

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

Major Dixon, Commanding Officer or any authorized)
agent or administrator of the Salvation Army Church of)
the City of Monrovia, Liberia.....Appellant)

VERSUS)

APPEAL)

Catherine Johnson Whisnant, by and thru her Attorney-)
In-Fact William, L. Bryant of the City of Monrovia,)
Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Catherine Johnson Whisnant, by and thru her Attorney-)
In-Fact, William L. Bryant of the City of Monrovia,)
LiberiaPlaintiff)

VERSUS)

ACTION OF
EJECTMENT)

Major Dixon, Commanding Officer or any authorized)
agent or Administrator of the Salvation Army Church) of
Monrovia, Liberia.....Defendant)

Heard: November 17, 2021

Decided: December 15, 2022

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

When this case was called for hearing on November 17, 2021, the Court observed from the certified records that the counsel representing the Salvation Army Church, the present appellant, had filed a written excuse with the Clerk of Court requesting postponement of the case for an unspecified period of time due to his absence out of the bailiwick of the Country pursuing certain medical treatment.

The Court also observed that since its October Term, 2014, the records are replete with several notices of assignments and notices from the Clerk of this Court to the appellant's counsel, mandating him to file his appellate brief in compliance with the mandatory rule pertaining to the timely filing of briefs. The said rule as found in the Revised Rules of the Supreme, Part III (b) states that, “...Both parties shall within five days after or within fifteen days after service of the notice of completion of the appeal file their respective briefs with the Clerk of Court.” However, up to and including the

date of assignment of the case for argument, November 17, 2021, the counsel for the appellant failed to file a brief; neither the counsel nor the appellant have proffered any reason for said failure to file an appellate brief. Moreover, the action of ejectment filed before the trial court in 2006 has remained pending and undetermined. In view of this revelation, the Court evoked the applicable rule to enter upon the records and make a determination on this appeal in the interest of justice.

The facts as gleaned from the records are that the present appellant, the Salvation Army Church, was the defendant in a five (5) count action of ejectment instituted on September 1, 2006, by the present appellee, the Intestate Estate of Catherine Johnson Whisnant, for a parcel of land situated in Sinkor, Monrovia. The appellee alleged that the appellant illegally entered upon said property and erected structures thereon. The appellee therefore prayed the trial court to eject, evict and oust the appellant from its property and grant damages in the sum of US\$200,000.00 for the appellant's wrongful withholding of said property. The appellee attached to its complaint, copy of a quitclaim deed dated June 9, 1957, issued by the heirs of Gabriel Johnson.

On September 14, 2006, the appellant filed a four (4) count answer asserting ownership of the disputed parcel of land which it claimed was purchased from Counsellor Joseph A. Sellie on June 10, 1994, and that the latter purchased same from Zondall A.B. Jallah, both now deceased. The appellant attached to its answer, a certified copy of deeds from Joseph A. Sellie to the appellant and from Zondall A.B. Jallah to Joseph A. Sellie.

The appellee filed a five (5) count reply on September 21, 2006, averting that the appellant's grantors were never seized of or had ownership of land or property in the area of the appellee's land as the metes and bounds described in the appellant's deed is not within the vicinity of the appellee's land.

On April 27, 2007, the appellee filed a motion to submit the case to arbitration and with no objections interposed by the appellant, the trial court granted the motion and both the appellant and the appellee entered into and executed an arbitration agreement on June 10, 2009.

Although there arose some problems preceding the arbitration survey process, same was eventually proceeded with and a report submitted to the trial court on February 17, 2011. We shall mention the said problems and the reason giving rise to them later in this Opinion. The trial court assigned the reading of the final report of the Board of Arbitration for February 22, 2011. However, on the said date the appellant and its counsel did not appear for the ruling, although the sheriffs returns show that both parties were served the notice of assignment. The trial court then appointed Counsellor Jallah A. Barbu to receive the reading of the report on behalf of the appellant and its counsel. We note that although the arbitration report was filed with the trial court on February 17, 2011 and read on February 22, 2011, the appellant filed no objections within 30 days as of the reading of the final report as required by law. On September 6,

2011, the appellee filed a motion requesting the trial court to confirm the arbitration report.

On January 4, 2012, the trial court issued out a notice of assignment for the ruling on the Arbitration Report which was served on the parties. However, on the assigned date for the ruling, the appellant and its counsel were again absent from court without any excuse, thus prompting the trial court to appoint Cllr. Sylvester D. Rennie to take the ruling on behalf of the appellant. The trial court then proceeded to enter its final ruling, affirming the conclusion contained in the Arbitration Report. The conclusion of the report stated that “according to ground location, the appellee is the owner of the disputed property and not the appellant.” Exceptions were duly noted followed by the announcement of the taking of an appeal by the trial court's appointed counsel for the appellant. Thereafter, the appellant perfected its appeal which is the present matter before this Court.

The appellant's core contention in a five-count bill of the exceptions is that the appellant and its representative on the board of arbitration were never notified of the date of the survey, and therefore did not participate in any survey conducted on the disputed parcel of land; that the failure of the board of arbitration to notify the appellant or its representative of the date of the survey deprived it of the right to due process.

Hence, the issue for our determination is whether or not the appellant was accorded due process during the arbitration proceedings, and if not, whether the Arbitration Report therefrom can be upheld? In making our determination, we must revert to an in-depth perusal of the records in order to establish the veracity of the appellant's contention of being deprived of representation at the arbitration survey and the legal ramification, if any.

As stated earlier herein, the arbitration process could not commence due to certain problems, the first of which was the refusal of the appellant to pay its share of the cost to conduct the survey. Secondly, the failure by the representative of the appellant, Surveyor Gwee, to commit to his presence on the dates of the survey, although he was present at the commencement of the arbitration process and did sign certain documents along with the chairman and the appellee's representative on the board of arbitration, and submitted the title document of the appellant to the Board of Arbitration prior to the announcement to the general public; and thirdly, the complete lack of interest and cooperation by the appellant although it signed the arbitration agreement.

The records reveal that before the commencement of its task, the Board of Arbitration prepared a work plan, which included a budgetary cost of Four Thousand United States Dollars (US\$4,000.00) for the entire exercise, and same was signed by all the members of the Board with the understanding that the cost was to be evenly shared between the appellant and appellee.

However, on January 27, 2010, the chairman of the Board of Arbitrators addressed a communication to the trial judge informing him of non-compliance by the appellant in paying its share of the cost for the arbitration. Predicated on the aforementioned communication, the clerk of the trial court, acting on the directive of the trial judge, mandated the appellant to pay its share of the cost of the arbitration survey process on or before April 1, 2010.

Following these communications from the trial court to the appellant through its counsel, the record is silent as to the intervening events until September 20, 2010 when the Board of Arbitration again addressed another letter to the trial judge informing him of the progress of the arbitration process and requesting an extension of the time mandated by the trial court for the submission of its report. This communication was also signed by all the members of the arbitration board, to include the appellant's surveyor, Mr. Gwee.

Then again on October 22, 2010, another communication was addressed to the trial judge, by the chairman of the arbitration board, complaining that the appellant's representative was not cooperating with the other two members of the board in order to carry out the task; that Mr. Gwee's failure to show up on two occasions after they had all agreed to a scheduled time, hindered the progress of the board, specifically the gathering of 'ground information' at the subject premises where the Salvation Army Church is situated, and at which time a pastor of the appellant's church denied them access to the premises on grounds that the church had not been informed about the exercise.

All the afore-stated lapses on the part of the appellant and its representative contributed to the procrastination of the entire arbitration proceedings since 2007. In fact, the acts of the appellant and its survey representative were reported to the trial court on more than one occasion. Moreover, the records show that the trial court cited the parties for a hearing on each of the complaints filed by the Board of Arbitration. Strangely, there is nothing in the records showing that the appellant filed a rebuttal or counter allegation of unfair practice or dealing by the majority members of the Board of Arbitration against its interest. How then can this Court accept the appellant's allegation that the majority members of the Board of Arbitration acted clandestinely with the intent of avoiding the participation of the appellant through its representative in the arbitration process? Does the appellant expect the Supreme Court to rely on mere allegations to determine a factual issue in dispute when the records establish the appellant's own negligence and recalcitrance? We think not!

It is a cardinal principle of law, enunciated by both the statute and the decisional laws of the Supreme Court, that mere allegation is not proof (*Morgan v. Barclay*, 42 LLR 259 (2004)]; that a party who alleges a fact or set forth a claim has the burden of proving or substantiating the allegations by a preponderance of the evidence. *U N Timber v. Naca Logging Company et al.*, 42 LLR 527 (2005). The record is replete with the careless

attitude exhibited by the appellant and its representative throughout the arbitration process; even though they had voluntarily consented to have the matter submitted to arbitration, and had signed the arbitration agreement and submitted its title documents to the Board of Arbitration.

It is the duty of party litigants to exercise outmost diligence in prosecuting and superintending their cause of action before the courts. In this regard, the Supreme Court has held that when the statute prescribes a process for party litigants to follow, that process must be adhered to scrupulously. *Mananaai v. Momo*, Supreme Court Opinion, March Term (2015).

Hence, given all of what we have narrated above, can it be said that the appellant was not accorded due process during the arbitration process, and that the arbitration report therefrom be nullified?

As we stated herein, the majority members of the Board of Arbitration furnished the trial court with a status report on its assigned task on September 20, 2010, and requested for an extension of time, noting that given the information the Board had gathered at that point in time, it could not technically establish the actual identities of the disputed parcel of land. That status report was signed by all three members of the board, to include the appellant's representative. By that information, the Board was seeking the indulgence of the trial court to grant it more time to conduct its technical investigation in order to first establish the identities of the parcel of lands described in both the appellant's and appellee's deeds. More importantly, this initial report by the Board constituted the unanimous decision of all the members of the Board evident by their respective signatures appearing on said report. It also indicates to us that at that point, the Board was collaborating in its effort to execute its assigned task.

The records show that when controversies began to arise, and same were brought to the attention of the trial court, all the parties were duly cited by the court for conference. For instance, on October 22, 2010, when the chairman of the Board of Arbitration filed a complaint of the non-compliance of the appellant and its representative, the records show that a notice of assignment was issued on November 25, 2010, citing the parties to a conference on December 2, 2010, and that said notice of assignment was duly served upon all the parties.

Although the record is silent as to the outcome of the said conference, we do see that subsequently, a notice of assignment for contempt of court, growing out of the very same complaint, was served on both parties through their legal counsels. Again, although we note the absence from the records of the outcome of the contempt proceedings, it is clear that both parties were accorded due process of law as neither party raised any issue on the matter of the contempt proceedings.

This Court has defined due process as a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. It is also defined as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered. *Broh v. Hon House of Representatives et al.*, Supreme Court Opinion, October Term, 2013; *Liberia Telecommunications Authority v West Africa Telecommunications Inc.*, Supreme Court Opinion, March Term, 2009; *Morlu II v. House of the Senate*, Supreme Court Opinion, March Term, 2008;

Given our observation of the events that occurred during the arbitration proceedings and at the level of the trial court, we are of the considered opinion that the appellant was accorded its right to due process of law, contrary to the allegation raised in its bill of exceptions.

But assuming *arguendo* that the Board of Arbitration was proceeding contrary to law or that its final report was not conclusive or reflective of the facts established during the arbitration survey, can the appellant raise any challenge to the report at this stage of the case being an appeal, having willfully neglected and failed to file objections to the arbitration report within statutory time? We again think not!

It is the law that a party seeking to have the court vacate an award of an arbitration board must do so upon written motion, and said application shall be made within thirty days after delivery of a copy of the award to the applicant except that if the application is predicated upon fraud, or corruption, or other undue means, it shall be made within thirty days after the grounds are known or should have been known. *Civil procedure Law*, Rev. Code 1:64.11(1) and (2); *Mananaai, Id.*

The records show that the appellant and its legal counsel were absent on the day of the reading of the arbitration report. Howbeit, upon receipt of the said report from the trial court's appointed counsel, it was incumbent upon the appellant to file a motion requesting the trial court to vacate the arbitration report in consonance with the grounds set forth in the applicable provision of the statute. *Civil procedure Law*, Rev. Code 1:64.11(1). But this, the appellant failed to do. We hold therefore, that the appellant was never denied its right to due process, and the final report of the majority members of the Board of Arbitration is legal and conclusive as to the claims of the parties.

Before concluding this Opinion, we make the observation that in both her complaint before the trial court and amended brief filed before this Court, the appellee prayed for Two Hundred Thousand United States Dollars (US\$200,000.00) as damages for the appellant's illegal entry upon and withholding of her property, which damages, by operation of law, falls within the ambit of general damages. This Court has opined that general damages, especially when specifically requested, must be considered in face of the conduct of the defendant's deliberate, obstinate and unreasonable refusal to leave the

disputed property coupled with a continuous occupation and withholding of plaintiffs property to latter's dissatisfaction and displeasure. *Dasusea and Kargou vs. Coleman*, 36 LLR, 102, 136 (1989); *Konkai Freeman et al. v Eid*, Supreme Court Opinion, March Term, 2011. Therefore, the demand for damages being a factual issue for consideration either by a jury or a judge, in the case of a bench trial, this Court cannot grant the appellee's request for damages for wrongful detention of her property by the appellant. However, our holding herewith does not prejudice the appellee's right to recover damages from the appellant hereafter, predicated on the Judgment of this Opinion.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial court which confirmed the final report of the Board of Arbitration is hereby affirmed. The appellant shall forthwith be ejected, ousted and evicted from the subject property. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Affirmed

When this case was called for hearing, Counsellors Necillar Y. Edwards and Wiefueh A. Sayeh appeared for the appellee. No lawyer appeared for the appellant.