Lawrence Kollie and **Howard Kollie** and all those under their control, Congo Town, Monrovia, Liberia APPELLANTS v **Dr. Moses C.T. Jarbo**, by and thru his Attorney-In-Fact, **Ben Jarbo** of Congo Town, Monrovia, Liberia, APPELLEE

APPEAL

LRSC 22

Heard: November 14, 2013 Decided: January 24, 2014

Mr. Justice Ja'neh delivered the opinion of the Court.

In October, 2008, the appellee, plaintiff below, instituted an action of ejectment against Lawrence Kollie and Howard Kollie and all persons acting by and under their control. The appellee complained that the defendants, appellants in these proceedings, without any color of right whatsoever, had intruded, encroached as well as dispossessed the appellee of his bonafide property, containing two lots, situated at Duport Road, in Paynesville, Montserrado County. But the appellants, in their answer to the complaint, denied any encroachment on appellee's property and insisted that the land in question belong to them (the appellants).

The parties waived jury trial and a bench trial was conducted. On February 24, 2011, more than two years after the institution of this ejectment action, His Honour Yussif D. Kaba, Resident Circuit Judge, Sixth Judicial Circuit for Montserrado County, entered final judgment in favor of the Appellee/Plaintiff, Dr. Moses C. T. Jarbo, represented by his attorney-in-fact, Benjamin Jarbo. The Judge in his ruling ordered the appellants/defendants evicted, ousted and ejected from the subject land. The appellants excepted to this final judgment and announced an appeal to the Supreme Court. The trial court granted the appeal as a constitutional right. Article 20 (b) provides, inter alia:

"The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board, except the Supreme Court, shall be held inviolable. The Supreme Court's status as the final arbiter in all matters is reinforced by both Articles 65 and 66 of the Liberian Constitution (1986). Judgments of the Supreme Court, according to Article 65, shall be final and binding and shall not be subject to appeal or review by any other branch of Government. The language of Article 66 of the Constitution (1986) is even more emphatic. It states: "The Supreme Court shall be the final arbiter of constitutional issues and shall exercise appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies or any other authority, both as to law and fact.

The appeal having been granted, the appellants tendered a three (3) count bill of exceptions for the judge's approval as in keeping with Civil Procedure Law, Rev. Code 1: 51.7, providing, inter alia, The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court. [Emphasis supplied].

Three count bill of exceptions states as follows:

1. Because Appellants say Your Honour in your final judgment mentioned that the Defendants were ruled liable because according to Your Honour, the defendants, now Appellants had failed during the trial of the case to produce evidence along with their Grantors to testify before Your Honour in this case whereas, to the contrary Defendants/Appellants testified before Your Honour and produced witnesses as well as documents, including their Title Deed just as was done by the Plaintiff now Appellees whose grantors were never brought to court to testify on his behalf.

2. That further to Appellants exception in Count one (1) above, the production of witnesses along with documents by the Defendants, now Appellants, is reflected in the transcript of the hearing of the ejectment case by Your Honour held on February 16, A.D. 2011 as found on pages 5, 6 & 7 of the transcript file no. 2011-02-16-2 where it is confirmed that the Defendants/Appellants produced witnesses along with documents which documents were admitted into evidence, but all of which Your Honour inadvertently ignored in the rendition of Your Honour's judgment now appealed from by Appellants.

3. Appellants say and contend that Your Honour having said in Your Honour's judgment in which Appellants are appealing, that it was because of Defendants' failure to produce their grantors to testify and for the Appellants to produce their deed for the properly is one of the grounds for which the court has ruled them liable, it is this reason given by Your Honour for Defendants' loss of the case that Counsel for Defendants now Appellants excepted to said Ruling which exception was noted by Your Honour, and the Appeal announced by Counsel for Appellants was granted by Your Honour.

The bill of exceptions catalogues what the appellant claimed to be reversible errors committed by the trial judge resulting to the adverse judgment against them as regard to this controversy. It is held by the overriding opinions of legal authorities in this jurisdiction that ejectment action is a legal course to test the strength of titles of the contending parties and to award the property to the party whose chain of title effectively repudiates the possessory right of the other. It is also settled in this jurisdiction that a party plaintiff in ejectment recovers on the strength of his own title, and not on the weaknesses in the adversary's title. Teahjay v. His Honor Albert C. Dweh and Ophelia Brown, Supreme Court Opinion, October Term 2013; Savage v. Dennis, 51 (1871); Donzo v. Tate, 39 LLR 72, 80 (1998); Caine et al. v. Fahnbulleh et al., 31 LLR 235, 245 (1983); Cooper-King v. Cooper-Scott, 15 LLR 390 (1963); Duncan v. Perry, 13 LLR 510, 515 (1960).

Put differently, for the party plaintiff in an ejectment suit to ably illustrate the defects in the defendant's title is insufficient legal ground to render judgment for plaintiff. The party plaintiff wins on the strength of his own title. Miller v. McClain, 12 LLR 356 (1956); Tay v. Tay 18 LLR 310, 315 (1968); Cooper v. Gissie et al., 28 L LR 202, 210 (1979); The United Methodist Church and Consolidated African Trading Corporation v Cooper et al., 40 LLR 449, 458 (2001).

Guided by this principle of law, we find ourselves called upon to examine the evidence appellee adduced at the trial to support his ejectment action particularly in the light of appellants' strenuous contention that the appellee failed to carry the mandatory burden of proof imposed by law in every such case.

To aid us in this undertaking, we first revert to the complaint filed by the appellee/plaintiff as forming the basis for our determination whether appellee presented the quantum of the evidence appellee was required to present to warrant a judgment in his favour.

The certified records reveal that on October 28, 2008, appellee/plaintiff filed a three- count complaint against the appellants/defendants, at the Sixth Judicial Circuit for Montserrado County, sitting in its December Term, A. D. 2008. For the benefit of this Opinion, the complaint is herewith substantially reproduced below:

Plaintiff in the above entitled cause of action has been strenuously constrained to issue out a Writ of Summons against the Defendants herein above named for intruding, encroaching as well as dispossessing the Plaintiff of his bonafide property, (two lots of land) without any justifiable cause whatever, despite plaintiffs several and repeated demands to no avail. Hence, plaintiff brings this action for the recovery of his land for reasons therefore to wit:

1. That by virtue of an honorable purchase of two (two lots) from Honorable Williams Fayia Vanwon, of the City of Monrovia as well as executed WARRANTY/TRANSFER Deed in fee simple duly Registered and Probated in the Monthly and Probate Court, Montserrado County without obstruction whatever from anyone including the defendants which instrument plaintiff herewith annexed and marked P/2 A to form a cogent part of their complaint.

2. The plaintiff further avers that defendants have elected against the will, consent and knowledge of the plaintiff to illegally, wrongfully and with the intent to dispossess the plaintiff right of possession, encroached and intruded on the plaintiff's said (two lots) despite plaintiff's several warnings to no avail. Because of these illegal act on the part of the defendants, plaintiff is left with no other alternative but to file this suit against defendants so as to evict, oust and eject them from plaintiff's two lots with damages to be determine by the trial jury for the illegal withholding, dispossession of the plaintiff for over two years and erecting huts on the said property.

3. That because plaintiff, Dr. Moses C.T. Jarbo is engaged in the United States of America, Virginia Beach, VA - 23456, plaintiff has appointed, authorized and empowered his son Ben Jarbo of Congo town, Montserrado County, as his Attorney-In-Fact to take any legal action to protect his interest, the property in question is no exception as will more fully appear from Photostat of plaintiffs deed exhibit P/2 to form cogent part of this complaint.

WHEREFORE, it is the prayer of the plaintiff that Your Honour and this Honourable Court will eject, evict and oust the defendants from plaintiffs property that defendants have illegally gained entry thereon without the consent, will and authority since 2005, or thereabouts. As a result, they have dispossessed, withheld and deprived the plaintiff the right of possession without any justification having exerted all means humanly possible without success. That defendants be made to pay sufficient damages to commensurate with the damages suffered including mental agony and deprivation suffered at the hands of the defendants. [Our Emphasis]

Having set forth appellee's claims as contained in the complaint, herein above referenced, appellee's first witness was his attorney-in-fact, Benjamin Jarbo. He testified that Dr. Moses C.T. Jarbo, his father and principal, acquired title to the subject property, located on Duport Road, Paynesville, through lawful purchase from William Fayia Vanwen in 1989; that the grantor, William Fayia Vanwen, executed a transfer deed in his father's favour, as illustrated on the face of the deed. He told the court that they had somebody at the site to keep watch on the land and to report whenever they saw people [trying to] encroach on the land. He said that he received a call that some people were trying to do something on the land but was not fortunate every time he went to the site to see those persons trying to encroach on the land.

The witness further told the court that he was obliged to contact the police to register his complaint. The police advised that he should try to identify the people doing construction on the land before getting a writ of arrest. Fortunately, according to the witness, he met three persons the next day on the land who were arrested and taken to the court.

On direct examination, the following questions were posed to the witness:

Q. Mr. Witness, did I understand you to say that the defendant has built a house on your father's deeded property?

A. Of course. While we are still in court since we started this case in 2008. As I speak, they are even dwelling on the premises. I even took photos. The defendants have built on the land and they are dwelling there currently [though] this case started March 14, 2008, from the magisterial court and from there to the circuit court.

Q. Mr. Witness, please refresh your memory and say if you know the names of the defendant or the defendants?

A ... the first name I received was Lawrence Kollie. But Your Honor for every time I went to the house, I was not opportuned to see Mr. Kollie; I only saw people doing work on the premises.

The following questions were posed to witness during cross examination:

Q. Mr. Witness, did I understand you to say that you informed the defendant that the land on which he was building was for your father?

A. Granted

Q. What method of information you used to tell him that the land was for your father, that is to say, was it through written notice or verbal notice?

A. I said in 2001 to 2002 at which time my father was here, there was a conference. Counselor Chea Cheapoo, my father's counselor, invited Mr. Lawrence Kollie to the conference. At the conference, they were informed that this property in question was for Mr. Jarbo. It was a conference held on two or three instances. So from there on I believe that Mr. Lawrence Kollie was aware that this property in question was for Mr. Jarbo.

Q. Please refresh your memory and say if your principal, Mr. Moses Jarbo, obtained deed for the property you referred to?

A. Yes, this is the deed.

Q. Mr. Witness, where is the location of the land?

A. It is situated in Paynesville to be precise, Duport Road, Cowfield.

The plaintiff himself, Dr. Moses Jarbo, also testified as appellee/plaintiff's second witness. He testified in chief as stated:

As far as I can recall, during my assignment with the United Nations in 2003, I was informed that someone by the name of Lawrence Kollie has encroached on my land. When I received that information, I went to an Attorney by the name Chea Cheapoo who summoned Mr. Lawrence Kollie and his lawyer

in the person of counselor Constance. At that conference, I produced my deed. Mr. Kollie and his lawyer were asked to produce their deed. But Mr. Kollie never showed up at subsequent conference. The next thing I found out, around 2005, Mr. Kollie had someone constructing a makeshift on my property. I went there and tried to get him through my lawyer; they dismantled the makeshift that they were building. I subsequently left and travelled to the United States around 2006. Given the fact that I was out of the country, Mr. Kollie went back there and started to construct a building at which time [my] lawyer came to court to represent me.

The witness was asked the following questions during direct examination:

Q. Mr. Witness refresh your memory and say if you know who sold the land to you?

A. The land was sold to me by Mr. William Vanwen and I have both the deed and the mother deed.

Q. Were you to see the deeds you referred to, will you recognize them?

A. Yes indeed.

Q. I hand you these instruments, look at them and tell this court and jury de facto what you recognize them to be?

A. To be my deed and my title.

Q. Please refresh your memory and say if you know the where about of the original deed.

A. The original deed due to the civil conflict was burned in a fire.

Q. Mr. Witness I hand you here with a certified copy from the Foreign Ministry, please look at it and tell the court in whose favor the instrument was executed?

A. The document was executed in my favor.

During cross examination, the following questions were posed to Witness:

Q. You said M r . Witness t h a t counselor Chea Cheapoo cited the defendant in these proceedings. What was the purpose of the citation if you can remember?

A. You were present at the conference counselor. The purpose of the conference was for you to produce your deed because counselor Cheapoo was my lawyer, he had my information; he wanted you to produce some information and you could not produce it. You were given a time to come back and that was the purpose of the conference.

Q. The purpose of the conference was not to inform him [the defendant] that the land onwhich he was building was your land?

A. It was established that the land was my land and that it had been encroached upon and that you needed to come and produce a deed to verify your claim.

The appellee then rested evidence. In addition to the oral testimony, appellee's title deed, which was marked by the court, identified and confirmed, was admitted into evidence. This was the quantum of the evidence the appellee/plaintiff deposed at the trial in substantiation of his title claim to the two lots of land, situated at Cow field, Duport Road, Paynesville, Montserrado County. This was the sum

total of the evidence presented by the appellee based upon which the trial court entered judgment in his favour.

Section 25.5 (2) of the Revised Civil Procedure Law speaks to what quantum of evidence is in civil cases to prove the existence of facts in order to win a case. This section provides that "[i]t is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.

As can be seen from all that we have, there appears to be one germane question determinative of this appeal: "whether the appellee/plaintiff presented proof of title to warrant affirmation by this Court of the final judgment entered by the trial court.

A critical review of the evidence presented by the appellee shows as follows:

(1). The primary object of ejectment being to determine who has superior legal title to real property, appellee/plaintiff during trial presented a transfer deed as evidence ofhis title. The deed on its face demonstrates that appellee paid the sum of two thousand dollars as purchase price for two lots of the land to William Fayia Vanwen, and in consideration thereof, the said William Fayia Vanwen in 1989, executed a deed in the appellee's favour. This instrument of title was probated on March 21, 1989, and registered according to law in volume 6-89 on pages 118-120. Appellee's deed was testified to, confirmed and subsequently admitted into evidence. Copy of the deed of William Fayia Vanwen, appellee's grantor, was presented to form a part of the evidence in further substantiation of appellee's title claim. The deed of appellee's grantor was executed by Alfred B. Lewis and probated on July 2, 1979, under the gavel of Her Honour Gladys K. Johnson, then Commissioner of the Monthly and Probate Court for Montserrado County and subsequently registered in accordance with law. In the case Tulay v. The Salvation Army (Liberia) Inc., 41 LLR 262, 275 (2002), the Supreme Court held that a title deed, which was valid and registered consistent with law in our jurisdiction was "the best and most conclusive evidence" for the settlement of a dispute over the title of a property. This holding has been consistently up held in a litany of cases adjudicated by this Court including Railey v. Clarke, 10 LLR 330 (1960) and King v. Simpson, 17 LLR 226, 229 (1965).

(2). Corroborated testimony was offered into evidence to demonstrate that the appellee having purchased the two lots of land in 1989, upon hearing of the appellant's encroachment of the land made frantic efforts to put the appellants on notice that the land belongs to him. A conference was conducted at the instance of the appellee's counsel where Appellant Lawrence Kollie along with his lawyer, Counsellor J. H. Constance, attended. The testimony that even while the matter was pending in court undetermined, appellants continued to erect a structure on the land, was never rebutted.

With this clear and convincing evidence before the court in substantiation of the appellee's superior title, an objector, as appellants/defendants in the instant case, would ordinarily be required to show, if he has, a stronger and better title than the prima facie title proven by the party plaintiff, and until he does, plaintiff's prima facie title prevails. Kollie v. Kpan, 31 LLR 600, 604 (1983).

So when appellee rested with the production of evidence, both oral and documentary, mindful that ejectment is a title contest, which awards title to the party whose chain of title is so strong as to negate an adversary's right of recovery, as held in Duncan v. Perry,13 LLR 510, 515 (1960), the appellants also testified in his own behalf.

He introduced himself as Lawrence A. Kollie, living in Paynesville, Cowfield, Duport Road and employed by Medical Team International as a Physician Assistant assigned in Sinje, Grand Cape Mount County. The witness acknowledged being familiar with Mr.. Moses Jarbo. Regarding his title, the appellant claimed to have purchased the land from Johnson Williams, Tope Andrews, now deceased, John Tay, Clarence G. Tay. According to the appellant, these were the persons who executed his deed.

This is Witness Kollie's testimony in chief:

Before I bought the land, they [grantors] showed me their mother deed. After buying this land, they gave me the copy of the mother deed. As I speak, Mr. Johnson Williams and James Tisdell who succeeded Topoe Andrew, now dead, are in court to testify. Prior to buying this land, I was charged the sum of 44,000.00 Liberian Dollars which I paid for the land located in Paynesville, Duport Road, Cowfield. I have constructed a house [on the land] and live there presently. Mr. Jarbo came out to say he owns the land. I informed my grantors so we could be able to go to court and testify. Presently, I have a copy of the mother deed of which they have the original in court. They also issued me a deed ...of which I have a photocopy. My original copy is with Ecobank because we went [there] for a loan; we had to mortgage the deed. Prior to this incident, Mr. Jarbo came to my house and wanted to have a conference with me. In the process I had a visitor, he asked the visitor out because he wanted to have a confidential conference.

Just in that time, my wife arrived so I asked him permission for my wife to be in this conference. He said no problem. In the interim, he gave me three options with regards to this land case. The first option was for us to go to court and let the court take its decision on this case. The next option was on the 30th of November 2009, he would bring a surveyor to survey the land and only give my house spot and I will buy it from him ... I told him I was not going to go into any argument with him in the absence of my legal representation. I asked for his last option and he said that he will evict me from the land. I told him that the laws of Liberia still stand. And Your Honor, Mr. Jarbo's son also came to me sometime last year November; he said we should compromise this case. When I asked him for what, he said he is the only person who can talk to his father for us to compromise the case. I said no, the only way we will compromise this case is for my legal representation to be present. And that's how he left. ...We have been threatened by Mr. Jarbo's son. He went and took photograph, I don't know if the court is aware, we have been in court, he went and took photograph of that place, and our security is being threatened. I don't know their intent, so that's where my memory can serve me at this point.

Following his testimony in chief, the witness, under direct was asked the following questions:

Q. Mr. Witness, I again pass you this document testified to and identified by you, please look at it and say whose signature it bears?

A. The signatories to this deed are one Topoe M. Andrews, who is deceased, John C. Williams, present in court, Jonathan Tay and Clara G. Tay.

Q. Mr. Witness, you said that the original copy of the mother deed is in the possession of one of the witnesses; were you to see copy of this mother deed will you be able to recognize it

A. Yes, this is Edward J. Roye, President at the time.

Witness Kollie was cross examined as follows:

Q. Mr. Witness, you have just told this court that this is a copy of the mother deed allegedly signed by the late President Edwin J. Roye, not so?

A. Yes

Q. Mr. Defendant, did you see the original copy of the mother deed upon which you based your evidence or confirmation?

A. Yes.

Q. Mr. Witness, you said in your testimony that the signatories to your deed of April 6, 2001 were Johnson, Topoe Andrews, Clarence Tay and that they presented you a mother deed signed by President Roye?

A. Yes, it's Topoe Andrews who is deceased.

Q. When did Dr. Moses talk to you about the land you were trying to obtain from Topoe and others; in what year?

A. I had obtained the land already, deed processed, all documents signed and presented to me before Moses Jarbo came. I was constructing when he came and said that the land was for him. We went to my counselor and they called us to conference. Moses Jarbo attended that conference one time and they asked him whether he had documents to present; he said his documents were in the archives and that he was going to get them in two months. Moses Jarbo was given the two months [but] he never appeared at any conference. Counselor Constance and I along with my grantors went to the conference two times. He did not appear. Counselor Constance and I went to his lawyer on two occasions. On the fourth visit, counselor Constance told his lawyer Chea Cheapoo that he should tell his client to keep off the property because he didn't have legal title, if my memory can serve me right.

Q. Did Dr. Jarbo tell you that the land given to you was his property, he had title for it?

A. No, not to my knowledge.

Q. So you confirm that you had the property in the year 2001?

A. Granted.

Q. The deed you have testified to, which is a photocopy of your deed, is an administrator's deed, meaning that it is an estate of one old lady of Montserrado County. Did your grantors show you copy of court decree authorizing the sale of that estate or any portion of that estate and if so, whether you can present it?

A. Well, yes, meaning I have the letter of administration and the names of those who administered that particular estate are described in that document.

Q. The question is whether you saw court decree authorizing the administrator to sell portion of that property for any reason?

A. Yes

Q. Do you have it, if so please present it?

A. My grantors will be able to clarify that when they appear to testify.

It is worth observing here that Appellant Kollie did not present any letters of administration, first to show that there was in fact an intestate estate being administered under the authority of the probate court; secondly, appellant's presented a photocopy of an administrator's deed. Assuming that the land appellant claimed to have purchased was part of an intestate estate, we noted that appellant failed to present any decree of sale, as evidence of the sale being authorized by a court of law as required by law. Without such showing evidence, there has to be an assumption that the administrators/grantors of appellant's title could not have transferred any portion of the estate, as a matter of law, to any third party, including Appellant Kollie, [citations].

It must also be kept in mind that it was the appellant, while on the witness stand and unable to respond to the appellee's question whether letters of administration was issued as well as a court's decree to authorize the sale of any portion of the deceased estate, said in answer to that question: "My grantors will be able to clarify that when they appear to testify.

Further, we must keep in mind that when Appellant Kollie was discharged from the witness stand on December 14, 2010, Judge Kaba scheduled the next hearing on December 17, 2010. At the instance of the appellant, a number of continuances were granted. This continued until February 18, 2011, when appellant's counsel, being unable to produce any further evidence, finally made the following submission to the court:

" ...that the defendant being too far away from the bailiwick of this court, the counsel has made all efforts to get in touch with him for additional witnesses but has been unsuccessful. Under the circumstance, counsel would like to request court to permit him to rest evidence on the testimonies of defendant Kollie along with other witnesses and that documents testified to, identified and confirmed by them and marked by this court be admitted into evidence and that he be allowed to rest evidence in toto and request court further for the argument of this case to be heard either tomorrow or day after tomorrow. And respectfully submit."

It was thereafter that Judge Kaba listened to the final arguments presented by counsels for the parties, and on February 24, 2011, ruled in favor of the appellee/plaintiff and ordering that the appellants be evicted, ousted and ejected and that the appellee be placed in complete possession of the subject property consistent with the metes and bounds of his title deed.

Summarized, appellant's bill of exceptions has attacked the judge's final judgment principally because, according to the appellant, Judge Kaba gave the impression that appellant's failure to produce his grantors constituted the ground for entering a judgment in the plaintiff's favour at the detriment of the appellants.

In that final ruling, Judge Kaba had said:

"The defendant, Mr. Lawrence Kollie took the stand after direct and cross examination of the plaintiff and his witnesses, and denied plaintiff's allegations; yet, contended that he (Defendant) bought the identical property from Messers Tompoe M. Andrews, John C. Williams, Jonathan W Tay, Sr., and Clara G. Tay, but failed to produce them in court as witnesses or otherwise. Defendant further contended that their Grantors had acquired the property by virtue of a phantom will which was never exhibited neither pleaded. Appellant has strenuously contended that such position taken by the trial judge lack any support in law.

Why we do not subscribe to judge Kaba's expression as such, we decline to accept appellants' argument that this statement by the judge constituted sufficient basis to warrant reversal of the final judgment. The statement was made within the context of the oral testimony offered in this case by the appellant. The records reveal that during cross examination, appellant was asked this question: "The deed you have testified to as copy of your deed is an administrator's deed; meaning that it is an estate of one old lady of Montserrado County. Did your grantors show you copy of court decree authorizing the sale of any portion of that estate and if so, whether you can present it? 'This was his answer: "Well, yes meaning I have the letter of administration and those who administered that particular estate, their names are described in that document. 'Further quizzed as to whether he ever saw copy of the court's decree authorizing the administrators to sell any portion of the estate property for any reason, appellant answered in the affirmative. His answer seemed to have triggered the question from the appellee's counsel: "where is it, please present it." It was at this point Appellant Kollie attempted to shift this burden of establishing his claim to title to his grantors by his statement: My grantors will be able to clarify that when they appear to testify.

But from December 14, 2010, when Appellant Kollie told the court that his grantors will come to court to testify on his behalf and show copy of the decree of sale predicated upon which the purported transfer of title to the property was made to the appellant, up to and including February 18, 2011, neither the appellant showed up in court with a copy of the decree of sale nor did his purported grantors appear or forward any instruments in support of appellant's title claim. We have therefore determined that under these circumstances, Judge Kaba did not commit reversible error by referring to what the very appellant had obligated himself to doing when he testified under oath in a court of law.

The trial court also addressed the issue whether the failure of appellant/defendant to produce his grantors as well as other witnesses to testify and his further failure to produce his deed could allow him to prevail in this trial. The court responded to this question in the negative, relying on Sio v. Sio, 35 LLR, 92 (1988). -Syl. 1, that A party who alleges a fact must prove it at the trial, by the production of evidence where the fact is denied by the opposite party. The appellant having indicated that clarification would be offered by his witnesses subsequently regarding the important question of title instrument, his failure to bring those witnesses to testify on his behalf and present those important instruments in support of appellant's title claim was a blunder on the part of the appellant. The utility value of judge Kaba's reference to this failure is a reasonable inference that no such instruments ever existed. We do not see this as a basis to reverse his final ruling in the matter.

The appellants/Defendants throughout the trial failed to produce any document to demonstrate that they acquired the land lawfully. Having claimed that the land was from an intestate estate, he failed to present neither letters of administration nor a decree of sale authorizing the purported sale of any portion of the intestate's property to him. We must again emphasize that the administrators executed a deed in appellants' favour, said transfer of title and execution of a deed, without first obtaining authorization from the court, would be irregular and in clear violation of the laws applicable. Speaking for the Supreme Court in the case, The Intestate Estate of the Late John N. Lewis v. Metzger, 38 LLR 404, 412 (1997), Mr. Justice Gausi, cited an earlier Opinion of this Court by Mr. Justice Henries and quoted therefrom the following succinct language on this question:

In the administration of a decedent's estate, a sale of real property can be legally made by virtue of an express order of the probate court .. .If it cannot be shown that the sale of the land in question was duly authorized by the probate court, then the sale by the administrator is void.

Appellant's failure to demonstrate that he in fact had any valid title instrument deprives him of any legally redeemable claim of any substantive claim of title. We therefore have to be guided under the circumstance by the long held and often quoted principle of law in this jurisdiction; that where a party plaintiff in an ejectment suit has proven by the preponderance of the evidence including production of a valid deed, as in the case before us, the defendant should not recover against plaintiff. Kollie v. Kpan, 31 LLR 600, 604 (1983).

Before concluding this matter, we must observe here that Civil Procedure Law provides that a party plaintiff in an ejectment cause may demand damages for wrongful detention of his property. Civil Procedure Law, Rev. Code 1:62.3. In the case at bar, the appellee/plaintiff made such a demand, and notwithstanding the clear and convincing evidence of wrongful detention by the appellant, the trial judge did not grant any damages. Consistent with this law, this Court in exercise of its authority to vacate, modify and enter the judgment which should have been rendered by the trial court, hereby modifies the final judgment entered by the trial court by granting damages to be paid by appellant to the appellee in the amount of Five Thousand United States Dollars (USD5,00.00), an amount we have determined to be adequate compensation for said wrongful withholding for more than five (5) years.

Wherefore, and following careful examination of the certified records in this case and having also listened to the legal arguments advanced by counsels from both sides, we have found no legal or factual basis why we should vacate the final judgment; to the contrary, we hereby affirm and confirm the final judgment as modified in this opinion. Costs are adjudged against the appellant. AND IT IS HEREBY SO ORDERED.

Counselor J. H. Constance appeared for the appellants. Counselor Richard K. Flomo, Sr. appeared for the appellee.