

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
 BEFORE HER HONOR: JAMESETTA H.WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Mohamed E. Koroma and his Grantor, Daniel Tor, of the City of Monrovia, Liberia.....Appellants)	
)	
VERSUS)	APPEAL
)	
George E. Henries, Beverly Barns and her husband, Roland Barns, James A. A. Pierre, Jr. and J. C. N. Howard, Jr., all of the City of Monrovia, Liberia.....Appellees)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Mohamed E. Koroma and his Grantor, Daniel Tor, of the City of Monrovia, Liberia.....Movants)	
)	
VERSUS)	MOTION FOR NEW TRIAL
)	
George E. Henries, Beverly Barns and her husband, Roland Barns, James A. A. Pierre, Jr. and J. C. N. Howard, Jr., all of the City of Monrovia, Liberia.....Respondents)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Mohamed E. Koroma and his Grantor, Daniel Tor, of the City of Monrovia, Liberia.....Plaintiffs)	
)	
VERSUS)	BILL IN EQUITY TO REMOVE CLOUD ON TITLE
)	
George E. Henries, Beverly Barns and her husband, Roland Barns, James A. A. Pierre, Jr. and J. C. N. Howard, Jr., all of the City of Monrovia, Liberia.....Defendants)	

Heard: July 24, 2023

Decided: August 11, 2023

MR. JUSTICE GBEISAY, SR. DELIVERED THE OPINION OF THE COURT.

This Court has been called upon by the appellants, Mohammed E. Koroma and his grantor, Daniel K. Tor, to reverse the final ruling of the trial court entered in favor of the appellees, George E. Henries, Beverly Barns and her husband, Roland Barns, James A. A. Pierre, Jr. and J. C. N. Howard, Jr. on April 3, 2019, upon a jury verdict of not liable.

The facts gleaned from the records before this Court reveal that on November 20, 1989, the appellants filed before the Sixth Judicial Circuit, Civil Law Court for Montserrado County, an action of Bill in Equity to Remove Cloud on Title against the appellees. The co-appellant, Mohammed Koromah, contended principally that on August 22, 1981, he purchased from co-appellant, Daniel K. Tor, the sole executor of Jeda Tor's Estate, two one quarter (2-1/4) lots of land out of 46 acres of land owned by said estate, lying and situated on Bushrod Island, Montserrado County; that the co-appellant, Mohammed Koromah, constructed thereupon a house and lived therein for eight years before said property was leased to Alliance Motor for twenty (20) years in 1989; that the appellees asserted their claims to the subject property eight years thereafter; hence, prayed the court to confirm his title and enter a decree denouncing any other titles to said property.

On December 16, 1989, one of the co-appellees, George E. Henries, filed his answer and argued that the property, subject of the litigation, was purchased by his late father Richard A. Henries as follows: one lot purchased in the name of co-appellee, George E. Henries, in 1952, and the other purchased in the name of his father, Richard A. Henries, in 1953, from C. A. Burrows who had earlier purchased 2-2/5 acres of land from the late Jeda Tor, father of the appellant's grantor, Daniel K. Tor; that since 1952, he has been in possession of the property until 1958 when same was leased to the Monrovia Breweries and has been receiving rental income; that an executor's deed was issued in his favor following the death of his father in 1980, because his father had willed to him the one lot purchased in his father's name as contained in the last will and testament; that the appellant's grantor, Daniel K. Tor, had prior knowledge that the subject property belongs to him and his father

because of communications exchanged as far back as 1978 concerning the said property; that because co-appellant Koromah had also leased portion of the subject property to the Liberia Equipment Limited, the trial court, in the interest of justice, granted a motion for sequestration of the rental incomes from both leases and placed same in an escrow account established by the court pending the final determination of the case.

Pleadings having rested and all pretrial formalities concluded the case commenced in earnest. The appellant produced three general witnesses and a subpoenaed witness, respectively: Abdullah Kromah, Mark M. Fahnbulleh, Hawa Kromah, and Eunice Parker Dahn. The appellees produced four witnesses: George E. Henries, Henry Hayes, Rev. Emmanuel Bowier, and Kempson Murray.

At the close of the production of both oral testimonies and documentary evidence, the jury was duly charged and subsequently returned with a not liable verdict in favor of the appellees; confirmed and affirmed by the trial judge upon denial of a motion for new trial, and entered his final ruling on April 3, 2019. Thereafter, the appellants noted exception to the final ruling, announced an appeal to the Supreme Court of Liberia, and filed their approved bill of exceptions on April 15, 2019.

Having thoroughly examined the bill of exceptions, we found one of the alleged errors assigned to be useful to aid the Court in making a determination in this matter.

The appellants alleged that the trial judge erred when he failed and neglected to pass on the issue of the investigative survey report raised in their motion for new trial when same constitutes a significant part of

the evidence which defines the positions [exact locations] of the party litigants.

The records reveal that on September 26, 2012, the trial court ordered an investigative survey. On December 11, 2015, the court appointed surveyor Edwin B. Boikai upon his nomination by the Ministry of Lands, Mines and Energy, to serve as the lead surveyor and was instructed accordingly. However, Edwin B. Boakai was replaced with Cyril S. Banya, the former having succumbed to death prior to the commencement of the survey. The court instructed as follows:

“The government surveyor is mandated to commence his work, only using deed(s), Map(s), Diagram(s), etc. that were pleaded by the parties and placed in the case file, along with the adjudicated map of the area in dispute...any technical representative who fails to appear having been served with a copy of the [survey] notice indicating the date and time of the survey and is absent without any tangible excuse to the government surveyor, the exercise should proceed in accordance with said survey notice...”

On April 6, 2016, surveyor Cyril S. Banya filed with the trial court the report from the investigative survey conducted and indicated therein that all the title instruments presented by the contesting parties, Mohammed Koromah’s title matched and corresponds with the ground location having conducted the exercise consistent with the instruction given by the court; that surveyor Kempson Murray represented co-defendants James A.A. Pierre and Richards A. Henries, and surveyor Mohammed Sheriff represented co-plaintiff Mohammed Koromah.

On April 25, 2016, co-defendants George E. Henries and James E. Pierre filed objection to the survey report. However, a motion to strike the objection having been filed by Mohammed Koromah on ground that one of the objectors, James A. A. Pierre, not being a party, same was

withdrawn and an amended objection was filed on May 11, 2026, with co-defendant George E. Henries being the only objector; requesting a resurvey because of discrepancy. Cogent excerpts of the objection are quoted herein for the benefit of this Opinion:

“That Surveyor Cyril S. Banya did not follow the normal and accepted technical rules required to conduct a comprehensive and impartial investigative survey; that the surveyor was required to review all the title document of all the claimants prior to the commencement of the survey; that the survey was conducted in the absence of the objector, George Henries’, personal representative; that in the face of objector’s representative, the surveyor conducted the survey using only the title deed of Mohammed E. Koromah, the process was not transparent and impartial”.

The records also show that Mohammed Koromah filed resistance, but while same was pending undetermined, the intestate of Foday Kamara filed with the trial court a bill of information contending that it should not be bound by the sequestration order issued earlier by the trial court for reason that it is not a party to the suit out of which the request and order grew. Subsequently, the Court consolidated the objection to the survey report and the bill of information having received resistance thereto, entertained arguments, and entered ruling granting the bill of information only. Not satisfied, the objector/respondent, filed before the Chambers Justice a petition for a writ of prohibition seeking to restrain the trial court but the parties soon entered a joint stipulation, the alternative writ disregarded and the matter was returned to the lower court only on the note of the rental sequestration. Thereafter, trial commenced and the jury found for the appellee, the court having entertained testimonies, documentary evidence and oral arguments.

The Court, having painstakingly given the chronology of the facts, shall now address itself to the lone error identified: the alleged failure of the trial judge to pass on the issue of the investigative survey report. The

plaintiff, now appellant, filed an action of Bill in Equity to Remove Cloud from Title and predicated on pleadings exchanged, the trial court ordered an investigative survey with the sole purpose of establishing: 1. whether the titles are calling for the same property, and 2. to establish the exact location/demarcation of each of the parties' property and same favored the appellant based on the instruments pleaded by the parties and used by the surveyor to which there was an objection. Our recourse to the records failed to reveal whether the objection and resistance, having been argued were disposed of prior to a full-fledged trial. The irregular manner in which the trial court conducted the trial is wanting, especially, considering that the objector contended that his technical representative was absent and his title instrument was not used by the surveyor, coupled with other irregularities.

This Court has held that whenever there exists a dispute over the same parcel of land the most appropriate thing to do, initially, is to conduct a survey with the titles relied upon by the parties, not the older title or chain of title. Speaking through Madam Justice Gladys Johnson, the Supreme Court opined that "it is not enough in an ejectment [equity] suit that a party has an older title deed; nor it is conclusive that the older title holder *ipso facto* becomes the owner of the land. What ought to be enough and conclusive is that the land in dispute is the same parcel or portion; the method or process to arrive as such finding is to conduct a survey using the title deeds relied upon". Emphasis supplied. *Joseph Surmie, Norwah Garkpor, et al v. Calvary Baptist Church*, Supreme Court Opinion, March Term, A.D. 2007. In the instant case, an investigative survey was ordered, had, and an objection which averred serious discrepancy and omission was filed but the trial court made no reference to same but ruled as it did. This Court is of the strong opinion that to establish the true owner of the disputed property, the objection to the

investigative survey report must be heard, sustained or denied, to enable this Court appreciate the contentions raised by the objector and the returns thereto. For instance, if the objector's deed was not utilized and his surveyor not present, then the survey report has no substance or evidentiary value.

Before concluding this Opinion, and for educational purpose, we take cognizance of the nature of the case before us for the purpose of setting the basis of our decision which finds support in Chapter 51, Subsection 51.15(1) of the Civil Procedure Law, 1LCLR, which states that: “the appellate court shall not consider points of law not raised in the court below and argued in the briefs, except that it may in any case, in the interest of justice base its decision on a plain error apparent in the record”.

We observed that the certified records transcribed to this Court revealed that the appellant, plaintiff in the court below, filed before the Civil Law Court, Sixth Judicial Circuit for Montserrado County, a Bill in Equity to Remove Cloud from Title and that the trial was conducted under the watch of a jury. This aspect of the proceedings we find as being irregular, in that a Bill in Equity to Remove Cloud from Title is a proceeding in which the trial court sits without the aid of a jury, as a matter of law. The empaneling of jury in this case, we must conclude that it was a plain error on the part of the trial court as provided for in the Civil Procedure Law, Subsection 51.15(1). The Supreme Court, passing on the issue of equity proceedings has held that “in equity proceedings, the trial judge sits without a jury”, *Pratt et al v. Smith et al*, 26 LLR 160 (1977); *African Hebrew Israelite Foundation v. Thorpe et al*, 31 LLR 351 (1983). Holding this principle of law in vogue, a Bill in Equity to Remove Cloud from Title, unlike an ejectment action, same being an equity proceeding, the court

must sit without the aid of a trial jury. Hence, we find that the trial judge erred when the court conducted the equity proceedings with the aid of a trial jury.

Wherefore, and in view of the foregoing, the final ruling of the trial court confirming the not liable verdict of the trial jury is reversed and the case remanded for a new trial. The Clerk of this Court is ordered to send a Mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case, constitute a survey team to conduct a survey using the instruments pleaded by the parties in the records before this Court, and give effect to the Judgment emanating from this Opinion. Costs are to abide final determination. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing Counsellors Alhaji Swaliho A. Sesay and Sunifu S. Sherif appeared for the appellants. Counsellors Anthony D. Mason and Cooper W. Kruah, Sr. appeared for the appellees.