CLARENCE O. TUNING, JR., attorney-in-fact for the late VICTOR L. TUNING and JOHNNY N. F. DAVIES, heirs of JAMES A. TUNING, Appellant, *v.* MARGRETTE E. THOMAS, widow of D. E. W. THOMAS, THEOPHILUS A. THOMAS, and FRANCES E. THOMAS-MAYSON, Executor and Executrixes of the Estate of D. E. W. THOMAS and WILLIAM THOMAS, D. E. W. THOMAS, II, and LETITIA J. L. THOMAS, heirs of D. E. W. THOMAS, Appellees.

APPEAL FROM THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued April 12, 1972. Decided April 21, 1972.

1. Except in cases of injunction and prohibition, when the complaint or petition must be verified by the party, all pleadings may be verified by the party's attorney or the party.
2. A pleading may be verified in a judicial circuit other than the circuit in which the action is to be tried.
3. For the verification of a pleading to be valid, it must be in writing, signed and sworn to as true or in the belief that it is true, by the affiant, whose capacity in the case must be shown, before an authorized official, the jurat must be indicated and the exact title of the case set forth.
4. A power of attorney cannot survive the donor, and the agent is without authority to act thereunder subsequent to the donor's death.
5. A married woman may in her own name be qualified as executrix or administratrix of an estate.
6. Where, as in the case at bar, by failure to diligently act, an antiquated demand is raised, the Supreme Court will invoke the doctrine of laches and refuse to interfere in a matter, so as to preserve the peace of society.

In 1947, petitioner for the first time became aware of the nature of a conveyance made by his father in 1922, when he sold an interest in realty greater than he was possessed of, by warranty deed to respondents' testator. The heirs of those whose interests were wrongfully conveyed by petitioner's father gave him power of attorney

to bring an action to cancel the warranty deed executed and probated in 1922. However, no action was instituted until 1971 and after the deaths of those who conferred the powers. The trial court dismissed the petition and an appeal was taken. Judgment *affirmed*.

Appellant *pro se*. *Hall W. Badio* for appellees.

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

According to the record in this case, James A. Tuning acquired title to a portion of Lot No. 65 in Greenville, Sinoe County, in the year 1889; he died in 1921, leaving two sons, Clarence O. Tuning and Victor L. Tuning. The eldest child, a daughter, had died before him and she had also left two sons, James and Johnny Davies. Thus the property had descended in three equal portions to the following: Clarence Tuning, Victor Tuning, and James and Johnny Davies, the heirs of Ella Tuning-Davies.

In 1922, Clarence O. Tuning, one of the sons, sold his piece of property to D. E. W. Thomas; the warranty deed executed by the grantor was probated and registered in Sinoe County without objection. In May of 1947, the petitioner, Clarence O. Tuning, Jr., who is the son of the grantor of Thomas, and is a grandson of James A. Tuning, visited his uncle, Victor L. Tuning, who had some years before left home and taken up permanent presidence in Freetown, Sierra Leone. It was during this visit with his uncle that he found out that the property had descended to C. O. Tuning his father, Victor Tuning his uncle, and James and Johnny Davies, the two sons of his deceased aunt, Ella Tuning-Davies.

In spite of the fact that he had knowledge of all of these circumstances surrounding the inheritance of the property, and although he had known since 1947 of the

transaction between his father and D. E. W. Thomas, in which the property had been sold, yet the petitioner took no legal steps to question his father's right to sell until October 1971. However, we shall say more about this later.

On October 8, 1971, he filed a petition to cancel the deed executed by his father to D. E. W. Thomas, on the strength of powers of attorney given him by his uncle, Victor Tuning, and his cousin, Johnny Davies, forty-nine years after the deed had been executed and probated, and twenty-four years after he first obtained knowledge of the sale. The case came on for trial before Hon. Alfred Flomo, presiding over the November 1971 Term of the Third Judicial Circuit Court in Sinoe County, who dismissed the petition and subsequent pleadings of the petitioner. It is from this ruling, dismissing the case, that the petitioner has appealed and come before us for review.

There are several important issues raised in the pleadings and developed in the briefs argued here: (1) Within what time should suit in cancellation be brought, according to the statutes of limitation? (2) Is a power of attorney valid after the death of the party who executed it? (3) Should a *femme covert,* who is executrix of an estate, be required to sue or be sued through her husband in matters involving the estate, or could she act as a *femme sole* in such matters? (4) Does the law require that an affidavit to a pleading be taken in the place where the case is filed? For the purpose of this opinion we think it necessary to pass upon these issues and we shall do so in reverse order.

In counts ten and eleven of the petitioner's reply he has contended that the answer of the respondent should be dismissed on the grounds that the attorney and not the party verified the pleading, which was, moreover, so verified in the wrong circuit.

Petitioner relied upon the Civil Procedure Law, L. 1963–64, ch. III, § 605, which we do not think is applicable in this case and will not be quoted in this opinion.

But a look at the answer shows it to be venued in the Third Judicial Circuit, Sinoe County, sitting in its November 1971 Term. It is also shown to be "dated this 15th day of October, 1971." We have not been able to find any irregularity in respect to either the venue or the date showing on the face of this pleading. However, the signature on the affidavit is shown to have been taken in the office of a justice of the peace in Montserrado County, and the petitioner contends that because it was not taken in the circuit in which the answer was venued, the answer is defective and subject to dismissal.

Verification and certification of a pleading are provided for in the Civil Procedure Law, *supra* § 904(1), (2), (3), (4), (5).

"1. Verification required. Every written pleading except one containing only issues of law shall be verified on oath or affirmation that the averments or denials are true upon the affiant's personal knowledge or upon his information and belief.

"2. Person required to verify. The verification shall be made by: (a) The party serving the pleadings, or, if there are two or more parties united in interest and pleading together by at least one of them; or (b) By the attorney of such party; provided, however, that the complaint in an action to secure an injunction or in a prohibition proceeding shall in every case be verified by the party himself.

"3. Equity rule abolished. The rule in equity that averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.

"4. Signature required; meaning. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. A party who is not represented by an attorney shall sign his pleading. The signature of an attorney constitutes a certificate by him that he has read the

pleading, that to the best of his knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. The signature of a party constitutes a certificate by him that the pleading is not interposed for delay.

"5. Effect of improper verification or certification. If a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of this section, it may be stricken and the action may proceed as though the pleading had not been served."

We have not been able to find anything in the statute to support the contention made in the reply of the petitioner. On the contrary, the law requires that except in cases of injunction and prohibition, when the complaint or petition *must* be verified by the party's own oath, all pleadings may be verified by oath of the party himself, or by his attorney. In this case counsellor Nelson Broderick is counsel of record for the respondents and, therefore, had a right to swear to the affidavit attached to the answer.

Petitioner has also contended that an affidavit annexed to a pleading must be taken in the circuit in which the particular pleading is venued. Counsellor Hall Badio, who appeared for the respondents in argument before us, very ably presented his disagreement with this position of the petitioner. The office of an affidavit is simply to verify the truthfulness of the contents of the pleading or document to which it is annexed. It must show that the affiant, being under oath before an officer of the law authorized to administer oaths, testified to what is contained in the document as being the truth within his personal knowledge; or upon information given him by another, or that he believes the same to be the truth. The fact that the administering officer is not in the place where the pleading is to be filed does not adversely affect the purpose for which the oath is administered. Nor can

the oath taken by the deponent in Montserrado County render the facts sworn to any less true because the oath was administered out of the circuit in which the pleading was filed.

The criteria governing the relationship of the affidavit to the document which it is to support are: (a) it must be a written statement and contain the oath of the affiant or deponent that what is written in the annexed document is true; (b) it must be administered by an authorized official; (c) it must carry the exact title of the cause as that title is stated in the pleading to which it is annexed; (d) it must show on its face the place where the oath was taken, so that the county in which the official functions might be ascertained, and (e) the deponent must sign the affidavit as an indication that he verily made it. Affidavits to pleadings must also show that the deponent is either a party, or of counsel for a party. *Blacklidge* v. *Blacklidge,* 1 LLR 371 (1901); BOUVIER'S LAW DICTIONARY, 3rd ed, 158.

A power of attorney is an authority for another to act in one's stead; it cannot survive the donor, because an attorney-in-fact can only act for the living under the authority. BOUVIER'S LAW DICTIONARY, see *Power of Attorney*. The authority under which the petitioner acted as attorney-in-fact for Victor Tuning and Johnny Davies expired upon their deaths. They died before the filing of the petition in 1968. Therefore, everything that was done by the petitioner in his capacity as attorney-in-fact, after the death of his two principals, is void. In *Caranda* v. *Fiske,* 12 LLR 245, 249 (1956), this Court spoke on the point.

> "It would seem undeniable that where there is no principal there can be no agent. Consequently where a principal dies without having revoked a power of attorney the said power automatically expires upon the principal's death."

See also *Miller* v. *McClain,* 12 LLR 3 (1954); *Ca-*

randa v. *Porte,* 13 LLR 57 (1957). There is no point in further belaboring this elementary principle of agency.

Normally, a married woman cannot sue or be sued in her name, except in criminal cases. But where a married woman in her own name is qualified as executrix or administratrix of an estate, without reference to or objections by her husband, she thereby becomes an instrument of the probate court, answerable to the said court in respect of all of the rules governing procedure in such matters. She is thereby amenable to the same extent and in the same manner as any other executor or administrator as provided in the Domestic Relations Law.

> "Rights of wife; removal of disability. Notwithstanding the provisions of section 44 of this chapter, any married woman who in her own name shall engage in any business or enterprise may for the purpose of such business or enterprise be considered a *femme sole* and as such without the intervention of her husband may make and execute contracts, sue and be sued, and do all such things as may be incident and necessary to the prosecution of her business interests, and shall be privileged or free to enjoy all the other civil rights granted by law to citizens of this Republic not in conflict with the Constitution of Liberia." 1956 Code 10:45.

This is the rule controlling a married woman's business transactions, in which she acts independently of her husband. There is no statute which denies a married woman the right to elect to waive the privilege she is entitled to enjoy under coverture. However, her election to waive the privilege also imposes upon her all of the responsibilities resultant from whatever independent act she undertakes. *Kaizolu-Wahah* v. *Sonni,* 16 LLR 73 (1964). Authorities make the same point.

> "Married Woman. Coverture was not, at common law, a disqualification for the office of executrix or administratrix, where the husband consented to the

wife's assuming the duties of the trust, and of course, under modern statutes coverture is not a disqualification. However, in some jurisdictions, the husband must consent to the wife's acting as executrix, and give bond for the faithful performance of her duties. By the established rule of the common law, if a *femme sole* was appointed an executrix, early accepted that trust and afterwards married, her husband became joint executor with her during the coverture; or perhaps, speaking more accurately, he became executor in her right. The same rule applied to an administratrix, even in the case of the marriage of a widow who was administering her first husband's estate. The foregoing principle that a husband may act as executor in the right of his wife is no longer in general force, although it is not entirely obsolete." 21 AM. JUR., *Executors and Administrators,* § 83.

"While an administratrix, after her marriage, was incapable of doing any act of administration which was to the prejudice of her husband without his concurrence, and although the husband could discharge all the offices of the administration, she nevertheless did not cease to be administratrix and was a necessary party in all suits for and against the administration. She was even liable after the termination of the coverture, for the devastavits committed by her husband during the coverture; and after the termination of the coverture she had the same power and authority that she had before its commencement." *Id.,* note 7.

This case was commenced twenty-four years after the petitioner had notice of what he now claims to be infringement of the rights of his principals. He has attempted to excuse himself of laches by alleging intimidation, and threats made against him by the late President Tubman, whom he claims forbade him to enter an action against his father, Clarence O. Tuning, Sr., who sold the property to D. E. W. Thomas in 1922. There is no

evidence of the truthfulness of this story, and so we have only the word of the petitioner, by which he asks us to deprive the respondents of forty-nine years of legitimate and undisturbed enjoyment of real property lawfully acquired.

Under the statute of limitations all actions must be brought within three years after the cause of action has accrued, except those specifically mentioned in the statute, and cancellation does not fall within the exceptions.

> "Limitation on commencement of actions. The time within which to commence civil actions after the cause of action has accrued shall be as follows: (a) In an action to recover possession of real property, twenty years; (b) In an action to enforce a judgment rendered in a previous action, twelve years; (c) In an action to obtain payment of a debt or damages for breach of a contract based on a written instrument or acknowledgment, seven years; (d) In an action to obtain payment of a debt or damages for breach of a contract not based on a written instrument or acknowledgment, three years; (e) In an action to obtain damages for personal injuries, one year; and (f) For all other actions not specifically provided for in this or other Titles, three years. Failure to commence an action within the period specified therefor shall constitute a valid defense; but the party who wishes to avail himself of such defense must expressly plead the limitation." 1956 Code 6:50.

In counts six and seven of the respondents' answer, they have pleaded the statute of limitations as a defense for failure to bring suit before more than twenty years had elapsed from the time knowledge of the facts was obtained to the petitioner.

The petitioner has contended that the suit was not filed in 1950 because the late President Tubman forbade him from bringing suit against his father. Even if we could allow this verbal and uncorroborated allegation to stand

against the paper title which the respondents hold, what prevented the parties themselves from filing suit in their own interest within the statutory time?

In *Smith* v. *Faulkner,* 9 LLR 161 (1946), the Supreme Court upheld the dismissal of the case in respect of parties who stood by and allowed lapse of time to defeat their otherwise justified claims. The Court stated the doctrine of laches at page 175.

> "There is a defense peculiar to courts of equity founded on lapse of time and staleness of claim where no statute of limitations directly governs the case. In such cases the courts often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights."

For these several reasons stated herein, and because we are reluctant to interfere with or disturb the status quo after so many years of undisturbed possession, and also because we are not convinced that this suit could not have been brought earlier, we affirm the judgment of the court below, with costs against the petitioner. It is so ordered.

Affirmed.