

J. C. N. JOHNSON, Appellant, v. LUCY DORSLA,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Argued April 13, 1959. Decided April 24, 1959.

1. Where an appellee fails to appear upon assignment for hearing, the Supreme Court may hear the appellant's argument and rule thereon.
2. Where issues both of law and of fact are raised by the pleadings, the trial court must determine all the issues of law before proceeding to try the issues of fact.

On appeal from the trial court's dismissal of an action of ejectment on the pleadings, *reversed and remanded for trial de novo*.

Edward N. Worlor for appellant. No appearance for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.*

We think it proper to mention that, at the call of this case, Counsellor Edward N. Worlor appeared for the appellant, but no one appeared for the appellee, and therefore, the case having been assigned and called for hearing, the Court proceeded to hear argument of counsel for appellant.

For the recovery of a portion of Lot Number 13, situated on Bushrod Island, Montserrado County, Republic of Liberia, J. C. N. Johnson, the appellant in this case, instituted this action of ejectment in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, against the appellee, Lucy Dorsla. The pleadings in the case rested with defendant's resistance to plaintiff's de-

* Mr. Justice Pierre was absent because of illness and took no part in this case.

murrer to defendant's amended answer. Notice of assignment was duly issued and served on the parties, and on January 17, 1957, the trial Judge, in disposing of the law issues, dismissed the action. The plaintiff, being dissatisfied with the ruling of the Judge, announced an appeal to this Court for a final hearing and determination upon a bill of exceptions containing six counts, three of which we deem pertinent for the purpose of this opinion, and which we hereunder quote:

- "1. Because Your Honor ignored and refused to pass upon the issue of law set out in Count '1' of plaintiff's reply, which said count avers: 'Plaintiff submits that defendant's answer should be ruled out of court because said answer was not filed within statutory period, and defendant be made to rest her defense on a bare denial of the facts,' which said count defendant tacitly admitted by failing to file a subsequent pleading traversing said count. In spite of this, Your Honor sustained Count '5' of defendant's answer, ruled against plaintiff, and dismissed the entire cause, to which said ruling plaintiff excepted and submits this bill of exceptions for approval.
- "2. And also because Your Honor ignored and refused to pass upon the merits of plaintiff's demurrer to the amended answer of the defendant, which said demurrer alleges that defendant's amended answer was filed nine months after pleadings in the case were rested, and the case assigned the next day for hearing the law issues raised in the said pleadings, which said demurrer, according to statute, should have been disposed of before the pleadings. Plaintiff there and then excepted to Your Honor's said ruling, and now submits this bill of exceptions for approval.
- "3. And also because Your Honor ignored and refused to consider and pass upon the merits of defend-

ant's amended answer, which said amended answer conceded Count '5' of plaintiff's reply to the effect that the defendant can be sued as *feme sole* for property acquired in Monrovia in her own right and name, after deserting her husband in Maryland County for more than five years, and contracting business in her maiden name. Plaintiff then and there excepted to Your Honor's said ruling, and now submits this bill of exceptions for approval.

Recourse to, and a thorough scrutiny of the Judge's ruling reveals that none of the law issues raised in the reply, the amended answer, the demurrer thereto, or the resistance of the defendant to the demurrer, was taken into consideration and passed upon by the trial Judge. This Court has made it mandatory that all law issues raised in the pleadings in a case must be disposed of, which was not done in this case. We find, from a thorough inspection of the Judge's ruling, that said ruling is based upon Count "5" of the defendant's original answer, which had been subsequently amended. We are of the opinion that all issues of law contained in the pleadings should have been disposed of; and this is supported by the following:

"When the pleadings raise questions both of law and of fact, the court shall determine all issues of law before it tries the questions of fact." 1956 Code, tit. 6, § 313.

Predicated upon the above, Counts "1," "2" and "3" of the bill of exceptions are sustained, the ruling of the trial Judge is reversed, and the case is hereby remanded for trial *de novo*. And it is so ordered. Costs to abide final determination of the case.

Reversed and remanded.