JACOB KING, Appellant *v.* A. D. SIMPSON, Appellee.

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

Argued November 23, 1965. Decided January 20, 1966.

1. Nonjoinder of a party in an ejectment action may be cured by amendment, and is not sufficient ground for dismissal of the action. 1956 CODE 6:1125.
2. A valid, duly registered deed will prevail over mere possession as evidence of title in an ejectment action.

On appeal from a retrial ordered in Chambers on a writ of error in an ejectment action, the *judgment* was *affirmed.*

Albert A. Reeves for appellant. *Simpson Law Firm* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

The present appellee instituted an ejectment action to evict the present appellant from a parcel of land which the appellant claimed to have acquired by government deeds dated January 5, 1959, covering Lot. No. 19, situated in the Township of Tubmanville, near Bomi Hills, Senjeh, Gola Chiefdom, then Western Province of the Liberian Hinterland.

Because of patent errors committed by the trial judge in the first trial of the case, a retrial was ordered by the Chambers Justice on a writ of error. Following the second trial the case has now found its way before this Court on a regular appeal.

This therefore brings us to consider first, the issues of law raised in the pleadings, and then the facts adduced at

the trial in order to determine whether or not there is any merit in this appeal.

All law writers are agreed that a nonjoinder of parties in an action may be timely cured by an amendment to supply the omission and it is not ordinarily a ground for dismissal of an action. Comment on this point seems unnecessary since appellant failed to lay a legal premise on which to base his contention, in that there is nothing of record to show that a lease was executed between himself and the claimed omitted party, George Bleh, who was alleged to have become an indispensable party to the action by reason of said lease.

At the time of the filing of this action, appellant based his claim to ownership of the property on an unsigned and unprobated deed, alleging that finalization or the processing of said deed was in progress as appellee produced a deed complete in all of the legal requirements to give fee simple title to appellee in the property. Thus one of the instruments, namely that of appellant, was in the category of a naked document as against a genuine paper title, a deed bearing no voidable character but complete in all of its legal requirements.

Appellant charged that the trial judge committed reversible error when he declared the half lot occupied by appellant to be within the property right of appellee. The surveyor who delimited the property certified that it was not within the area claimed by appellee who asserted fee simple right to said property by title deed executed in his favor by the President of Liberia, probated and registered according to law and produced at the trial of the case in the court below. This deed, however, was denied admission into evidence by the trial judge, which denial constitutes one of the assignments of error in appellant's bill of exceptions.

We must now take recourse to the objections raised by appellee as plaintiff below to the admissibility of the title deed sought to be admitted into evidence by appellant

and the trial court's ruling thereon. The main ground of these objections as disclosed by the record, is that the presidential deed was not proferted in the pleadings to give plaintiff notice of its existence as the statute prescribes in the following language.

> "The fundamental principle on which all pleadings shall be based shall be that of giving notice to the other parties of all facts it is intended to prove." 1956 CODE 6:252.

On the misjoinder or nonjoinder of parties, the statute further provides:

> "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action on any terms that are just. Any claim against a party may be severed and proceeded with separately." 1956 CODE 6:125.

Along with this important objection is the fact that the deed under which appellant claims title, besides not being probated or registered, was not signed by the purported grantor; hence appellant's claim of naked possession cannot prevail against a paper title—the paper title of appellee being legally genuine in all respects. Ruling on the issue thus joined, the trial court made the following statement.

> "The test for the admissibility of a legal document is that of identification. Document marked D1 constitutes defendant's exhibit C and from an inspection thereof is not signed by the President of Liberia so as to have given the opposite party notice thereof, nor is there any indication of the same having been admitted into probate and registered; hence it is denied admissibility. Documents marked D3, D4, D7, D8, and D9, as also D10, having been pleaded in the answer of the defendant and a legal test fully met, are hereby admitted into evidence to be expounded to the empan-

eled jury by the court as to their relevancy and effect. And it is so ordered."

Buttressing the contention of appellee and supporting the legal soundness of the trial court's ruling on the point is the opinion handed down by this Court in *Minor* v. *Pearson,* 2 L.L.R. 82 (1912), and summarized as follows in Syllabus 2 of that case:

"A naked possession of land by an intruder cannot prevail against a paper title."

The following statutory provision is also apposite.

"If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which duly probated and registered." 1956 CODE 29:6.

The more so do the circumstances in this case preponderate in favor of the appellee on this point because not only is appellee's claim based on a legal paper title, but said paper title or deed was executed, probated, and registered prior to the naked possession on which appellant makes claim of ownership to the property.

In the absence of law, statutory or common, to the contrary, we have no alternative but to sustain and confirm this ruling of the trial court on this point. The bare denial on which appellant was placed by the court as his defense is legally sound and is therefore upheld.

Traversing the testimony recorded at the trial and relevant to the point of appellant's claim of title, we find the following questions and answers made on the cross-examination of the appellant himself when testifying in his own behalf.

"Q. At the time of the institution of this action by the plaintiff, did you have title to the land in dispute?

"A. I had my tribal certificate, but my deed was not processed.

"Q. I mean Mr. Witness, that when the plaintiff sued out this action against you, did you hold a title deed to the property subject of these proceedings signed by the President of Liberia, since the land in controversy is public land?

"A. No.

"Q. So you subsequently, during the pendency of this action got the President to sign your deed on September 10, 1963, not so?

"A. I do not know when the President signed it; I know I got it during that time."

We must conclude from the foregoing questions and answers that at the time of the filing of this action, appellant had no finalized title to the land which he claimed; nevertheless he asserted that the property for which he had allegedly obtained a deed from the President of Liberia did not fall within the property of plaintiff.

On review of the record we find a desperate effort on the part of appellant to establish that the half town lot claimed by him, for which a title deed was in course of being processed, did not fall within Lot No. 19, the established fee title property of appellee. However, there is nothing in the record to show that the said half town lot to which appellee is claiming title is separate, distinct, and without the area covered by Lot. No. 19, which would have justified the court and jury in excluding same from their findings and judgment declaring same not to be within the property of appellee. The following principles of law are controlling.

"Actions of ejectment may be brought against any person holding property by possession adverse to the interest of party plaintiff." *Couwenhoven* v. *Beck,* 2 L.L.R. 364 (1920) Syllabus 2.

"If a title deed although apparently valid, shall not have been probated and registered within four months

from date of execution, it is not error to reject it as evidence upon objections properly taken." *Id.* Syllabus 7.

"In ejectment the plaintiff must recover, if at all, upon the strength of his own title." *Id.* Syllabus 8.

The charges that the trial judge inflamed the minds of the jury, prejudicing the interests of the appellant, is not borne out by the record and hence must be considered as unmeritorious in point of fact; it is therefore rejected by this Court.

Finalizing this opinion, we must conclude in all fairness, equity, and justice, that the ruling of the trial judge on the law issues advanced in this case, as well as the verdict of the empaneled jury and subsequent rulings of the court, together with the final judgment of the court decreeing the eviction of appellant from the property in question and vesting possession in appellee, are legally and factually sound and are therefore hereby sustained and affirmed with costs against appellant. And it is hereby so ordered.

Judgment affirmed.