

ABRAHAM MORRIS et al., Appellant, v. MUSA B.
KEITA, Appellee.

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

Heard: November 3, 1999. Decided: December 16, 1999.

1. In an action of ejectment, the defendant cannot claim title to the premises in a third party and at the same time claim title in himself to the same property by adverse possession.
2. An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty (20) years.
3. Title to land by adverse possession owes its origin to and is predicated upon the statute of limitation, and although the State does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law.
4. The statute of limitations in our jurisdiction is a source of title, which is a valid and effectual title as a grant from the Republic.
5. A claim of legal title in a third party and a claim of possessory right or title by a defendant in an action of ejectment are two separate and distinct defenses or claims. However, a claim of legal title in a third party and a claim of title through adverse possession contradicts one another as the proof of one disproves or extinguishes the other.
6. A claim of title in a third party does not vest title in a second party, whose possession of the premises is at the instance of the third party.
7. A plea of adverse possession is an affirmative plea or defense in our jurisdiction. A party pleading an adverse possession must therefore admit that plaintiff has a color of title and a cause of action against the defendant party, but that the plaintiff failed and neglected to take any steps to protect his own interest within twenty (20) years as provided by statute.
8. A party claiming adverse possession of real property cannot also plead that title to the disputed property is vested in a third party.
9. Summary judgment can be granted by a trial court if it is satisfied that there is no genuine issue as to any material fact and the party in whose favor judgment is granted is entitled to it as a matter of law.

Appellee instituted an action of ejectment against the appellant, claiming title to a certain parcel of land at Bushrod Island, Monrovia, based on a title deed proferted with his

complaint. In their answer, appellants submitted that the parcel of land belonged to the Cooper family, who had permitted Abraham Morris, the principal appellant, to occupy same but appellants, having lived and occupied the property openly and without any molestation for a period of more than twenty (20) years as of the filing of the complaint, they own said property by virtue of adverse possession (the statute of limitation). In addition to filing a reply, appellee moved the court for a summary judgment in his favor and this motion was resisted by appellants, a hearing had, and the trial court's ruling reserved.

Before the trial court rendered its ruling on the motion for summary judgment, the Cooper family moved to intervene as party defendants; but their motion was resisted by appellee. When the motion for intervention was called for hearing, the Cooper family did not appear and so their motion was denied pursuant to the law on default on motions. The Cooper family then filed another motion for reconsideration and relief from the judgment on the motion to intervene; and this new motion was also resisted by appellee. When this motion for reconsideration was called for hearing, again the Cooper family did not appear and so this motion was also denied for the same reason as the motion to intervene.

In the absence of any remedial proceeding to review the interlocutory ruling of the trial court on the motion to intervene, the Supreme Court ruled that that matter was not before it.

As to the motion for summary judgment, it was heard by the trial court and granted. Appellants excepted and announced an appeal to the Supreme Court. Among the several contentions were the reiteration of the claim that the Cooper family originally owned the property and that appellants now own it by adverse possession. Appellants also claimed that appellee is not a citizen of Liberia and so could not acquire fee simple title to real property as the Liberian Constitution provides that only Liberian citizens may own real property in fee simple.

After a review of the records and entertainment of arguments, the Supreme Court held that a party cannot claim

title to property by adverse possession and yet aver that a third party owns the property. The Supreme Court also held that since adverse possession is an affirmative plea, the party who asserts it must have admitted color of title in the adversary and relied only on his open, notorious and adverse possession of the property for a period of twenty or more years as the basis for his claim to title. Putting these two laws together, the Supreme Court ruled that summary judgment was properly granted as there was no genuine issue in dispute for the matter to go to trial by a jury and appellee was entitled to judgment as a matter of law.

The Supreme Court also said that as much as it would have wanted to delve into the issue of the citizenship of appellee, it was precluded from doing so because appellants had already admitted that the Cooper family own the title to the land and appellants did not produce any evidence to show how they acquire any title or right of possession in the property. So the issue of the citizenship of appellee as a determinant of title to the property as between appellee and appellants did not arise.

In confirming the judgment of the trial court, the Supreme Court specifically said that its judgment decided the matter only as between appellants and appellee and not the Cooper family. The Supreme Court noted that if the Cooper family believe that the land belongs to them; they have adequate remedy at law against appellee.

As to the claim of damages, the Supreme Court said that the issue is one of fact which must be decided by a jury trial, not summary judgment proceeding; and so if appellee thinks that he is entitled to damages, he may present a new case and prove it before a trial jury.

The Supreme Court therefore *affirmed* the trial court's judgment with the *modification* that damages should not be recovered.

Moses K. Yangbe appeared for Appellants. *George S. B. Tulay* appeared for Appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case is before us on an appeal from the ruling of His Honour Wynston O. Henries, Resident Circuit Judge of the Sixth Judicial Circuit Court for Montserrado County, granting a motion for summary judgment in favor of Musa B. Keita, appellee, in an action of ejectment instituted by appellee, as plaintiff, against Abraham Morris and others, appellants herein, as defendants, during the September 1998 Term of that court.

The facts, as gathered from the records in this case, reveal that Musa B. Keita, appellee, instituted an action of ejectment on July 24, 1998, against Abraham Morris and all those under his control in the Civil Law Court of the Sixth Judicial Circuit Court, Montserrado County. In his four-count complaint, appellee claimed ownership of a piece of land located and lying on Randall Street, near the Mesurado River, containing three (3) lots, which property he allegedly purchased from one Bangalee Keita on the 6th day of February, A. D. 1963 for a consideration of \$300.00 (Three Hundred Dollars). Appellee attached a copy of his deed to the complaint to substantiate his claim of title to the aforesaid property. Appellee also alleged that appellants illegally, unlawfully and wrongly entered and occupied the premises without his consent. Appellee therefore prayed the trial court to evict, eject and oust appellants from the premises, place him in possession thereof, and award unto him the sum of US\$150,000.00 (One Hundred Fifty Thousand United States Dollars) as general damages for appellants' unlawful, illegal and wrongful withholding of his property and for the injury, damages, embarrassment and inconveniences sustained by him at the instance of appellants.

Appellants were duly summoned and returned served. Appellants filed a twelve-count answer on the 3rd day of August, A. D. 1998, denying that appellee had any right to the property. Appellants alleged in count 2 of their answer that the premises occupied by them were owned by the legitimate heirs and grandchildren of the late Jesse F. Cooper. In count 6 of the answer, they claimed title to the subject property by adverse

possession, contending that the appellee was barred by the statute of limitations on ground that they lived openly, notoriously and continuously on the premises over and above the period of twenty (20) years as at the date of the complaint. Appellee filed a reply and pleadings in this case rested.

On the 29th day of August, A. D. 1998, appellee filed a six-count motion for summary judgment, contending that appellants did not profert any deed or lease agreement to their answer. As such, according to appellee, there was no title in issue on ground that appellants cannot claim title in the Cooper family and at the same time claim title to the premises by adverse possession.

This motion for summary judgment was resisted by appellants on the 11th day of September, A. D. 1998. This Court deems count 6 of the resistance relevant for the determination of this case. In this count, appellants contended that the appellee's title deed was void *ab initio* on ground that he is not a born or naturalized citizen of the Republic of Liberia to own land as required by the Liberian Constitution.

The trial judge heard the motion for summary judgment and reserved ruling.

The certified records in this case also indicate that the heirs of the late James Francis Cooper, Jesse R. Cooper, Augustus W. Cooper and Edward Cooper, represented by Henry Reed Cooper, filed a five-count motion to intervene as party defendants in the ejectment suit. The intervenors claimed ownership of the subject property, and alleged that Abraham M Morris, the main defendant in the ejectment suit, was a "watch dog" or care-taker of the intervenors, whose representation was insufficient to protect their interests and rights to the property in litigation. This motion to intervene was resisted. However, the intervenors defaulted by not appearing for the hearing of the motion to intervene and so their motion was denied. They then filed a motion for reconsideration and for relief from judgment; which latter motion was also resisted. The intervenors again defaulted, and their motion for reconsideration and for relief was denied by the trial judge.

On the 3rd day of November A. D. 1998, the trial judge, His

Honour Wynston O. Henries, granted appellee's motion for summary judgment and ordered the issuance of a writ of possession to place appellee in possession of the premises. appellants excepted to this ruling and announced an appeal to this Court.

Appellants contended before this Court that the Cooper family is the legitimate original owner of the subject property, and that Co-appellant Morris was placed in possession thereof by the Cooper family. Appellants also claimed the premises by adverse possession on the ground that they openly, notoriously and adversely lived on the said premises for more than twenty years without any molestation. It is contended by the appellants that the trial judge erred in granting the motion for summary judgment notwithstanding that they had alleged fraud in their answer, as well as the resistance to the motion for summary judgment. Further, appellants contended that the trial judge erred when he ruled that appellants did not affirmatively plead the statute of limitations, in that, they admitted the apparent truth of the appellee's title in their answer, as a color of title may be expressed or implied. Moreover, appellants argued that the trial judge erred when he ignored their plea in bar and that appellee, Musa Keita, is not qualified to own title to land in fee simple absolute in the Republic of Liberia for reason that he is not a Liberian citizen.

Based on the foregoing, appellants prayed this Honourable Court to reverse the judgment of the trial court.

In response, appellee contended that even though appellants claim that they were placed in possession of the premises by the Cooper family, they failed to exhibit any power of attorney from the Cooper family or a lease agreement executed by and between them and the Cooper family. Besides, appellee also contended that the Cooper family filed a motion to intervene but defaulted by not appearing for hearing thereof, thereby bringing their right to the disputed property to a close in this litigation.

It was strenuously argued by the appellee that appellants publicly admitted appellee's title deed for the premises when they claimed title to the disputed property by adverse possess-

ion. Appellee maintained that based on this admission there was no disputed factual issues in this case to warrant a trial by jury . Appellee also submitted that in their resistance to the motion for summary judgment, appellants failed to show that there was any genuine issue of fact for trial by a jury. Appellee concluded that therefore the trial judge did not err in granting a motion for summary judgment; the trial court properly determined that there was no genuine issue of facts to warrant the case being submitted to a jury trial and that appellee was entitled to judgment as a matter of law.

Appellee therefore prayed this Honourable Court to confirm and affirm the judgment of the lower court.

The facts and circumstances in this case present one germane issue for the determination; and that is:

Whether or not the ruling of the trial judge granting a motion for summary judgment was proper and lawful.

A recourse to the certified records in this case reveals that after pleadings in the ejectment suit rested, a motion for summary judgment was filed by appellee, resisted by appellants, and the trial court entertained argument *pro et con* and reserved ruling. Thereafter, the Cooper family filed a motion to intervene as party defendant and this was resisted by appellants. While appellants and appellee were still awaiting the trial judge's ruling on the motion for summary judgment, the trial judge assigned the hearing of the motion for intervention. However, the Cooper family defaulted by not appearing for hearing of the motion; and pursuant to the law on default on motions, the motion to intervene was denied and dismissed. Civil Procedure Law, Rev. Code 1:10.7. The Cooper family subsequently filed a motion for reconsideration and for relief from judgment; but again the Cooper family defaulted on this second motion by not appearing for its hearing as assigned. The trial judge therefore denied the motion for intervention because of their default.

At this juncture, the intervenors failed and neglected to seek the aid of a remedial process from this Court as the law directs for a party aggrieved by an interlocutory ruling of a trial court. Hence the ruling of the trial judge denying the motion for

intervention is not before this Court.

This Court also observes from the records in this case that co-appellant, Abraham Morris, did not show any power of attorney from the Cooper family authorizing him to defend the rights and interests of the Cooper family with regards to the disputed property in litigation. As much as this Court would like to pass upon the issue of fraud and the citizenship of appellee, which is necessary hold title to property in fee in Liberia, this Court firstly declines to decide these issues on the ground that co-appellant Morris does not have the legal capacity to raise any defenses for and on behalf of the Cooper family. Secondly, this Court observes the absence of any lease agreement between the Cooper family, as lessor, and co-appellant Abraham Morris, as lessee, as evidence of a color of possessory rights to the premises.

We shall now decide the issue of whether or not the ruling of the trial judge granting the motion for summary judgment was proper and lawful.

Appellants claimed that title to this property is vested in the Cooper family and at the same time they claim title to said property by adverse possession. This Court holds that the appellants cannot claim title to the premises in a third party and at the same time claim title to the same property by adverse possession. The rationale is that a claim of legal title in a third party and a claim of possessory right or title by a defendant in an action of ejectment are two separate and distinct defenses or claims. A claim of title in a third party does not vest title in a second party, whose possession of the premises is at the instance of the third party. In other words, the claim to title of premises in the Cooper family does not vest any title in the appellants in the absence of any documentary evidence. The Cooper family, under our law, procedure and practice in this jurisdiction, is the proper party defendant to protect the rights and interests of its property. The Cooper family therefore has adequate remedy at law against appellee Keita if said Cooper family so desires.

The statute provides that "an action to recover real property or its possession shall be barred if the defendant or his privy

has held the property adversely for a period of not less than twenty (20) years." For reliance, see: Civil Procedure Law, Rev. Code 1:2.12(2). A party, therefore, can claim adverse possession of a real property wherein such party is in possession of a premises overtly and continuously for the period of twenty (20) years.

A plea of adverse possession is an affirmative plea or defense in our jurisdiction. A party pleading an adverse possession must therefore admit that plaintiff has a color of title and a cause of action against the defendant party, but that the plaintiff failed and neglected to take any steps to protect his own interest within twenty (20) years as provided by statute. In this regard, a party claiming adverse possession of real property cannot also plead that a title to the disputed property is vested in a third party, as in the instant case.

In the case *Thorne et al. v. Thomson*, 3 LLR 193, 197 (1930), this Court, speaking through Mr. Chief Justice Johnson, held that "title to land by adverse enjoyment owes its origin to and is predicated upon the statute of limitation, and although the State does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law. The statute of limitations thereupon may be properly referred to as a source of title and is really and truly as valid and effectual a title as a grant from the Sovereign Power of the State."

Thus, the statute of limitations in our jurisdiction is a source of title, which is a valid and effectual title as a grant from the Republic. It follows therefore that the statute of limitation cannot be invoked by a defendant, who at the same is claiming title of the real property in a third party, as in the case under review.

Our revised Civil Procedure Law provides that a motion for summary judgment can be granted by a trial court if it is satisfied that there is no genuine issue as to any material fact and if the party in whose favor judgment is granted is entitled

to it as a matter of law. For reliance, see: Civil Procedure Law, Rev. Code 1:11.3(3). In the case at bar, the trial judge ruled granting a motion for summary judgment on grounds that there was no genuine issue of material fact for trial. In *Dennis et al. v. Philips, et al.*, 21 LLR 506, 513 (1973), this Court held that: "Summary judgment can only be granted when no justiciable material issue of fact is presented to the court." We uphold the holding in the *Dennis et al.* case and hereby rule that the trial judge properly and legally granted the motion for summary judgment since there was no genuine issue as to any material fact, and that the appellant, Musa B. Keita, in whose favor judgment was granted, is indeed entitled to it as a matter of law.

We, however, hold that this case is between Musa B. Keita and Abraham Morris and other persons occupying the land in question; and as such, the judgment rendered against Abraham Morris and these other persons is not binding on the heirs of the late James Francis Cooper, Jesse R. Cooper, Augustus W. Cooper and Edward Cooper, who were never made a party due to their default.

Wherefore, and in view of the foregoing, it is the considered opinion of this Honourable Court that the judgment of the trial judge should be, and the same is hereby affirmed and confirmed with modification that appellee Musa B. Keita is not entitled to any general damages in the absence of any proof of such damages. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and enforce its judgment. Costs against the appellants. And it is hereby so ordered.

Judgment affirmed with modification.