IN THE HONORABLE 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

Fallah Willie, Joseph Saah and all occupants under their Control and Archie T. Nazzal, also of 72nd community, Paynesville City, Montserrado County, Republic of Liberia
……..…….....Appellants
Versus
Yussif B. Fahnbulleh and Frazeanatu Fahnbulleh, represented by and thru their Guardian, Madam Doris Z. Meanwon of 72nd Community, Paynesville City, Montserrado County, Republic of Liberia…….Appellees

APPEAL

GROWING OUT OF THE CASE:

Fallah Willie, Joseph Saah and all occupants under their Control and Archie T. Nazzal, also of 72nd community, Paynesville City, Montserrado County, Republic of Liberia
……..…….....Movants
Versus
Yussif B. Fahnbulleh and Frazeanatu Fahnbulleh, represented by and thru their Guardian, Madam Doris Z. Meanwon of 72nd Community, Paynesville City, Montserrado County, Republic of Liberia……..…..Respondents

OBJECTION TO ARBITRATION REPORT

GROWING OUT OF THE CASE

Yussif B. Fahnbulleh and Frazeanatu Fahnbulleh, represented by and thru their Guardian, Madam Doris Z. Meanwon of 72nd Community, Paynesville City, Montserrado County, Republic of Liberia…….…….....Movants
Versus
Fallah Willie, Joseph Saah and all occupants under their Control and Archie T. Nazzal, also of 72nd community, Paynesville City, Montserrado County, Republic of Liberia
……Respondents

MOTION FOR ARBITRATION

GROWING OUT OF THE CASE

Yussif B. Fahnbulleh and Frazeanatu Fahnbulleh, represented by and thru their Guardian, Madam Doris Z. Meanwon of 72nd Community, Paynesville City, Montserrado County, Republic of Liberia…….…….....Plaintiffs
Versus
Fallah Willie, Joseph Saah and all occupants under their Control and Archie T. Nazzal, also of 72nd community, Paynesville City, Montserrado County, Republic of Liberia
……..……Defendants

ACTION OF EJECTMENT

HEARD: June 6, 2023 DECIDED: August 11, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This case is before us on appeal from the final ruling of the assigned Judge of the 6th Judicial Circuit, Civil Law Court, Montserrado County, sitting in its March Term A.D. 2016 in an action of ejectment filed by Yussif B. Fahnbulleh and Frazeanatu Fahnbulleh, represented by and through their Guardian, Madam Doris Z. Menwon of 72nd Community, Paynesville City, Montserrado County, appellees herein, against Fallah Willie, Joseph Saah and all occupants under their control and Archie T. Nazzal, also of 72nd community, Paynesville City, Montserrado County, Republic of Liberia, appellants herein.

The facts as gathered from the certified records of the case revealed that on December 9, 2013, the appellees by and through their guardian, (Natural mother) Madam Doris Z. Menwon, instituted an action of ejectment against appellants at the 6th Judicial Circuit, Civil Law Court, Montserrado County. The appellees alleged in their complaint that they are minor children of Madam Doris Menwon and Boakai Fahnbulleh, who were the original owners of the property and deeded the property, subject of these proceedings, to their minor children after they got divorced; that the said property lies along the Somalia Drive within the 72nd Barracks Community, and the frontage of the property faces the Somalia Drive. The appellees further alleged that appellants have encroached upon and had illegally taken over and now exercise control of portion of their property and had set up a mix-shape garage between appellees' property and the main Street, completely obstructing the egress and ingress of the property. The appellees therefore instituted this action of ejectment against appellants, who are believed to be the owners and operators of the garage.

The records show that the appellants filed their answer on December 19, 2013, along with a motion to dismiss, alleging amongst other things, that there was another case pending in the same court between the same parties. The appellees resisted the appellants' motion to dismiss and informed the court that the appellees were not party to the case that the appellants relied upon to file the motion to dismiss. The appellants' motion to dismiss was heard and denied by the court. The records further revealed that all of the pre-trial motions filed by the appellants were heard and passed upon in keeping with law. Accordingly, on October 24, 2014, the appellants' counsel filed a Motion to Intervene in favor of the Intestate Estate of Dana Nazzal by and through the administrator, Archie T. Nazzal, along with an Intervener's answer. The appellees did not oppose the motion to intervene filed by the appellants' counsel for and on behalf of the Intestate Estate of the late Dana Nazzal by and through the administrator, Archie T. Nazzal; therefore, the court granted the said motion and the appellees filed its reply to the intervener's answer within the time required by the statute.

We note that on June 25, 2014, the appellees filed three counts motion for arbitration; stating therein that the case involves parties who are contending over the ownership of properties with different metes and bounds; that since the metes and bounds are different, according to the appellees, the most proper, effective and efficient way to proceed to a justiciable outcome of the controversy between the parties is by arbitration. The appellees therefore requested the trial court to set up a "Board of Arbitration" to determine the true identity of the disputed property in keeping with the parties' respective deeds, which will form the basis of the court final ruling. The motion was assigned, heard and granted by the court; even though the appellants' counsel informed the court that he did not receive copy of the appellees' motion for arbitration. In his ruling on the motion for arbitration filed by the appellees, the trial judge stated that from the careful perusal of the case file, the appellees motion for arbitration was filed on June 24, 2014. Thereafter, three notices of assignments were issued out of the court and served on the parties for the hearing of the appellees' motion for arbitration on August 21, 2014, September 30, 2014 and November 7, 2014, respectively. The sheriff returns show that all counsels for the parties were served the notices of assignment; and a further indication on the face of the notices of assignment fully established that the counsels for the parties did sign for and received copies of the notices of assignment for the hearing of the appellees' motion for arbitration. The court further stated that the contention raised by the appellants' counsel is baseless and cannot be continence by the court; that because the appellants were aware of the motion for arbitration filed by the appellees and failed to take necessary action(s) in keeping with law, couple with the fact that the case is an ejectment action, and that arbitration, being one of the proper remedy at law, the court thereby granted the appellees' motion for arbitration and ordered the clerk of the court to write the Ministry of Lands, Mines and Energy, (now Liberia Land Authority [LAA]), to appoint or nominate a License Surveyor and submit his/her name to the court to serve as the chairman for the "Board of Arbitration".

A perusal of the certified records shows that Mr. Jimmy K. Davies, License #052, Republic of Liberia, was nominated by the Ministry of Lands, Mines and Energy now Liberia Land Authority) to serve as chairman of the Board of Arbitrators. The appellants, by and through a letter dated March 24, 2015, addressed to His Honor Johannes Z. Zlahn, assigned circuit Judge at the 6th Judicial Court, Montserrado County, submitted the name of their surveyor, in person of Mr. Robert Thomas, to serve as their technical representative and member on the Board of Arbitration. Also the appellees submitted Mr. Murana Sheriff as their technical representative and member on the Board of Arbitration.

The records show further that the Board of Arbitration executed its work and submitted its report to the court on May 25, 2015. Thereafter, the appellants filed objection to the arbitration report substantially stating that, upon the filing of the action of ejectment by the appellees and the disposition of all pretrial motions, the parties, for the sake of time, energy and money, resolved and agreed to consolidate and to have the case subjected to arbitration so as to quiet title; that the surveyors were sworn, qualified and instructed to conduct the survey as agreed upon by the parties. However, the appellants stated, during the conduct of the survey, the appellees were not informed and were not represented by their technical representative. The appellants contended that survey report failed to show that the appellants and/or their technical representative was informed or contacted on or before the day of the survey; that because the appellants were not notified and did not participate in the process, couple with the intervention of the representative of the Ministry of Defense, who claimed that the contested premises belongs to and form part of the 72nd barracks, therefore, the survey was never conducted. The appellants request the court to set aside the Board of Arbitration Report and order a resurvey of the disputed property with the full participation of the appellants in keeping with law.

The appellees, in response to the objection filed by the appellants, stated that notices for the conduct of the survey on the disputed property was done by the chairman of the Board of Arbitration and distributed to all the parties, to include the appellants themselves and their legal counsel; however, the appellants' counsel deliberately refused to accept the survey notice. The appellee stated that all adjoining parties to the property were served and were present on the day of the survey; that the survey notice was published in local dailies as required by law and practice; that the objection filed by the appellants is speculative, baseless and does not alleged any legal violation(s) that would warrant the report being set aside; that the appellants do not have any evidence to substantiate their claims. The appellees therefore request the court to deny the appellants' objection and allow the chairman of the Board of Arbitration to read his report in obedience to the court's instruction.

The records show that the appellants' objection was heard and the court ruled and denied the appellants' objection. We quote below the determinative portion of the trial court final ruling:

> "….in view of the foregoing this court says that the details of the report signed by the majority members of the Board established clearly that the mix-shift garage, the subject of this action, is directly before a developed property owned by the respondents in these proceedings. More besides, the arbitrators took into consideration, the deed for the alleged grantors of the owner of the mix-shift garage in the name Diana Nazza presented to the arbitrators team by Archie Nazza. The arbitrators report shows that the description of the deed does not reflect or bears no

relationship to the property at issue. The court is therefore reluctant to disturb the arbitration report. It is therefore our considered opinion that the objection as filed by the objector is not supported by the statutory grounds as provided by the statute and the facts and circumstances of this case. The objection is therefore dismissed and the arbitration report signed by the majority members of the Arbitration Board is hereby confirmed and affirmed by this court. The clerk of this court is therefore ordered to prepare a writ of possession in favor of the Plaintiffs/Respondents herein, Yussif B. Fahnbulleh and Razanatu Fahnbulleh to have the Plaintiffs/Respondents herein placed in possession of the said property through their biological mother. The cost of these proceedings is ruled against the Objector/Defendants."

The appellant excepted to the trial court's ruling and announced appeal to this court en banc. Having heard the arguments, reviewed the facts and circumstances revealed by the records, and examined the laws controlling, the Court shall determine this case base on a single issue, which is:

1. Whether or not a party who agrees and submits to arbitration, suffers waver and lashes to raise an objection to an Arbitration report on ground that he did not enter a formal arbitration agreement?

Our answer to this question is No. The Issue of arbitration in matters of ejectment filed before our courts and how they are handled is governed by statute. Chapter 64 of the Civil Procedure law, "Arbitration" sets out a proceeding where parties to a dispute who want their matters settled by arbitration must submit a written agreement to the court stipulating terms and condition by which their dispute would be resolve by a board of arbitrators. Such agreement effectively ousts the court from delving into the hearing of a matter, except to confirm the awards made by the arbitral board with exception as set forth by *section 64.10 of our Civil Procedure Statute*. An arbitration agreement further sets out issues decided by the parties to be put before the board to be settled and the parties must agree as to those Issues to be settled in the written agreement. In an event wherein a party feel dissatisfied with the way and manner in which the process was instituted or the outcome thereof, the law sets out grounds upon which the court can set-aside the arbitration award.

From the facts and circumstances in this case, we observed that the parties did not execute any "written agreement" as mandated by the statute. However, we note that the court ordered the arbitration and constituted the Board of Arbitration based on an implied agreement by the parties. The parties agreed and submitted the case to arbitration.

We take note of count four of the appellants' objection to the arbitration report filed with the court on October 22, 2015, in which the appellants confirmed the agreement of the parties to this dispute; that is, the appellants and the appellees, taking into consideration "time, energy

and money" agreed to submit the case to arbitration, and so they did and informed the court about their decision in a motion for arbitration filed by the appellees' counsel. It states that:

> "The parties herein for the sake of time, energy and money, resolved and agreed to consolidate to have this matter subjected to arbitration so as to quiet title".

Even though the parties did not execute a written agreement as required by law, but the parties willingly, voluntarily and by consensus, submitted to arbitration, appointed their respective technical representatives and paid all costs associated with the process. The actions and inactions of the parties demonstrate that they accepted and were in agreement with the processes leading to the report of the Board of Arbitration. This Court wishes to highlight that the essence of a written arbitration agreement, as contemplated by the law, especially in ejectment actions, is to ensure an amicable, expeditious, cost-effective and confidential out-of-court resolution of disputes by the technicians and within the confines of mechanisms agreed by the parties. The arbitration agreement tends to narrow down contentious issues between the parties and narrow the scope of the controversy for its easy and inexpensive resolution. It is a mechanism agreed by the parties to resolve their dispute, and the parties are free, to a significant extent, to decide their own dispute determination mechanisms. The arbitrators decide the case and not the court. The court, in most instances confirms the award and enforces the recommendation(s) from the Board of arbitration. From the facts and circumstances in this case, the action and inaction of the parties and their failure to execute a written agreement, give this Court the impression that the Board of Arbitration had a wider scope to investigate the titles of the parties, institute a survey and determine from the titles of the parties the legitimate owner of the contested property. The records show that the Board of Arbitration performed this task within a reasonable period of time and submitted its report.

We observed that from the date of the constitution of the Board of Arbitration, up to and including the date of the presentation of the Board's report, the appellants did not take any objectionable step in highlighting its disapproval of the processes and procedures agreed upon by the parties and embarked upon by the court in the settlement of their dispute. The failure of the appellants to take appropriate steps in the timely heralding or signaling of their disapproval of the procedure adopted by the court, they suffer waver or lashes as a matter of law. Waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment. One who keeps silent when he should speak suffers waver and lashes. Laches require an element of estoppel or neglect which has operated to prejudice the party. *Williams et al v Smith et al [1983] LRSC 21; 30 LLR 633 (1983) (4 February 1983);* FDA v. FDA Workers Union et al.[1999] LRSC 35; , 39 LLR 684,

688 (1999); Intercon Security Systems, Inc. v. Philips and Tarn, [2000] LRSC 4; 40 LLR 30 (2000); and Gbartoe et al. v. Doe; [2000] LRSC 15; 40 LLR 150, 156 (2000). We hold that the parties agreed to arbitration and demonstrated their agreement by the nomination of their respective technical representatives and the payments of their respective fees to the sheriff of the court for the Chairman of the Board of Arbitration. Therefore, the appellants cannot object or dissociate itself from the Arbitration Report simply because a written agreement was not executed by the parties. Quite clearly the appellants acquiesce by its conduct.

When a case is ruled to arbitration, it is placed in the hands of surveyors to use their technical skills to arrive at a conclusion for court consideration. In the instant case, the majority members of the technical representatives; that is, the surveyor for the appellees, and the Chairman of the Board of Arbitration, appointed by the Ministry of Lands, Mines and Energy were in agreement with their technical findings to the effect that the deed for the appellees corresponded to the physical identification of the disputed property on the ground and that the appellants' deed did not fall within the parameter of the disputed property. The report further revealed that the technical representatives were in agreement as to the finding of facts regarding this property, made its conclusion and recommendation as follows:

> "We wish to recommend to this Honorable Sixth Judicial Circuit, and Civil Law Court that the demarcation of the Fahnbulleh' property was established. Henceforth, the 0.35 lot of land claimed and owned by Yussif D. Fahnbulleh & Razanatu Fahnbulleh may be placed in their possession and that the mix-shape garage encroached upon the front view of the Fahnbulleh's property".

The court confirmed the findings and recommendation of the Board of arbitration consistent with law. Chapter 64 of 1LCL Revised, provides, among other things, that the finding of the majority member of a **B**oard of Arbitration is binding on the parties and that such a report may he set aside only if proven that the said report was obtained through fraud, misrepresentation or undue influence. The Supreme Court has held that award of the board shall be binding on parties to a dispute who have agreed to submit their claims to a board of arbitration, unless grounds provided for vacating the award conforms to the statute, and that it is not within the province of the trial judge to determine factual Issues in any arbitration proceedings. *Berry v Intestate Estate of Bettie, Supreme Court Opinion, October Term 2013; Koon v. Jleh, 39 LLR 340, 341(1999).* Thus, this Court has held, the same as in other jurisdiction subscribing to the principle of arbitration and in conformity with our statute referred to above, that a court may vacate an arbitration award where the arbitrators execute their powers so that a final, definite award is not made *(Nyepan et al. v. Jarteh,, Supreme Court Opinion, March Term 2010; Kerpeh Sellu and Dweh et al. v. the Intestate Estate of Barchue, Supreme Court, October Term 2009; 4 Am Jur 2d, Alternative Dispute Resolution, Section 226).*

In its bill of exceptions, the appellants alleged in counts 7, 8 & 9 that it was not aware of, was not represented and did not participate in the survey executed by the Board of Arbitration; that the survey notice which is said to have been issued was only signed by the Chairman of the Board of Arbitration without the express consent and notice to the appellants thereby denying the appellants of representation at the alleged survey, which in actuality, did not take place, neither did Surveyor Jimmy Davies serve copy of the survey report on the appellants. The appellants further stated that the report submitted by the surveyor was procured by fraud insofar the appellants were not notified through their surveyor neither was the alleged publication filed with the court up to and including the filing of the appellants' Bill of Exceptions.

We take note of the appellants' exceptions as highlighted herein above. Nevertheless, the certified records sufficiently and undoubtedly show that on February 19, 2015, a survey notice was prepared by Mr. Jimmy K. Davis, Chairman of the Board of Arbitration, and filed with the court on February 20, 2015 at 12:03. The said survey notice stated the authority who ordered the survey, the location of the land to be surveyed, the parties involved, adjoining parties were named, the Paynesville City Corporation was also named and informed of the survey and it was signed by the Chairman of the Board of Arbitration. The appellee alleged that the appellants themselves were served and present on the day of the survey. Also, the appellee further stated that the appellants' counsel was also served with the survey notice and he refused it, on grounds that he does not have to be present on the day of the survey. This assertion the appellants' counsel did not refute or deny. In the case, *Knuckles v TRADEVO et al [2001] LRSC 17; 40 LLR 511 (2001) (6 July 2001),* the Supreme Court said that, "When an essential allegation in a pleading is not denied in the subsequent pleading of the opposing party, the allegation is deemed admitted".

On the 27th day of February 2015, the survey was conducted with the aid of officers of the Liberia National Police without any objection from any of the invited parties. The report was submitted to this court and read in open court. On November 12, 2015, lawyers representing the same parties who were present and raise no objection during the survey, filed four counts objection to the arbitration report contending in count five of the objection that although they submitted the name of their surveyor who was placed under oath by the clerk of the court but that there was no notice to their surveyor to be present during the conduct of the survey. A care perusal of the records before us further show that on February 23, 2015, the notices for the conduct of the survey was also published by the Arbitration Board, and delivered to all parties including the two main appellants who are the operators of the mix-shift garage, Fallah

Willie and Joseph Saab. The records confirmed that the appellees exhibited copy of a newspaper which shows that besides the notices that were given to the affected parties in these proceedings, members of the Board of Arbitration also published the notices in the local newspaper, copy of which is was filed with the court. These indicate that the parties, to include the appellants' surveyor or technical representative, were placed on adequate notice to be on the site of the survey and on the date and time mentioned therein to participate in the process. The appellants alleged failure to be present at the site on the date and time of the survey cannot serve as the bases to set aside the arbitration report. We hold that the parties had adequate notice for the conduct of the survey and their participation and input in the preparation of the arbitration report. The failure to so do is not one of those grounds contemplated by statute to set aside the arbitration report.

Chapter 64, section 64.4 of the Civil Procedure Law provides that the power of arbitrators may be exercised by the majority members of the board. We note that the arbitration report is signed by two members of the board which suggest that the report, as in keeping with law, is valid and may be considered by this court based on the fact and circumstances indicated by the report. Also Chapter 64.11 of the Civil Procedure Law provides grounds for vacating an award as follows:

> "§ 64.11. Vacating an award.
>
> *1. Grounds for vacating.* Upon written motion of a party the court shall vacate an award where:
>
> a) The award was procured by corruption, fraud, or other undue means; or
>
> b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession; or there was corruption or misconduct in any of the arbitrators; or
>
> c) An arbitrator or the agency or person making the award exceeded his powers or rendered an award contrary to public policy; or
>
> d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6.
>
> The fact that the relief granted in the award was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm an award."

The facts that the appellants did not specifically allege any violation provided for in the above quoted provision of the statute, and did not provide pieces of evidence that would substantially prove the said allegation, this Court agrees with the court below when it affirmed and

confirmed the arbitration report and its recommendation. Thus, the ruling of the trial judge confirming the majority report of the Board of Arbitration and its recommendation is hereby confirm and affirmed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is hereby affirmed. The Clerk of this court is ordered to send a mandate to the court below commanding the judge therein to resume jurisdiction over this case and enforce its final judgment. Costs are ruled against the appellants. AND IT IS SO ORDERED.

RULING CONFIRMED & AFFIRMED

When this case was called for hearing Counsellors Bob B. Laywheyee, Sr., Mammie S. Gongbah and S.L. Lofen Kenniiah of the NACH Legal Services Inc. and Liberty Law Firm respectively, appeared for the appellants.

Counsellors Cooper W. Kruah, Sr. and Idris S. Bility of the Henries Law Firm appeared for the appellee.