

Hannah Saba Gardiner, of the USA, by and thru Her Attorney-In-Fact, Attorney-at-Law, **Charles H. Gibson**, of Monrovia, Liberia APPELLANT Versus **Esther Pyne James**, of the USA, by and thru Her Attorney-In-Fact, Counselor-at-Law, **Emmanuel S. Kroma**, of Monrovia, Liberia APPELLEE

APPEAL

LRSC 28

Heard: APRIL 9, 2015 Decided: August 7, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal grows out of an action of summary proceedings to recover possession of real property Instituted by the appellant, Hannah Saba Gardiner of the United States of America, by and thru her attorney-in-fact, Attorney Charles H. Gibson of the City of Monrovia, Republic of Liberia, on January 4, 2007, in the Monrovia City Court against various tenants occupying a parcel of land situated on 5t11 Street, Sinkor, Tubman Boulevard, Monrovia, Liberia allegedly belonging to the appellant. During the proceedings in the magisterial court on January 16, 2007, Counsellor Emmanuel S. Koroma made a submission to Intervene on behalf of the defendant/appellee who lived In the United States of America and who had sent him a limited power of attorney appointed him to represent her Interest In the matter. In his submission, he informed the court that he was acting as both lawyer and attorney-in-fact for the appellee. Counsellor Emmanuel Koroma notified the court that the appellee possessed a title deed to the parcel of land, subject of these proceedings, and that because title was In Issue, the magisterial court lacked jurisdiction over the subject matter. The Issue of Jurisdiction having been raised, the magistrate dismissed the cause for lack of jurisdiction.

The plaintiff, Hannah Saba Gardiner, now appellant before us, by and thru her attorney-In-fact, Attorney Charles H. Gibson subsequently filed an action of ejection on April 10, 2007, against the appellee, Esther Payne James, also of the United States of America, by and thru her attorney-In-fact, Counsellor Emmanuel S. Koroma during the June A. D. 2007 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County.

The appellant's seven-count complaint In the court below basically stated that the appellee/defendant without any color of right unlawfully and wrongfully occupied and withheld her parcel of land without her consent despite repeated requests and demands made to defendant, now appellee, to vacate said parcel of land, and that the appellee Instead of vacating the premises, constructed mud and mat structures thereon as well as carried on other petit and demeaning commercial activities. The appellant further complained that the act of the appellee was Injurious and prejudicial to her interest and financial gains causing her to suffer financial loss and Inconvenience and thereby making It difficult and

Impossible to construct on her land or lease It to Interested business person(s) who had and continue to approach her for the lease of the said premises, but which she could not do because of the appellee's unlawful and wrongful withholding of the subject parcel of land. The appellant therefore prayed the court to have the said appellee/defendant ousted, ejected and evicted from said premises, and that the jury In consideration of the pecuniary loss and other Inconveniences sustained and suffered by her, award her general damages to commensurate with the said pecuniary loss and the aforesaid Inconveniences and grant unto her all and further relief that may seem just, legal and equitable In the premises.

In response to the appellant's complaint, the appellee/defendant on April 26, 2007, filed her answer to the complaint contending Inter alia that she Is not occupying any land belonging to the appellant/plaintiff on 5th Street, Tubman Boulevard as alleged by the appellant, but Is occupying her own bonafide property by virtue of an executor deed Issued to her by J. Gbaflen Davies and Albert B. Davies, executors of the testate estate of K. Payne Nlmely, executed and signed on March 14, 1951, probated and registered In June 1951 and recorded In volume 66 at page 366. The appellee attached to her answer a copy of her deed marked as "Exhibit EPJ/1. She therefore prayed the court to dismiss appellant's complaint and ruled all costs against the appellant and to grant unto her any and all further relief which the court seems just, legal and equitable In the premises.

Thereafter, on May 7, 2007, the appellant in her reply, to the answer, contended amongst other things that the purported executor's deed to which appellee claims title for the parcel of land, besides being virtually mutilated, illegible and vague, Is unsupported by any deed of the testator which would show the testator's original grantor from which the executor's deed was drawn and executed. She also contended that there Is no chain of title to support the purported executor's deed to warrant Its legality. The appellant further averred that her title deed is legally supported by a chain of title, (a) Public land sale deed from the Republic of Liberia to the late Elijah Johnson, father of appellant's grantor, dating as far back as the year A.D. 1839; and (b) quit-claim deed, probated according to law on February 3rd, A.D. 1954, from VICTORIA Johnson-Balthazard and Charles B. Johnson, sister and brother, respectively, of Jeneva Johnson-Duff. She attached copies of said deed marked exhibit PR/1 and PR/2 respectively. The appellant also challenged the appellee/defendant's deed marked as exhibit "EPJ/1" claiming that said deed being uncertain, Is fraudulent and without any trace to an original grantor. She therefore prayed the court to dismiss the appellee's entire answer and rule appellee to a bare denial of the facts as contained In appellant's complaint. Along with her reply, the appellant filed a motion for arbitration as follows:

MOVANT'S MOTION FOR ARBIJRATION;

"And now comes movant: In the above entitled cause of action and most respectfully prays this Honorable Court to appoint a board of arbitration for the following reasons showeth to wit:

1. That as to count two(2) of respondent/defendant's answer and the purported executor's deed on which she is claiming title to plaintiff's land, the subject of this proceedings, movant/plaintiff says that same is vague and uncertain as to which parcel of land and its location respondent/defendant is claiming; that is to say that it appears from the entire answer of the respondent/defendant that she is on a fishing expedition to identify what land to which her purported executor's deed refers, in addition to other defects as the said executor's deed is itself questionable as to genuineness, legibility and trace to an original grantor.

2. That as to counts two (2), three (3), four (4) and five (5) of movant/plaintiff's reply, with exhibits thereto, the parcel of land to which movant/plaintiff lay claim is genuine and certain in that movant/plaintiff proffered title is graphically traced to its original grantor, the Republic of Liberia, with surveyors' report and map authenticating with certainty the location of the said land, the subject of this proceeding.

WHEREFORE, AND IN VIEW OF THE FOREGOING, movant/plaintiff prays this Honorable Court to appoint a board of arbitration composed of qualified and licensed surveyors of the Ministry of Land, Mines and Energy, including a private surveyor of each party, that is to say movant/plaintiff and respondent/defendant, respectively, to determine which of the two contesting titles actually relates to the parcel of land in dispute, which would save the Court much time and resources in the adjudication of this case, by eventually dismissing the entire answer of the respondent/defendant and to evict respondent/defendant from the said land and turn same over to its legitimate owner, the movant/plaintiff, and to grant unto the movant/plaintiff all further relief as Your Honor may deem just, legal and equitable, with cost against the respondent/defendant."

On May 17, 2007, the clerk of the Civil Law Court, Sixth Judicial Circuit for Montserrado County, issued out a regular notice of assignment for the hearing of the motion for arbitration on May 28, 2007. Our review of the records shows that the appellee/defendant interposed no objection to the appellant/plaintiff's motion for arbitration and as such the trial judge proceeded in granting the motion on July 7, 2008. A 3-man board of arbitration was immediately constituted by the trial court with the participation of all interested parties. The board was duly qualified with the following instruction given by the court:

"Mr. Chairman and Members of the Board of Arbitration constituted by this Court, this matter is one of an action of ejectment. Both parties to this dispute claim ownership to the disputed property based upon titles in their respective possessions. A careful review of the titles presented by the parties show that the metes and bounds of the respective titles presented are not the same. The purpose of the investigative survey by members of the

board of arbitration is to identify the ground location of the respective properties of the parties and to report to this court as to whether or not the property in dispute constitute that of either of the parties or whether any of the parties Is encroaching upon the properties of another members of the board are hereby instructed to conduct a reconnaissance survey of the area and report to this court on or before the 11 day of July A.D. 2008, as to the time required to conclude the task allotted to the surveyors and costs of the same. ANQ IT IS HEREBY so ORDERED. " (See Sheet Seven, 19th Day's Jury Sitting, June Term, A.D. 2006, Tuesday, July 7, 2008)".

The board of arbitration conducted a survey on August 15, 2008, and submitted a report dated October 6, 2008, to the Civil Law Court on October 8, 2008. The report read In open Court on Thursday, November 13, 2008,was as follows:

Arbitration Report

Date: October 6, 2008

We the members of the board of arbitration in the above captioned case do hereby submit this Investigation report. This report contains Information of documents (deeds) received during the survey exercise, survey methodology, technical analysis, finding /observation recommendation and conclusion.

The survey was conducted on August 15, 2008, beginning at the hour of 10:00 a.m. In the presence of the contending parties. All parties were asked to Identify their property corner on the ground which they did without hesitation and after the Identification of the property corners, the survey commenced.

Survey methodology: Taking the disputed area Into consideration, the board ran a loop traverse around the main disputed area, and extended the traverse to surrounding properties so as to show a dear picture of the terrain. Our main focus was on the property In dispute.

All points Identified by each of the party were located as well as other feature like road, cornerstone and concrete fence, houses as seen on the map.

Having gone through the aforementioned exercise we are pleased to submit these technical analysis.

TECHNICAL ANALYSIS

1. The first point of our technical analysis has to do with the scrutinization of the deeds, In this light; two deeds were received from the party, each calling for one (1) lot.
2. During the scrutinization period of the deeds the board recognized the various dates on which the deeds presented were registered and probated.

In this regard, the following are the names of property owners, date and probation.

a) Hannah Latitia Saba, one lot warranty deed probated on the 8th day of May A.D. 1975, Volume 142:75, page 12:514

b) Esther Payne James, one lot executor's deed probated on the 4th day of June A.D. 1951, Volume 66,page 366.

In view of the foregoing, analysis, the below constitutes our observation:

Observation and Findings

Taking the technical analysis Into consideration, the following constitutes our observations:

1. That both parties show the same place and the same points as their property comer.
2. That there Is a difference In the layout and the metes and bounds are different.
3. That both parties bought the land from different grantors.
4. That according to the deeds given to us Madam Esther Payne James bought from the Payne Nlmely In 1951 While Hannah Latitia Saba bought from Henera Johnson Duff In 1975.
5. Based on the documents presented to us by both parties we recommend that this Honorable Court look at these two documents carefully and come out with a judgment. Because both deeds have different grantors and different types of deeds and also different In age. Both grantors mother's deeds are needed to defend the grantees.

Submitted by:

Eastman K. Quaqua

Chairman

Lanson S. Massaquol

Member

Henry K.Lamandlne

Member

Thereafter, the parties were advised by the trial judge to file their objections, if any, to the board's report and In accordance with the statute. On November 19, 2008, appellee flied an objection to the report. Counts 5, 6 and 7 of the objection captioned the contentions of the appellee. These counts read:

5. Objector says that the entire report Is In complete contradiction to the charge given to the Board by this Honorable Court In that said Board failed to show the exact metes and bounds or the difference In the metes and bounds of the properties. Objector says further

that In keeping with the Supreme Court's holding In the cases cited below, when a matter Is submitted to a Board of Arbitrators, said Board Is clothed with the responsibility to conduct an accurate, Impartial and Investigative survey of the disputed property (s) to determine whether (a) the defendant's property Is separate and distinct from plaintiff's property, as contended by objector/defendant In her answer, or (b) whether the disputed property Is the same one (1) lot of land described by the metes and bounds on the respective deeds, and (c) If so, to determine who Is the legitimate owner of the disputed property based on the metes and bounds Indicated on the title deeds of the respective parties. Cole vs. Philips, 29 LLR 125 (1981), syl. 5; Aldoo vs. Jackson, 24 LLR 306 (1975); Freeman vs. Webster, 14 LLR 493 {1961), syl 2.

6. Further to count 5 of this objection, objector says that not only did the Board not make an award which Is an Important function of any Board of Arbitration In Investigating any property or properties In dispute, as In this case, but the board made It more difficult for this Honorable Court to determine the exact metes and bounds of the disputed property. The failure of the Board to determine the exact metes and bounds with respect to the deeds presented makes It even more difficult for this Honorable Court and jury to make an Informed decision. The arbitrators comprising the Board were to duly make an Informed decision. The arbitrators comprising the board were duly compensated for the services In order to aid the Court In Its work. To submit a report advising the Court to do what they were charged and paid to do does not show any professionalism on their part and that the work was poorly done as the desired objective has not been achieved. In short, the report presented by the Board of Arbitration Is an exercise in futility because It Is not conclusive.

7. Objector says that from all Indications, the Board of Arbitrators was only Interested In the money and not doing a professional job. The work Is far below generally accepted standards for trained and licensed surveyors who have been working In this field for over two and a half decades. Objector Is requesting this Honorable Court to take judicial notice of the entire survey report and Item 5 under observation and findings.

The appellant on the other hand resisted the appellee objections to the report stating that the appellee was erroneously defining what constitutes an award In a very narrow and elementary sense and argues that the trial court's mandate to the board was clear and unambiguous In that the board was tasked to Identify the ground locations of the respective deeds submitted by the parties, which was adequately done, and determined which of the two deeds relates to the land In dispute or whether there was an encroachment by either of the parties upon the other. She further argued that It Is absurd for objector to reduce the board to such a demeaning level when It Includes objector's own nominated surveyor. The appellant noted and maintained that the said arbitration report was professional, complete and balance, and respondent also argued that It Is Ironical that objector's having expressed lack of confidence In the professional and moral competence of members of the board of arbitration, the objector Is requesting In Its

prayer that the court have the same board redo the survey; which amounts to self-contradiction and an Indication that the objector was confused and bent on delaying and frustrating a sound determination of this case. She therefore prayed the court to deny and dismiss objector's objection In Its entirety and empanel a jury In keeping with law to conduct a regular trial of this case to determine the rightful and legal title to the disputed parcel of land.

On February 3, 2009, the trial court entertained arguments pro et con Into the appellee's objections to the survey report and the resistance thereto and on the same date notified the parties In open court that It would hand down Its ruling on Friday, February 13, 2009, and that all parties being present, the minutes of court would serve as notice of assignment. (See Minutes of Court, 411t Day Jury Sitting, December Term, A.D. 2008, Tuesday, February 3, 2009).

Recourse to the certified records reveals that the court's ruling on the objections to this first survey report and the resistance thereto was not made on the 13th day of February, 2009; however, there is record to the effect that the ruling on the objections to the arbitration's report was made on the 17th of February, 2009, but the appellant was not present to receive the ruling. The court therefore appointed Counselor Fomba Sheriff to take the said ruling on behalf of the appellant and he accepted and noted exceptions on the record to the ruling made.

The Judge In his ruling to the objection of November 19, 2008, denied appellant's resistance to the report, granting the appellee's objections. The court opined that a thorough Investigation was not conducted by the board as per the Instructions given by the court. Further, the court ruled that the statute governing arbitration In this jurisdiction requires that an award shall be made to Include a determination of all of the Issues submitted to the arbitrators and the decision of which is necessary In order to determine the controversy.

The court In ordering the second survey by the arbitral board mandated the board to conduct an accurate and Impartial survey of the disputed property and Instructed the arbitral board as follows:

Court's order

"By directive of His Honour S. Geevon Smith, assigned Circuit Judge presiding over the Six Judicial Circuit court for Montserrado County, Republic of Liberia, It Is hereby ordered that surveyors, Eastman Quaqua - Chairman; Lanson Massaquol - member; Henry Lamadlne - Member, with the knowledge of all parties In the above entitled cause of action are hereby ordered to redo the survey to determine the following:

(a) The exact metes and bounds of each of the property/les.

- (b) Show If the properties are separate and distinct
- (c) Whether they are over lapping.
- (d) Which party Is encroaching on the other, and
- (e) Report to this court with an award clearly Indicating which party Is entitled to the disputed property, and make a report to the court within twenty (20) working days.

Based on the court's mandate, the board conducted a resurvey of the disputed property and filed Its second report with the court under the signatures of all members. The resurvey report dated April 9,2009,reads as follows:

Arbitration Report
Date: April 9. 2009

We the members of the board arbitration In the above captioned case do here submit this Investigation report. This report contains Information of documents (deeds) received during the survey exercise, survey methodology, technical analysis, finding/observation recommendation and conclusion.

The survey was conducted on March 15, 2009, beginning at the hour of 10:00 a.m. in the presence of the contending parties. All parties were asked to Identify their property corner on the ground which they did without hesitation and after the Identification of the property corners, the survey commenced.

Survey Methodology: Taking the disputed [area] Into consideration, the board ran a loop traverse around the main disputed area, and extended the traverse to surrounding properties so as to show a clear picture of the terrain. Our main focus was on the property In dispute.

All points identified by each of the parties were located as well as other feature like road, cornerstone and concrete fence, houses as seen on the map,

Having gone through the aforementioned exercise we are pleased to submit these technical analyses.

Technical analysis

1. The first point of our technical analysis has to do with the scrutinization of the deeds, In this light; two deeds were received from the party, each calling for one (1) lot.
2. During the scrutinization period of the deeds the Board recognized the various dates on which the deeds presented were registered and probated.

In this regard, the following are the name of property owners, date and probated.

(a) Hannah Latitia Saba, one lot warranty deed probated on the 8th day of May A.D. 1975, volume 142-75, page 12-514.

(b) Esther Payne James, one lot executor's deed probated on the 4th day of June A.D. 1975, volume 66, page 366.

In view of the foregoing, analysis, the below constitutes our observation.

OBSERVATION AND FINDINGS

Taken the technical analysis Into consideration, the following constitutes our observations:

(1)The two (2) properties don't have the same metes and bounds, this caused the overlapping.

(2)The properties are located at the same place and different In metes and bounds. Both parties showed their corners at the same points.

(3)Both properties overlapped according to the difference In metes and bounds of their deeds. But the ground location of Hannah Saba Gardiner did not correspond with her deed, only Esther P. James deed corresponded with the ground location,

(4)Hannah Saba Gardiner encroached Into Esther P. James property, because she (Esther P. James) was the first person to purchase this land In 1951, twenty-four (24) years before Hannah Saba Gardiner got the same property In 1975 from different grantor.

(5) Based on the documents presented to us by both parties and our technical observation, we recommend that this Honorable court look at these two documents carefully and come out with a Judgment. We are technician we are not Imposition (in a position) to say who Is right or who Is wrong. But through our report the court will come out with the final ruling.

On June 26, 2009,the resurvey report was read In open court. Following the reading of the report, the parties were advised by the court to again file their objections, If any, within the time allowed by statute.

This time, the appellant objected to the second report contending amongst other things that to her utmost surprise and Injury, and without any assignment authorized, Issued or served, the Judge of the court below illegally convened a forum and ruled In favor of the appellee who objected to the first arbitration report; empanelling the same members of the board, charging them to her disadvantage. She attached a clerk's certificate dated June 01, 2009, marked as exhibit P/1 evidencing that she was not served any notice of assignment for the ruling on the first appellee/objector's objections and the appellant resistance thereto.

The Appellant also prayed that the board of arbitration report of April 9, 2009, be denied and set aside. Relevant counts In the appellant's objection in support of her contention are as follows:

6. "Further to counts one thru five above, objector herein further says that the April 09, 2009, Board of Arbitration report should be denied because It Is self-contradictory and borders on misinformation and fraud, In that the objector was not notified of, and therefore not represented, during the entire period of the bogus Investigative survey.

7. Objector further says that the said April 09,2009 Board of Arbitration report should be denied and set aside because It Is self-contradictory In that count two of the report's "observation and finding" Indicates that both properties are located at the same place, which confirms the existence of both properties, but count three thereof disputes the ground location of the two properties. Objector says that It Is not possible for two bodies of property to be In the same place but with different ground locations.

8. Objector further say and contends that the said April 09, 2009,report of the Board of Arbitration should be denied and set aside because of misinformation In that under count 2 (a) of the report's technical analysis, only the objector/plaintiff warranty deed of May 08, 1975 Is referred to and was therefore the only Instrument of objective/plaintiff that was used In the Investigative survey, but count three of objector, plaintiff therein reply also provided two additional deeds- a Quit-Claim Deed probated February 03, 1954,and a public land sale deed as far back as 1839, which trace objector/plaintiff's title directly to the Republic of Liberia, and which form part of the court's file, but which was deliberately not accessed none utilized by the Board of Arbitrator during their Investigative survey.

9. Further to count eight above, objector says and maintains that the report of the Board of Arbitration dated April 09, 2009, should be denied and set aside because the reason given for concluding that objector/plaintiff Is encroaching on respondent/defendant property, contained In count four-under "observation and findings" of the said report, Is based on an erroneous assumption that the party In a dispute with the oldest title suffices, Irrespective of the fact that the two contending titles to the disputed property derived from different grantors, and despite the fact that the one of the parties titled Is traceable directly to the Republic of Liberia.

10. Objector herein further says and maintains that the Board of Arbitration report of April 09, 2009, should be denied and set aside because count five under "observation and findings" of the said report Is vague and unsettling, In that It squarely Indicates the Inability of the board to advise the court as to who Is the rightful owner of the disputed property, for which lack of ability to advise the court the Board has admitted It failure to perform the duly for which It was constituted.

11. Further to count two above, objector says that the said Board of Arbitration report of April 09, 2009, should be denied and set aside because It entirely contradicts Its earlier

report of October 06, 2008, and that members of the Board of Arbitration whose credibility and professionalism have been questioned and such questioned sustained by this Honorable Court by Its ruling February 17, 2009, should not be held In esteem by this court for want of credibility.

WHEREFORE AND IN VIEW OF THE FOREGOING, responding prays Your Honor and this Honorable Court to deny and dismiss objector's objection In Its entirety and empanel a jury in keeping with law to conduct a regular trial of this case to determine rightfully 8nd legal title to the disputed parcel of land, and to grant unto your humble respondent any and all other and further relief that may be just, legal and equitable In the premises."

The appellee resisted the appellant's objections to the second report of the board substantially contending that the appellant's counsel was estopped from raising the Issue of notice as he did have notice that the ruling was scheduled to be handed down on the 13th of February, 2009, through the minutes of court dated February 3, 2009, and the appellant was given a copy of said minutes; that on the 13th when both parties appeared, the Judge was Indisposed to give the ruling and therefore Informed both parties orally that the ruling would be giving on the 17th of February Instead and since both parties were being Informed there would be no need for a written assignment. Both parties agreed and left but the appellant failed to show up for the ruling on the 17th of February as understood so Counselor Fumba O. Sheriff was appointment by the Judge to take the ruling for and on behalf of the appellant. The appellee contended that the appellant did not object to the same board of arbitrators conducting the resurvey and In fact did work along with the board on the second survey and of which one was his choosing. The deputy clerk, appellee said, was not aware that notice of assignment had been given through the minutes to the parties and was not In court when the Judge orally In the presence of both lawyers postponed the date of the ruling from February 13, to the 17, 2009, and that the counsel for appellant misled the deputy clerk Into giving him a clerk's certificate dated June 1, 2009, almost four months after said ruling for the re-survey was handed down.

The appellee further asserted that for the appellant to allege that the April 9, 2009 report from the board of arbitrators Is self-contradictory and borders on misrepresentation and fraud because objector was not notified of and not represented rs false and misleading because the report Is signed by objector's own appointed surveyor who was sent by her to the board to represent her Interest In this matter. The appellee therefore prayed the court to deny and dismiss objector's objections, accept and confirm the board of arbitration's report In Its entirety.

The lower court's ruled on the objection of the appellant to the second arbitration's report, relying on sections 64.1 and 64.2 of the Civil Procedure Law (1973). In his ruling, the Judge

held that the motion for arbitration filed by appellant constituted an agreement which was enforceable and irrevocable. The pertinent portion of the ruling of the lower court is as follows:

"The only issue for determination of this matter is whether or not this case should be ruled by a jury after this case was submitted to a Board of Arbitration upon the agreement of both parties.

As stated herein earlier, the objectors filed a motion for arbitration, subsequent to the filing to the action of ejectment. Counsel for the defendant, the respondent herein, interposed no objection. This court accordingly granted the motion, constituted the Board and qualified it, with the instruction to conduct a survey.

This court says that it is irregular and illegal for this court to rule this case to trial by a jury, after the qualification and subsequent report of the Board of Arbitration to this court. Section 64.1, page 270 of our Civil Procedure Law provides that:

"A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement and/or controversy arising is valid, enforceable without regard to the justifiable character of the controversy. Irrevocable except upon such ground as exists for revocation of any contract."

Section 64:2 sub paragraph two (2) provides the stay of arbitration proceedings upon application as follows:

1. On application, the court may stay arbitration proceedings commenced or threatened on a showing by an applicant adversely affected thereby that:

- a) If there is no agreement as described in section 64:1; or b) He is not a party to the agreement; or
- c) The controversy is not referable to an arbitration; or
- d) The adverse party is not a party to the agreement; or
- e) The right to proceed to arbitration has been waived by the adverse party; or
- f) The agreement has been revoked by either party.

This court says that the motion for arbitration filed by the plaintiff to which counsel for the defendant interposed no objection, which was granted by this court, constitute an agreement between the parties, which is enforceable and irrevocable. This court also says that at no time prior to the submission of the report by the Board of Arbitration, that the plaintiff, objectors herein, ever filed an application before this court to revoke and/or withdraw his motion for arbitration. This court says further that the plaintiff cannot under our law request this court to set the report of the Board of Arbitration aside simply because

It Is not In his favour, and that the case should be ruled to trial by jury. This court disagrees with the prayer of the plaintiff/objector on ground that the Arbitration Proceedings has the same effect of the final judgment, which Is appealable to the Honourable Supreme Court of the Republic of Liberia.

WHEREAS AND IN VIEW OF THE FOREGOING, the objectors' objection Is hereby denied and the resistance thereto Is hereby sustained. The award of the Board of Arbitration In favour of the defendant Is hereby confirmed and It Is the judgment of this Honourable Court that the report and/or award of the Board of Arbitration Is hereby confirmed.

The clerk of this court Is hereby ordered to Issue a writ of possession, and place same In the hands of the Sheriff for service; and place the defendant In complete possession of her property In keeping with the metes and bounds of her title deed since the report clearly showed that the plaintiff Is encroaching on the defendant's property. Costs In these proceedings are ruled against the plaintiff. The Clerk Is ordered to Issue a bill of costs to be taxed by both counsels and approve by the judge sitting AND SO ORDERED."

The appellant's filed a bill of exceptions to the judge's ruling which we Include hereinunder:

"APPELLANT'S BILL OF EXCEPTIONS

Appellant/plaintiff In the above entitled cause or action having been not satisfied with your ruling of July 28, 2009, on the objection to the report of the board of arbitration, excepted and announced an appeal to the Honorable Supreme Court of Liberia and hereby submits these bill of exceptions for your approval as follows:

1. That Your Honor committed a reversible error when you failed to take judicial notice of the clerk's certificate of June 01, 2009 contained In the said case file to the effect that the appellant was not notified of any assignment of the ruling of February 17, 2009, on the previous objection to the arbitration report by the same board and as such the appellant could not have known and did not know of the authorization of the second arbitration Investigation In which appellant did not participate and should therefore not be subject to Its findings. Appellant submits and says that she did Informed Your Honorable Court that the apparent participation of Its previously nominated surveyor In the second Investigation survey was without appellants knowledge and Your Honor failed to Investigate the said averment to the disadvantages of appellant.

2. That Your Honor's judgment of July 28, 2009, should be reversed because several questions bordering on the Integrity of the board of arbitration have been raised by both the appellee and appellant, as Is seen In counts six and seven of appellee/objector's objection and count two of appellant/objector's objection, for which reason the said board of arbitration report should have been set aside and a new board constituted or the case ruled to trial by jury In keeping with law.

3. That Your Honor committed a reversible error In your final judgment when you violated a fundamental rule of law by failure to pass an Issues germane to the determination of this case, In that appellant/objector had observed and brought to the attention of this court in count eight of appellant/objector's objection, which was acknowledged and conceded to count nine of appellee/respondent resistance, that the board of arbitration report of April 09, 2009, restricted Its Investigation to the 1975 warranty deed of the appellant/plaintiff and neglected to review nor made any mention of appellant's /plaintiff other two supportive deeds traceable to the Republic of Liberia - a quit-claim deed of 1954 and a public land sale deed of 1939 which form part of the records In this case, and for which concern Your Honor should have sought clarification from the board of arbitration before rendering the final judgment so as to determine why such strange practice was adopted by Ignoring vital Instrument of chain of title to appellant claim y to the said disputed property.

4. That Your Honor erred In his judgment of July 28, 2009, by hitching the said judgment on your presumed failure of the appellant to withdraw from the arbitration agreement - an Issue not raised in appellee/respondent resistance to the appellant/objector's objection. Notwithstanding appellant submits and says that In count five of appellant/respondent's resistance to appellee/objector's objection to the arbitration report of the same board dated October 06, 2008, and In Its prayer In appellant/objector's objection to the April 09, 2009, report of the same board of arbitration, all of which was Ignored by this honorable Court.

5. That Your Honor ruling In the said case should be reversed because Your Honor err In the second paragraph of Its judgment by wrongly assuming that appellant/objector Interposed no objection to the second Investigated survey carried on by the board of arbitration, which false assumption affected the judgment of this court against the Interest of appellant.

6. That Your Honor ruling In the said case should be reversed because you judgment fall to take Into account the Inherent contradiction In the board of arbitration report as contained In count seven and eight of appellant/objector's objection and the conclusion In count five under observation and findings of the said report which categorically started the Board's conclusion that they could not reach a determination as to which party was "right or wrong" In the said land dispute case but called upon this Honorable Court to come out with a final determination, Invariably through regular trial.

WHEREFORE, and in view of the foregoing, appellant submits these as her bill of exceptions for your approval so that your judgment wilt be reversed by the Honorable Supreme Court of Liberia.

In count 1 of the bill of exceptions, the appellant disputes that there was notice given for the appearance of the parties to appear on the date of the Judge's ruling. The Judge having appointed a counsel to take his ruling and the counsel having excepted to the ruling and announced an appeal which is now timely before us, we do not see that it is necessary to delve into the issue raised in respect thereto but will proceed to delve into the substantive issue of what appeared to be a board of arbitration's report and the Judge's ruling thereon.

The appellant, in her bill of exceptions, basically questions the competence of the board to perform the function assigned to it, and the ruling of the Judge on the board's second report which appellant says is inconclusive.

The Judge in his ruling had denied the appellant's objections to the second arbitration's report, citing Sections 64.1 and 64.2 of the Civil Procedure Law, which makes the agreement to submit to arbitration enforceable and irrevocable. He held that the motion for arbitration filed by the appellant and accepted by the appellee constituted an agreement which was enforceable and irrevocable; that it was irregular and illegal for the court to rule the case to trial by a jury; and that board's report was the same as a final judgment of a court, which is appealable to the Supreme Court. Hence, he said, the appellant could not request the court to set aside the report simply because it was not in her favor.

Our Civil Procedure Law (1973), at section 64.1, states: "A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract." Section 64.7 requires that the award of an arbitration proceeding should include a determination of all the issues submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.

The Supreme Court has held that award of the board shall be binding on parties to a dispute who have agreed to submit their claims to a board of arbitration, unless grounds provided for vacating the award conform to the statute, and that it is not within the province of the trial judge to determine factual issues in any arbitration proceedings. *Berry v Intestate Estate of Bettie*, Supreme Court Opinion, October Term 2013; *Koon v. Jleh*, 39 LLR 340, 341(1999). Thus, this Court has held, the same as in other jurisdiction subscribing to the principle of arbitration and in conformity with our statute referred to above, that a court may vacate an arbitration award where the arbitrators execute their powers so that a final, definite award is not made (*Nyepan et al. v. Jarteh*, Supreme Court Opinion, March Term 2010; *Kerpeh Sellu and Dweh et al. v. the Intestate Estate of Barchue*, Supreme Court, October Term 2009; 4 Am Jur 2d, Alternative Dispute Resolution, Section 226).

From our review of the records, we must ask whether there was an award made by the purported board of arbitrators that the court could have ruled on to put the appellee in possession of the property? Was the report conclusive. More importantly, was the exercise

conducted by the surveyors an arbitration proceeding done In the manner or form as contemplated under Section 64 of our Civil Procedure Law (1973)?

This brings us to the Issue of arbitration In matters of ejectment filed before our courts and how they are handled.

Chapter 64 "Arbitration" sets out a proceeding where parties to a dispute who want their matters settled by arbitration must submit a written agreement to court agreeing to submit their dispute to a board of arbitrators. This agreement effectively ousts the court from delving Into the hearing of a matter except to confirm the awards made by the arbitral board with exception as set forth by section 64.10 of our Civil Procedure Statute. An arbitration agreement further sets out Issues decided by the parties to be put before the board to be settled, and the parties must agree as to those Issues to be settled In the written agreement.

An Investigative survey on the other hand Is one requested or directed by the court as a means of helping the court In settling certain technical aspects of a case which will aid the court in determining an Issue In a matter before it. Unlike an arbitration award which Is binding, and which may not be disturbed by court unless as provided for under sections 64.10,64.11 64.12, the report of an Investigative survey ordered by the court Is to be used as evidentiary tool and Is not In the nature of an award. It Is used by the court to determine a particular technical nature or controversy of a matter before it. Pratt v. Philips, 9 LLR 446 (1947). An Investigative survey is usually ordered In cases of boundary disputes where title Is uncontested. Jallaba Yammah v. Street 12 (LLR 356 (1956). In such case where an Investigative surveys Is required, the court must first disposed of the Issues of law raised by the parties pleadings. Mananaal v. Momo, Supreme Court Opinion, March Term 2012; Kamara et al v. Heir of Essel, Supreme Court Opinion, March Term 2012.

In our practice of ejectment cases, arbitration Is often requested and limited to the Inquiry on reconciliation of metes and bounds In the title Instruments of the parties to the disputed property, and which Is not arbitration as contemplated by the statute. The appellant, In her motion to the court to appoint and set up a board of arbitration, questions the appellee's executor's deed on which she Is claiming title to the land, the subject of this proceeding. Appellant claimed that the appellee's deed was vague and uncertain as to which parcel of land and Its location was being claimed, and that It appeared from the entire answer of the appellee that she was on a fishing expedition to Identify that land to which her purported executor's deed refers, In addition to other defects as the said executor's deed Is Itself questionable as to genuineness, legibility and trace to an original grantor.

The second report of the board states that (1) the two properties did not have the same metes and bounds, this caused the overlapping; (2) the properties are located at the same place and different in metes and bounds. Both parties showed their comers at the same

points. (3) both properties overlapped according to the difference in metes and bounds of their deeds. But the ground location of Hannah Saba Gardiner did not correspond with her deed, only Esther P. James deed corresponded with the ground location; (4) Hannah Saba Gardiner encroached into Esther P. James property, because she (Esther P. James) was the first person to purchase this land in 1951, twenty-four (24) years before Hannah Saba Gardiner got the same property in 1975 from different grantor; (5) Based on the documents presented to us by both parties and our technical observation, we recommend that this Honorable court look at these documents carefully and come out with a judgment. We are technicians; we are not [in the] position to say who is right or who is wrong. But through our report the court will come out with the final ruling.

Arbitration and Investigative survey are often used interchangeably by our courts and one of the major problems the court face, when land cases are sent to arbitration based on the request of parties, is the quality of reports and the awards. As Judge Yूसisif Kaba mentioned in his address when he served as the Keynote Speaker at the Celebration of Law Day on May 1, 2015, our surveyors are not equipped to do arbitration of land matters and more often than not, the arbitration awards granted are not clear and in certain cases incomprehensible to enable the court to enter an informed judgment thereupon. Most often these purported arbitration reports create more confusion than direction and this case is a case in point. The report on which the Judge ruled putting the appellee in possession is not only contradictory but inconclusive as to the law on right of title to land. The lower court should disallow ejectment cases not strictly conforming to Section 64.1 of the Civil Procedure Law, as members who form these boards of arbitration are not legally competent to handle such cases fully, their expertise being limited to surveys in locating and demarcating lands as per the contesting parties' deeds.

Sections 64.5 and 64.6 of our Civil Procedure Law provide for the manner and scope of arbitral proceedings. This Court says that in this case, the purported board of arbitration, besides not having made an award as to who is legally entitled to the property, was definitely not formed in accordance with Chapter 64 "ARBITRATION" and as contemplated by the statute. Therefore the Judge's ruling and the entire purported arbitration exercise must be set aside.

The right to property in an ejectment action, this Court has often held, requires the court establishing whether or not a disputed property is one and the same, and which deed is traceable to the state. *Adoo v. Jackson*, 24 LLR

306 312-213 (1975); *Dausea and Kargou v. Coleman*, 36 LLR 102, 130

(1989); *Garkpor et al/ v. Calvary Baptist Church*, Supreme Court Opinion, March Term 2007; *Marwolo v. Reeves*, Supreme Court Opinion, October term 2007.

The lower court, we believe, is in a better position with the request of an investigative survey and the aid of jury to hear and decide the issue as to who is rightfully entitled to

the property, as the appellee who has the older deed does not automatically hold a superior title to the property. Her title must be proved to be authentic and linked to the state. *Cooper vs. Davies et al.* 27LLR, 310, 317, {1973}; *Teah v. Kemokal et al*, Supreme Court Opinion, March Term 2009.

This Court takes note of the fact that the Government did carry out an adjudication of lands in the mid-1970s of properties lying in the Slnkor area of Monrovia, up to 24th Street, and that this property in dispute is located on 5th Street, Slnkor, Monrovia.

This Court having decided that besides the purported board of arbitration report being inconclusive and made no award, and the board of arbitration as set up was not an arbitration board as contemplated under Chapter 64 of our Civil Procedure Law, the judgment of the judge below is reversed, the case is remanded with the instructions that the court below resumes jurisdiction to hear the matter, set aside the purported arbitration report and proceeds with the following instructions: (1) That the judge orders an investigative survey requiring the surveyors to use the deeds of the parties and the aid of the Government's adjudication map at the Ministry of Lands, Mines and Energy to determine the location of the land and the ownership thereof, and (2) that the court with the aid of the jury make a determination as to the party legally entitled to the said property.

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction of this case. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR CHARLES H. GIBSON APPEARED FOR THE APPELLANT. COUNSELLORS ROSEMARIE S. JAMES AND EMMANUEL S. JAMES OF THE INTERNATIONAL GROUP OF LEGAL ADVOCATES AND CONSULTANTS APPEARED FOR THE APPELLEE.

