the appellant/defendant; d) that the trial judge erred when he ignored the fact that by receiving the refund the appellee parted with title to the subjected parcel of land and confirmed and affirmed "the bad verdict of the jurors which ran contrary to the weight of evidence in this case;" and e) that in charging the jurors, the trial judge erred when he stated that under our laws, no agent can convey real property to another without the expressed authority of the principal thereby leading the jurors to form the belief that this case is about an agent conveying the real property of his/her principal without the principal's express authority when in fact the emails verified the express authority.

As can be seen, the appellant's 9-count bill of exceptions, summarized above, centers around two principle contentions. Firstly, the appellant contended that the appellee received refund of the money she paid for the land from the Hines Family through Counsellor M. Wilkins Wright who the appellant referred to in his motion for new trial as "attorney -in- fact" for the appellee, and that having thus been refunded, the appellee no longer had title to the same land, a fact which the jury did not take into consideration. The verdict of the jury, according to the appellant, being therefore against the weight of the evidence adduced in the case, the trial judge erred when he failed to set said verdict aside and award a new trial.

Secondly, the appellant contended that the trial judge committed errors when charging the jury; that the judge erred when he charged the jury that under our law, no agent can convey real property to a third party without the express authority of the principal; and that the trial judge also erred when he failed to explain to the jury the principle of law that one cannot repudiate his/her own act.

Later in this opinion, we will address the contention of the appellant regarding the refund said to have been received by the appellee. But concerning his other contention that the trial judge erred when charging the jury, we must note at this juncture that the appellant did not take exception to the trial judge's charge to the jury at the time the judge made the charge. Nowhere in the records do we see that the appellant, through his counsel, disagreed with the trial judge's charge to the jury. Had it been so, the records would have reflected same. Our statutory as well as decisional laws require that an exception be noted by a party at the time the judge makes an order, decision, ruling or comment to which he disagrees and objects. Failure to note an exception to any such action shall prevent assigning it an error on review by the appellate court. Civil Procedure Law, Rev. Code 21.3 Further, the Supreme Court has held that raising the issue for the first time in the bill of exceptions seems to be asking the Court to take jurisdiction over the point, although it had never been raised in the trial court. Wilson v. Dennis, 23 LLR 263 (1974).

We hold that since the appellant, through his counsel, did not raise contention with the trial judge's charge to the jury at the time the charge was delivered to the jury, the failure to have done so is deemed a waiver. Forleh et al. v. Republic, 42LLR 23 (2004). Therefore, any disagreement the appellant had with the said

charge cannot be raised in the bill of exceptions to be considered for the first time by this Court. We will therefore disregard all alleged errors made by the trial judge in his charge to the jury as contained in the bill of exceptions filed by the appellant.

Having carefully perused and analyzed the pleadings exchanged by the parties before the lower court and the briefs filed by them with this Court, and having listened to the oral arguments presented by their respective counsels before us, we have determined that the issues for the disposition of this case are:

1. Whether or not Counsellor M. Wilkins Wright was attorney- in- fact for the appellee, Mrs. Angela Sawyer Kamara under the facts and circumstances of this case?

2. Whether or not where one sells a real property and parts with title, title to the same property can revert to the same seller without the buyer issuing a title instrument to the seller, or without the seller first proceeding to court to have the title instrument cancelled for good cause shown?

3. Whether or not the unanimous verdict of the trial jury is supported by the weight of the evidence adduced during the trial or this case?

Considering the issues in the same order as presented, the first issue we shall pass on is- whether or not under the facts and circumstances of this case Counsellor M. Wilkins Wright was attorney- in- fact for the appellee, Mrs. Angela Sawyer Kamara?

The appellant contended that Counsellor M. Wilkins Wright was attorney-in-fact for the appellee because he was the person who transacted the land business on her behalf with the Hines Family; that Counsellor Wright contacted the Hines Family and informed them that Mrs. Kamara was no longer interested in the land; that he demanded that she be relocated and she was relocated; and that Counsellor Wright made refund to the appellee in the amount of two thousand United States Dollar.

The appellee, on the other hand, contended that Counsellor Wright was not her attorney- in- fact as alleged by the appellee; that while it is true that Counsellor Wright assisted her in purchasing the land from the Hines Family she did not authorize Counsellor Wright to be her attorney-in-fact and act on her behalf as he did; that she issued no power of attorney or any other instrument to Counsellor Wright giving him authority to act in her stead and behalf as her agent.

Having taken recourse to the certified records in this case we are in full agreement with the appellee on this point. The records do not show that there was a principle - agent relationship between Counsellor M. Wilkins Wright and the appellee in this case. A principal- agent relationship is a relationship by which one person confides to another for the management of some business to be transacted in the former's name or on his or her account. It has also been defined as "the fiduciary relationship which results from the manifestation of consent by one person to another that the other will act on his or her behalf and subject to his or her control, and consent by the other to so act."3 AM Jur. 2d, Agency Section 1.

In this jurisdiction, the Supreme Court has held that before one can hold himself out as the agent of another, he or she should have received a power of attorney, and the power of attorney should have been duly probated and registered. Bryant v. African Produce Company, 6LLR 27 (1937). A power of attorney is an instrument in writing by which one person, as principal, appoints another person as an agent and confers upon the agent the authority to perform certain specified acts or kinds of acts on behalf of the principle. Such agent is designated as an attorney-in-fact. The records before us do not show that Mrs. Angela Sawyer Kamara appointed Counsellor Wright as her attorney-in-fact. Although the appellant argued

consistently that Counsellor Wright was attorney-in-fact of the appellee, no instrument was pleaded or introduced into evidence to provide proof of this assertion. The records show though that Counsellor Wright assisted the appellee in purchasing the land in question. It was Counsellor Wright who took the appellee to the Hines Family and it was he who probated and registered the deed for the second 2 acres of land the appellee purchased from the Hines Family in 1997. But this does not in any way make Counsellor Wright the attorney-in-fact for the appellee. After all, the records show, also, that Counsellor Wright probated and registered the title deed issued to Posthumous Benson, the appellant in this case. Does this also make him the attorney -in-fact for the appellant? We hold not.

The relationship between an agent and a principal is a contractual one, so there must be a meeting of the minds. The principal must intend that the agent acts for him or her and the agent must accept the authority and act on it, and the intention of the parties must find expression either in words or conduct between them. 3 AM Jur. 2d, Agency Section 15. This is particularly required where the alleged agency relationship relates to authority to undertake a task relatin9. to real property such as disposing of the property. In such a case, the power of attorney establishing the relationship or conferring the title of attorney-in-fact must specifically state that the agent has the authority not just to manage the property, but to dispose of the property or convey title to another. There is no showing in this case.

As we have stated, the appellee did not issue written instrument authorizing Counsellor Wright to act as her agent. And there is no showing of any conduct on the part of the parties to suggest that they intended to act, one as a principal, and the other as an agent. Thus, there was no express or implied agency relationship between the parties. To the contrary, Mrs. Angela Sawyer Kamara, the appellee in this case, is on record as having said that she did not ask for relocation and did not tell Counsellor Wright to tell the Hines Estate to relocate her.

This Court has held that no liability attaches to an individual for the acts of one who assumes without authority to act for him in capacity of an agent, there being no elements of ratification present. Family Planning Association of Liberia v. Harris, 42LLR 97 (2007).

In view of the foregoing, we hold that Cllr. M. Wilkins Wright was not an agent of the appellee and did not have any legal authority to seek relocation of properties duly and legally acquired by the appellee without her expressed written authorization.

We address next the issue whether or not where one sells a real property and parts with title, title to the same property can revert to the same seller without the buyer issuing a title instrument to that seller, or without the seller first proceeding to court to have the title instrument cancelled for good cause shown?

Before proceeding further, we should note that the parties in this case are claiming the same and identical property and that the two parties purchased the property from the same grantor, the Hines Estate. It is not in dispute as to who first purchased the property. In fact the appellant conceded that it was the appellee that first purchased the property in question consisting of two acres of land. The records show that the appellee purchased the property on February 18, 1996, and was issued an Administrator Deed signed by Thomas C. H. Hines, Sr. and William L. Hines, Sr. Similarly, the appellant purchased the identical property from the Hines Estate and was issued an Administrator Deed, also signed by Thomas C. H. Hines, Sr. and

William L. Hines, Sr. on July 3, 2001, more than five years after the appellee had purchased the same property.

The appellant has strenuously contended however, that the appellee disliked the land after she purchased it because the area was being defaced due to sand mining, therefore the appellee, through her "attorney-in-fact" Counsellor M. Wilkins Wright, requested that the appellee be relocated; that based on this request, the appellant was in fact relocated to a new site "leaving the land free" for the sellers, the Hines Family, to do what they wanted to do with it; and that it was only after the land became free that the Hines Family decided to sell and he purchased the said land. The appellant maintained that the Hines Family requested the appellee to exercise patience until they can identify a buyer after which they would be in the position to refund the appellee; that the appellee's "attorney-fact , Counsellor M. Wilkins Wright, not being satisfied with the delay in making refund to the appellee, personally offered to refund his principal since he was the one who took the appellee to the Hines Family for the purchase of the land. The appellant further maintained that Cllr. Wright paid to the appellee, two thousand United States Dollars against the four thousand United States Dollars constituting the total purchase price for the four acres of land the appellee paid to the Hines Family; that the appellee acknowledged payment of the money through two separate e-mails dated May 4, 2004 and September 1, 2004, respectively, which in essence meant that the appellee directed her aunt not to take the balance due her by Counsellor Wright but to inform Counsellor Wright to keep the balance money until she (appellee) sends for it or comes to Liberia to collect it. Finally, the appellant contended that having first requested to be relocated and then subsequently refused relocation and demanded refund of her money paid for the land, portion of which amount was paid, the appellee cannot now prevail in an action of ejectment, claiming ownership to the same parcel of land she had rejected; that in the face of the evidence of the appellee's rejection of relocation and the payment of two thousand United States Dollars to her by her own attorney-in-fact through her aunt, the jury erred in finding for the appellee, hence the said jury verdict was contrary to the weight of the evidence adduced in the case.

The appellee, on the other hand, contended that she purchased the property for future development and did not ask to be relocated; neither did she authorize anyone to ask for relocation on her behalf. She said her title deed which was duly processed is in her possession; that she has not seen, nor is she in possession of any relocation deed. She narrated that when the appellant encroached on her land and refused to leave, she filed complaints at the Ministry of Land and Mines & Energy and the Ministry of Justice to have the appellant leave her property but he refused to do so after investigations were separately done at the Ministries and rulings made in her favor.

The cardinal rule in any ejectment case to which ancient and modern law writers subscribe is that the plaintiff must show in himself a good and sufficient title to the land in dispute, against the whole world. The plaintiff must not only have a title, but he must be clothed with the legal title to such land; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary. Dasusea v. Coleman 36LLR 102 (1989); Kissell v. Diago 22LLR 329 (1973); Tay v. Teh et al, 18LLR 310 (1968); and Minor v Pearson, 2LLR 82 (1912).

Applying this principle of law to the facts of this case, we see that the appellee admitted into evidence, an Administrator Deed from her grantor which establishes title in the appellee. The appellee, by virtue of that

title duly obtained, which was not in dispute, became the lawful owner of the land against the whole world. And having conveyed the land to the appellee, the grantor parted title with said property and could not have conveyed the same property to a third party. This Court has held that a conveyance of realty by a person not possessed of title at law or equity is a vacuity." Wayne et al. v. Cooper 21 LLR 50 (1972). Moreover, we have held repeatedly that where adversaries claim title to the same property from the same grantor, the party who is entitled to the property is the party who produces an original deed and clear and convincing evidence in substantiation of the transactions which led to the execution of the deed in his favor. Barclay v Digen, 39 LLR 774 (1999).

The question is, how did the appellee's grantor, the intestate estate of Hines regain ownership to the land in question to have it sold to the appellant? In our opinion, once sold to the appellee, there are only two ways the property could have reverted to the Hines Estate: 1) the appellee could have conveyed the property back to the Hines Estate in which case a deed would have been issued by the appellee in the name of the Hines Estate; 2) the Hines Estate, for good cause shown, could have gone to court and cancelled the appellee's deed in which case the property would have reverted to the Hines Estate. This Court has held that on cancellation of a deed to real property, the title reverts to the person owning the land before issuance of the deed. Pratt et al. v Smith 26 LLR 160 (1977). But this was not done. The appellee testified that she is still in possession of the deed for the first two acres of land purchased from the Hines Estate, subject of this law suit, as well as the second two acres of land she purchased from the same Hines Estate. This testimony was never refuted by the appellant. The appellee also testified that she had not received nor even seen any deed from the Hines Estate relocating her and that whatever deeds purporting to relocate her were in the possession of Counsellor Wright, who we have already concluded, was not the agent for the appellee under the circumstances of this case.

The appellant argued that the property "became free" when the appellee no longer wanted it and she was refunded and relocated. But no receipt of refund was pleaded. However, we see in the records two e-mails which the appellant's witness, Counsellor M. Wilkins Wright testified to and was admitted into evidence over the objection of the appellee. The appellee, through her counsel had objected to the e-mails on the grounds that they were not pleaded in the appellant's answer to give notice to the appellee for rebuttal in the reply. We hold that it was an error for the trial judge to have allowed the e-mails which were not pleaded in the appellant's answer, to be admitted into evidence. The law in this jurisdiction requires the defendant in civil cases to specially plead in his answer every affirmative matter upon which he desires to rely. Coffah v. Pyne and Smallwood, 8LLR 380 (1944). Garnett Heirs et. aI. v Allison 37LLR 611 (1994). The law, also, is that a trial court cannot properly pass upon issues not raised in the pleadings. Tetteh v. Stubblefield 15LLR 3 (1962).

But let us look at the e-mails for what they are worth to see whether they establish an acknowledgment of receipt of refund by the appellee for the land in question as alleged by the appellant. For this reason we reproduce the two e-mails herein below. The first e-mail date May 4, 2004, reads:

"Date: Tue, 04 May 2004 11:38:50+0100

From: "RPPM" rpmm4ak@africaonline.com.gh

To:patricksumoh@yahoo.com

Subject: Re: Greeting message

Dear Ma Selina,

Thanks for the information; I need to know which part of my land Micah had decided to pay for and the amount. I do not intend to sell any part of the first two acres of land that I bought, so if that is where his brother-in-law is building then he should stop and get out. Micah has to refund to me the two thousand US Dollars that I sent to him from America to buy the second piece of land, as the documents he gave me were doubtful and questionable. I look forward to hearing from you regarding this issue.

Thanks and best regards

"Angela"

The second e-mail dated September 1, 2004, reads:

"Date: Tue, 01sep 2004 09:13;21+0100

From: "RPPM" rpmm4ak@africaonline.com.gh

To: patricksumoh@yahoo.com

Subject: Re: Greeting message

Dear Ma Selina,

The Money Micah has for me is supposed to be given to ME. I did not tell you to collect it from him nor did I instruct you to use it to dig a well for me!! As usual you just continue to use what is supposed to be mine as you like, without first consulting me. I am tired of all that!! Regarding the property in point 4 you can do whatever you want with it, as you have always done anyway. I cut my losses for all the money I have spent on building it and also the thousands of dollars I gave you for the payment of the two stores. Since you have always done what you wanted with them without my knowledge, you can again have it all!! I believe that God will continue to help me as he knows that I have always had a clean heart and cared for you all, only to be repaid in the negative ways. When I am ready I will come to build on my lands in both section of Jacob Town. Let nobody think of messing around with the lands I have paid for!! Please do not take the balance of one thousand US Dollars from Micah. Tell him to keep if for me until I send for or come for it. God Almighty will be the judge for us all."

Of the two e-mails quoted above the first e-mail is more relevant to the issue under consideration. Our understanding of the first e-mail is that the appellee did not, under any circumstance, wish to sell the first two acres of land she purchased from the Hines Estate.

This is the land in contention which the appellant has maintained the appellee disliked and was sold to him after the appellee was relocated. But as seen from the e-mail, the position of the appellee with respect to the land in dispute is unequivocal, she do not intend to sell any part of the first two acres of land that I bought, so if that is where his brother-in-law is building then he should stop and get out." Thus according to the first e-mail, the refund the appellee wanted was for the second two acres of land she bought from the Hines Estate, not because the area was being defaced due to sand mining as alleged by the appellant, or for any other reason. The e-mail specifically stated: "Micah has to refund to me the two thousand US Dollars that I sent to him from America to buy the second piece of land, as the documents he gave me were doubtful and questionable." [Emphasis supplied.] So, if there is any reference to or acknowledgment of refund by the appellee, that reference was not in respect to the land in dispute; rather, as clearly seen from the e-mail introduced into evidence by the appellant himself, that reference was to the second two acres of land the appellee purchased. And, according to the e-mail, this was because the documents

pertaining to that latter purchase were "doubtful and questionable".

With respect to the second e-mail, it merely informed the addressee not to take the balance one thousand US Dollars Counsellor Wright had; the appellee said she would receive the money herself. The second e-mail, in our view, does not have much bearing on the issue under discussion. Lest we forget, the crux of the appellant's contention is that he bought the land only after the appellee was given back the money she paid for the land in question, and she was relocated. But the proofs of refund which the appellant relied on (thee-mails) leave much to be desired. Under the circumstance, we do not agree that a refund was made for the land in dispute and that the appellee was relocated.

Before we leave this issue we believe it is important to make a comment regarding the issue of the alleged sand min.ing on the land which the appellant says formed the basis for the appellee wanting the money she paid for the land returned to her. We note that in every transfer deed, whether warranty, administrator or others, the grantor undertakes and warrants to defend the purchaser against any claim by any person. Therefore, assuming that the allegation was true that the Gbeisay Family had made claim to the identical land and had indicated that they had sold the land to the person(s) who were sand mining on the land, the grantor of the appellant, the Hines Estate, had the responsibility to defend the appellee against the claim. Counsellor Wright knew or should have known of this duty on the part of the grantor, and rather than speaking of returning the money paid by the appellee to the grantor, he should have instead advised the grantor to defend the title of the appellee.

It seems rather strange that the very land which the appellee is alleged to have expressed dissatisfaction with and demanded the return of her money because of claims by the Gbeisay Family that the land belonged to them, is the very land which was then sold to the appellant. Was the claim of the Gbeisay Family laid to rest before the land was sold to the appellant?

Further, assuming that Counsellor Wright did return to the appellee the amount of US$2,000.00 and the appellee, having received the amount not only refused to execute a deed in favor of the Hines Estate but in fact sued the new grantee, the appellant, to oust him from the property, would action not be taken by Counsellor Wright to have the funds reimbursed to him. Nowhere in the records do we find that Counsellor Wright ever sought to have the appellee return to him the amount which he alleged he paid to the appellee. These unanswered questions leave much to be desired of the appellant's claim of title to the disputed property.

We address last the issue whether or not the unanimous verdict of the trial jury is supported by the weight of the evidence adduced during the trial or this case? The appellant has contended that the appellee received refund of the money she paid for the land from the Hines Estate through Counsellor M. Wilkins Wright and that having thus been refunded, the appellee no longer had title to the land in dispute, a fact which the appellant claimed , the jury did not take into consideration. The verdict of the jury, according to the appellant, being therefore against the weight of the evidence adduced in the case, the trial judge erred when he failed to set said verdict aside and award a new trial.

In the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, estimate and weigh its value, accept, reject, reconcile, and adjust its conflicting parts, and be controlled in the result by that part of the testimony which it finds to be of greater weight. The jury is the exclusive judge as to what constitutes the preponderance of the evidence. Accordingly, this Court has held that when the jury

has reached a verdict after having given consideration to the evidence which is sufficient to support the verdict, the verdict should not be disturbed by the appellate court. Liberian Oil Refinery Company v. Mahmoud 21LLR (2001).

It is not enough to just allege that the verdict is contrary to the weight of the evidence; such allegation must be clearly shown in the records. Where as in the instant case, the evidence supports the verdict and is clear and convincing, a motion for new trial will be denied and the verdict will not be set aside. We hold that the unanimous verdict of the jury in this case is supported by the weight of the evidence adduced during the trial and was therefore correctly upheld by the trial judge.

We note, however, that the appellee had prayed for an award of damages sufficient for the illegal and unlawful withholding of her land by the appellant. Although the jury found in the appellee's favor and the trial judge affirmed the verdict of the jury, no amount of damages was awarded to the appellee in the final ruling of the trial judge.

It is settled that this Court has the authority, after careful consideration of the records, to render any judgment that the lower court should have rendered. Padmore v. Republic of Liberia, 3LLR 418 (1933); Townsend v. Cooper, 11LLR 52(1951); Williams and Williams v. Tubman, 14LLR 109 (1960). Accordingly, we hereby adjudge that the appellant pays the appellee the amount of US $5, 000.00 (five thousand United States Dollars) for wrongfully withholding the appellee's land.

The Clerk of this Court is hereby ordered to send a mandate to the Court below to resume jurisdiction and enforce its ruling. Costs are ruled against appellant. AND IT IS HEREBY SO ORDERED.

JUDGMENT AFFIRMED

Counsellor Theophilus C. Gould, Sr. of the Kemp and Associates Legal Consultancy Chambers, Inc., appeared for the appellant. Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the appellee.