SANDY FORD HORACE, Appellant, *v.* SARAH V. HARRIS, by her Husband S. ALFRED P. HARRIS, Appellee.

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

Argued March 9, 20, 1947. Decided May 9, 1947.

1. Under our practice the party filing the last pleading is entitled to move the court first on any legal defect in the pleading of his adversary.
2. A party is not permitted to move the court with reference to any legal defect in the pleadings of his adversary to which the attention of the court will not have been previously called by some regular pleading.
3. In ejectment the plaintiff must show a legal and not merely an equitable title to the property in dispute.

On appeal from decision in favor of plaintiff in action of ejectment, *judgment reversed and remanded.*

B. G. Freeman for appellant. *A. B. Ricks* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

Upon the hearing of the records in this case certified to us, there vividly appeared to us so many irregularities and inconsistencies during the trial in the court below and such a gross travesty of justice committed by His Honor Emmanuel W. Williams, the judge resident and presiding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, that questions were directed to Counsellor A. B. Ricks, counsel for appellee, as to whether or not he considered the judgment resulting from said trial a fit subject for reversal with an order for the remand of the case for a legal and proper trial. It would seem as if said counsel were under the influence of his client for he hesitated taking a definite position in the

matter, notwithstanding his concession of the irregularity of the trial. Practicing lawyers are warned not to allow their clients to lead and direct them in the conduct of cases, since such clients invariably are not specialists in the science of the law and do not know how causes should be properly conducted. The lawyers are to correctly and properly advise their clients as to the true course for adoption and there should be no hesitation at all in doing this. A lawyer should be unwilling to further prosecute or defend a client's cause or interest where such client is unwilling to abide by his suggestions and advice. To adopt a contrary procedure would be lowering the prestige and dignity of the profession. It is hoped that this warning will be seriously taken.

We will now point out some of the irregularities and inconsistencies shown in the records. Sarah V. Harris, through her husband, S. Alfred P. Harris, entered an action of ejectment against Sandy Ford Horace for a parcel of land in the settlement of Bensonville designated as lot Number 12 containing five acres of land, which she, the plaintiff, claimed that defendant was in possession of and was unlawfully withholding. Along with her complaint, she made profert of a deed from Nancy Goodridge which she alleged gave her title to said parcel of land. The defendant appeared and, answering the complaint of plaintiff, denied being in possession of a parcel of land containing five acres of the property of plaintiff and designated as lot Number 12. Defendant submitted that he is truly in possession of a certain parcel of land in the same settlement of Bensonville also designated as lot Number 12 and containing ten acres of land, but obviously in a different location from the alleged five acres of the plaintiff. Defendant's land was alleged to have been bought from Eliza Carver. There were other issues raised in said answer.

The pleadings rested with this answer of the defendant. However, when the case came up for trial before Judge

Williams, the plaintiff, who had not made a reply to the answer of the defendant which would have constituted her last pleading, was allowed by the court to interpose a motion to dismiss the defendant's answer upon alleged defects therein. The said motion was both entertained and sustained over the rigid resistance of the defendant. It is inconceivable how a counsellor practicing in our courts found himself in the position of submitting such a motion in the manner done and with the surrounding circumstances.

The judge's ruling sustaining the motion ruled the answer of the defendant out, particularly, "that part of it that refers to the unprobated copy of the deed." This certainly left the defendant in the unfortunate position of being compelled to rest his defense upon the bare denial of the facts stated in the complaint of the plaintiff. This position of the plaintiff below, now appellee, which was sustained by the trial judge, does not find support in our practice, for the Court has repeatedly held that the party filing the last pleading is entitled to move the court first on any legal defect in the pleadings of his adversary. *Gould* v. *Gould,* 1 L.L.R. 389 (1903). It is not contemplated that parties are to be allowed to move the court on any legal defect in the pleadings of their adversaries to which the attention of the court will not have been previously called by some regular pleading. The granting of this motion, by the trial judge especially in face of the strong resistance made, was irregular and erroneous.

This erroneous ruling of the trial judge which left the defendant with a bare denial created such an irreparable injury to his defense that it permeated the whole trial. For, if the answer of the defendant had not been ruled out as it was, said defendant would have been able to stand on the forceful allegation of facts set out in said answer. In such a case, the trial court would have been confronted with a consideration of the issue of whether or not the five acres of land claimed by the plaintiff is a

portion of the ten acres which defendant claimed and which defendant said he bought from Eliza Carver. In this case it seems to this Court that the employment of a surveyor would have been necessary in the determination of the issue. It is, therefore, not clear how the trial judge under these circumstances was able to direct a verdict for the plaintiff as he did; for whilst it might be conceded that plaintiff is possessed of the five acres of land which she bought from Nancy Goodridge, which statement has not been attacked, yet there is no evidence on record that the defendant was in possession of the identical parcel of land and also was unlawfully withholding it from plaintiff.

In ejectment proceedings "plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title." *Bingham* v. *Oliver,* 1 L.L.R. 47, 49 (1870); *Savage* v. *Dennis,* 1 L.L.R. 51 (1871). In ejectment the plaintiff must show a legal and not merely an equitable title to the property in dispute; *the weakness of the defendant's title alone will not enable plaintiff to recover. Birch* v. *Quinn,* 1 L.L.R. 309 (1897); *Reeves* v. *Hyder,* 1 L.L.R. 271 (1895).

In view of these and many other irregularities and inconsistencies not pointed out, we have no alternative but to reverse the judgment of the lower court as well as its irregular and inconsistent ruling dismissing the answer in the absence of a reply attacking it; and to remand the case for trial *de novo.* Costs of these proceedings are to abide final determination; and it is hereby so ordered.

Reversed.