

HAWAH MASSAQUOI, Appellant, v.
DANIEL TOLBERT, Appellee.

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

Argued November 9, 1965. Decided January 20, 1966.

A duly rendered award of arbitrators appointed pursuant to order of court has the status of a jury verdict and is not a deprivation of constitutional right. 1956 CODE 6:1270 et seq.

On appeal from a judgment rendered in an ejectment action on a report of a board of arbitrators, the Supreme Court modified the judgment to conform with the report and *affirmed the judgment as modified.*

G. P. Conger Thompson for appellant. *Joseph Dennis* and *James Smythe* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

On the 7th day of December, 1964, the present appellee instituted an action of ejectment against Bishop S. D. Lartey, Hawah Massaquoi, and Paul Massaquoi in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. The complaint substantially alleged that the appellee is the *bona fide* owner in fee simple of 1/16-acre of land known as a portion of Block No. 11 of Halfway Farm, Monrovia, and that defendant Lartey entered upon the said premises by encroachment and without right detained 1,245 square feet of said land. The complaint also alleged that defendants Hawah Massaquoi and Paul Massaquoi entered into a lease agreement with the appellee in 1956 for a portion of the aforesaid premises for a period of time and that they had refused to surrender

possession when demanded. Defendants appeared and answered and pleadings rested at the reply. In their joint answer the defendants disclaimed encroachment on the land in question.

Thereafter it was mutually agreed that a board of arbitration composed of a chairman and two additional surveyors be appointed and sworn to determine the metes and bounds of the lands in dispute and tender its report to the court for further action. The plaintiff and defendant were each given the right to nominate one arbitrator and the Court appointed the third. The board of arbitrators was duly constituted and composed of the following persons: L. K. Gbuie (chairman), A. B. Lewis, and R. E. Clarke. In harmony with the orders of the court they performed their duty and tendered the following report to the court:

“Your Honor:

“Pursuant to your instructions we visited the *locus* and after making a reconnaissance we asked for and obtained the relevant papers from the interested parties and commenced the survey. Existing marks on earth, shown to us and accepted by the interested parties and adjoining owners, were located together with various buildings.

“The instrument was oriented to a north point obtained from the accepted bearing of Lynch Street. This procedure was adopted in order to standardize the work due to magnetic attraction, local and otherwise.

“None of the lines as delineated on earth by existing marks compared favorably with the deed descriptions. We have therefore shown on plan attached hereto the position of marks found on earth relative to position of lines in accordance with deed description. We might point out that we had no alternative other than to accept marks shown to us on earth by both parties and affected adjoining owners. Consequently the po-

sition of lines shown to conform with the various deed descriptions is controlled in each instance by the mark shown on earth and used as the starting point.

"Plan attached hereto shows lines delineated by existing marks on earth pointed out to us by Bishop Lartey bordered red; those delineated by marks on earth shown to us by Mr. D. Tolbert bordered green; lines in keeping with deed of Bishop Lartey bordered yellow; lines in keeping with deed description of Mr. D. Tolbert bordered blue.

"Please note that according to Mr. D. Tolbert's deed description as shown on plan, he encroaches considerably on undisputed lands occupied by Mr. Frederick Mikpaw; also on land occupied by Mrs. Buchanan. Also please note that if the existing marks on earth shown to us by the interested parties are accepted, the portion disputed by Bishop Lartey and Mr. Tolbert would be that which is colored brown on the plan attached."

On the 13th day of May the case was resumed and the award from the board of arbitration was proved. Counsellor J. M. T. Kandakai announced objections to the award for and on behalf of his client, defendant Hawah Massaquoi, which he formally withdrew on the 21st day of May, 1965, and proceeded to prosecute an appeal to this Court by filing on the same day his bill of exceptions, the body of which reads as follows:

"Because appellant says that despite the report of the board of arbitration which alleged and we quote: 'Please note that according to Mr. D. Tolbert's deed description as shown on plan, he encroaches considerably on undisputed lands. . . .' meaning thereby that no land could be drawn from the area in question in consideration of Daniel Tolbert's claim except by encroaching on land not in dispute, including that owned by one Hawah Massaquoi, a ward of appellant—nevertheless Your Honor rendered final judgment that

Daniel Tolbert's claim be satisfied by giving him land in metes and bounds and a writ of possession was issued in his favor according to the judgment, in flagrant disregard of the report of the board of arbitration, which report the court confirmed and on which the said judgment is purported to have been based; hence the said judgment is tainted with gross partiality against which appellant excepts and prays an appeal to the Honorable Supreme Court of Liberia, October term 1965."

The foregoing is that which appellant's counsel terms and classifies to be a bill of exceptions on appeal from the judgment of the court below affirming the award from the board of arbitration, even forgetting the all-important fact that appellant was sued as a tenant by leasehold, which allegation the same counsellor denied in Count 4 of his answer, when he said :

"And also because defendants say that as to defendant Hawah Massaquoi, one of the defendants herein, she entered the land in question under the title of defendant Bishop S. D. Lartey whose title she accepted and admitted that he was her landlord. Defendant Hawah Massaquoi submits that at no time was she ever knowingly made to become signatory to any document whereby she purported to have admitted the ownership of the land, the subject of the action, in the plaintiff as the plaintiff has sought to establish."

Yet, in the face of this plea when neither Francis D. Tolbert nor Bishop S. D. Lartey, who are freehold owners of the land in dispute, excepted to the judgment of the court, appellant has done so and comes on a bill of exceptions that means nothing less than a folly, a waste of time for the Court and a demonstration of the counsellor's deficiency in the science of law because it raises no traversible issues as the law requires.

Our law defines a bill of exceptions as follows.

"A bill of exceptions is in essence a complaint alleging that the trial judge has committed one or more

errors, all therein specified, which have resulted in a final judgment adverse to the contentions of appellant." *Richards v. Coleman* 6 L.L.R. 285 (1938) Syllabus 1.

In common law it is held that:

"... an order is not appealable ... if it does not ... in effect, finally determine the action, or finally determine some positive legal right of appellant relating thereto." 4 C.J.S. 279 *Appeal & Error* § 99.

In this case, legal right vested in the appellant was affected by the judgment rendered in the court below. Hence there is no sense in her appeal since both Lartey and Tolbert whose property rights were in dispute, submitted to the award and the judgment made thereon. It can therefore be clearly understood that this appeal is only the result of appeals in our courts according to our law being a right and not a privilege; and it is our opinion that the earlier our lawmakers become seriously concerned over the fact, the quicker our courts will be relieved of such unmeritorious matters.

When this case was assigned and called for hearing, appellant's counsel strenuously contended that the trial judge erred by entering a judgment on the award instead of having a jury sit on the case and submit a verdict under the principle laid down in Article I, Section 8th of the Constitution. Appellee's counsel, countering the argument of his adversary, contended that the appellant, not having excepted to the award of the arbitration board, does not enjoy the right of appeal.

In the first place we have wondered if appellant's counsel could be sincere in his argument. The constitutional provision relied upon reads thus:

"No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." CONST. Art. 1 Sec. 8.

An award from an arbitration board is sufficient to serve as a verdict when no objections are raised against its validity; and such award being predicated upon the law

of the land conforms with the provision of the Constitution relied upon by appellant. The controlling statute provides:

“After judgment has been entered upon an award, it shall have the same status as a verdict and shall be proof of the facts stated therein against all parties to the arbitration.” 1956 CODE 6:1286.

Because in our opinion the judgment of the court below is incomplete and liable to promote other litigations growing out of the same cause of action, and because this Court has the authority to affirm, reverse, or give such judgment as ought to have been given in any case before it, we shall take recourse to the award of the board of arbitration for a guide so that transparent justice may be done to all of the parties concerned. The report of the board is distinctly clear in all of its parts. The map which accompanies the report makes it still more understandable to the layman. Heretofore, Bishop S. D. Lartey claimed right and ownership according to his marks to the land bordered red on the map; and plaintiff Tolbert claimed right, possession, and ownership to the tract of land according to his marks bordered in green. The award of the board showing the lay of the land according to defendant Lartey's deed, makes him the rightful owner of the tract of land bordered in yellow and it is that tract of land that the writ of possession must possess him of. According to plaintiff Tolbert's deed, he is entitled to ownership and possession of the land diagrammed and bordered on the map in blue, and it is that tract of land he must be possessed of by the writ of possession; he should refrain from further encroachment on undisputed land as he has done heretofore.

The foregoing is the unanimous opinion of this Court in correction of the judgment of the court below. The clerk of this Court is hereby ordered to send a mandate to the lower court ordering it to resume jurisdiction and proceed to issue the necessary writ of possession and exe-

cute the same in strict conformity with this opinion under the direction of the board of arbitration with costs against the appellant. And it is hereby so ordered.

Judgment affirmed as modified.