

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC  
OF LIBERIA, SITTING IN ITS OCTOBER 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

The Intestate Estate of Barzoe Tiapon by and thru its )  
 administrators Nathan S. Karpo, Isaac K. Potter, and Joe )  
 Dixon and the late Henry Caine (King Karnley Estate), ) Appeal  
 all of Fendell, Montserrado County, Republic of )  
 Liberia.....Appellants )

Versus )  
)

The Intestate Estate of Marboe Tarr and William Clarke, )  
 by and thru its Administrators and Administratrix, Tonia )  
 Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula, )  
 ..... Appellee )

GROWING OUT OF THE CASE : )  
)

The Intestate Estate of Marboe Tarr and William Clarke, )  
 by and thru its Administrators and Administratrix, Tonia )  
 Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula )  
 ..... Movants )

Versus )

) Motion to Modify  
) or Correct Award

The Intestate Estate of Barzoe Tiapon by and thru its )  
 administrators Nathan S. Karpo, Isaac K. Potter, and Joe )  
 Dixon and the late Henry Caine (King Karnley Estate), )  
 all of Fendell, Montserrado County, Republic of )  
 Liberia..... Respondents )

GROWING OUT OF THE CASE : )  
)

The Intestate Estate of Marboe Tarr and William Clarke, )  
 by and thru its Administrators and Administratrix, Tonia )  
 Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula )  
 .....Objectors )

Versus )

) Objectors'  
) Objection

The Intestate Estate of Barzoe Tiapon by and thru its )  
 administrators Nathan S. Karpo, Isaac K. Potter, and Joe )  
 Dixon and the late Henry Caine (King Karnley Estate), )  
 all of Fendell, Montserrado County, Republic of )  
 Liberia..... Respondent )

GROWING OUT OF THE CASE : )

	)	
The Intestate Estate of Marboe Tarr and William Clarke,	)	
by and thru its Administrators and Administratrix, Tonia	)	
Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula	)	
.....Plaintiff	)	
	)	
Versus	)	
	)	Ejectment
The Intestate Estate of Barzoe Tiapon by and thru its	)	
administrators Nathan S. Karpo, Isaac K. Potter, and Joe	)	
Dixon and the late Henry Caine (King Karnley Estate),	)	
all of Fendell, Montserrado County, Republic of	)	
Liberia..... Defendants	)	

Heard: October 31, 2023

Decided: February 7, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from the ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, on a motion to modify an arbitration award, filed by the present appellee, the Intestate Estate of Marboe Tarr and William C. Clarke by and thru its administratrix and administrators Tonia Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula, against the present appellants, the Intestate Estate of Barzoe Tiapon, by and thru its administrators Nathan S. Karpo, Isaac K. Potter, and Joe Dixon, and the King Karnley Estate, in which final ruling, the trial Judge His Honor Scheaplor R. Dunbar ruled modifying the arbitration award as submitted by the board of arbitration and awarding all of the Six Hundred Twenty-Five (625) acres of land in contention to the appellee on the doctrine of superior title.

The facts as culled from the certified records show that on April 14, 2010, the Intestate Estate of Marboe Tarr and William Clarke, appellee, by and thru its administratrix and administrators Tonia Carter Deableh, Arthur Utee Berrian and Varney D. Kerkula, filed an action of ejectment against the Intestate Estate of Barzoe Tiapon by and thru its administrators Nathan S. Karpo, Isaac K. Potter, and Joe Dixon and the King Karnley Estate, appellants, alleging inter alia, that on August 7, 1895, it purchased Six Hundred Twenty-Five (625) acres of land lying and situated in the Fendell area, Montserrado County, from the Republic of Liberia, obtaining a public land sale deed signed by President Joseph J. Cheesman. The appellants filed their responsive pleadings denying the averments in the appellee’s complaint and asserting ownership to some Two Hundred Forty-Two (242) acres of land within the same vicinity, tracing title to the Republic of

Liberia through an aborigine deed signed by President Arthur Barclay in 1908. The appellee subsequently filed its reply denying the averments in the appellants' answer and further confirming the averments in its complaint.

Pleadings having rested and the law issues disposed of, on August 12, 2010, the parties entered into an arbitration agreement, with each nominating a registered and licensed surveyor to represent its interest on the Board of Arbitration constituted by the trial court. Surveyor Tommy Kerkula represented the King Karnley Intestate Estate; Surveyor Henry Lamidine represented the Intestate Estate of Marboe Tarr and William Clarke; Surveyor Samuel Danway represented the Barzoe Tiapion Intestate Estate; while Surveyor Jimmy K. Davis, Senior Surveyor, Ministry of Lands, Mines and Energy served as the Chairman on the Board of Arbitration.

On June 21, 2012, the board of arbitration issued a survey notice informing the parties, and the adjacent landowners about the conduct of the survey on Friday, June 29, 2012 at the precise hour of 10:00 A.M. The survey was conducted on the said date.

On December 31, 2014, the Board of Arbitration filed its report with the trial court, the findings of which we quote verbatim as follows, to wit:

“As a result of the arbitration survey, we located the University of Liberia Fendell Campus, the boundary points of Barzoe Taipion Intestate Estate; the boundary points of King Karley Estate; the boundary points of the William Clarke and Marboe Tarr Estate and related their deeds to the reference points shown on the ground by the heirs of the deeds presented. Although tedious, we were able to place their deeds in accordance with the points shown by all the contending parties.

We found that the William Clarke and Marboe Tarr deed is distinct and that it is a complete reflection or representation of the ground information and location but engulfed the entire land being claimed by all the parties in the dispute. However, their boundary points shown on the ground claimed Eight Hundred Sixty-Four (864) acres instead of Six Hundred Twenty-Five (625) acres. The team further discovered that the Barzoe Taipion Intestate Estate accounting for Two Hundred Forty-Two (242) acres of deeded land represented by Nathan Karkpo reflect the ground location but fall within the William Clarke and Marboe Tarr Eight Hundred Sixty-Four (864) acres of land according to the ground location and deed information. However, his boundary points shown on the ground claimed Three Hundred Ninety-Two (392) acres instead of Two Hundred Forty-Two (242) acres. Again, the Henry Caine (King Karley Estate), accounting for One Hundred Eighty (180) acres of deeded land also reflect the ground

location but fall within the William Clarke and Marboe Tarr Eight Hundred Sixty-Four (864) acres.

That when the University of Liberia negotiated for this land, at the time, there were people who settled on the Fendell Land and their settlements are reflected on the Ministry of Lands, Mines and Energy Map produced for the University of Liberia. Therefore, there should be a trace of title as far back to UL (University of Liberia) acquiring this land.

## RECOMMENDATION

We wish to recommend to the Sixth Judicial Circuit, Civil Law Court that the information contained on the University of Liberia Fendell Map which gives rights to various landowners be given serious consideration. Moreover, the Sixth Judicial Circuit, Civil Law Court may consider the 1972-1976 Survey conducted by the Ministry of Lands, Mines and Energy which catalogued property owners, deeds, maps and diagrams submitted to it at the time. We also recommend that the names of property owners that were mentioned on the map produced by the Ministry of Lands, Mines and Energy in the 1970s be considered claimants. Moreover, any property owner whose name is not contained in the 1970s map produced by the Ministry of Lands, Mines and Energy and is now a part of this dispute may not be considered.”

On February 10 2015, the Intestate Estate of Marboe Tarr and William Clarke, appellee, filed a seven-count objection to the Board of Arbitration Survey Report, on the following grounds:

“That the information contained on the University of Liberia Fendell Map be given serious consideration; that the court considers the 1972-1976 Survey conducted by the Ministry of Lands, Mines and Energy which catalogued property owners, deeds, maps and diagrams in making its determination as to the legitimate owners of the disputed properties; that the names of property owners that were mentioned on the map produced by the Ministry of Lands, Mines and Energy in the 1970s be considered claimants; and that property owners whose names are not contained in the 1970s map produced by the Ministry of Lands, Mines and Energy and are now a part of this dispute may not be considered...”

On October 7, 2015, the trial judge ruled on the appellee’s objection to the arbitration report, mandating the Board of Arbitration to submit a definite award within two (2)

weeks from the date of issuance of the mandate. We quote herein below an excerpt from the said ruling, to wit:

“After due consideration of the arbitration report and the map attached thereto, the court says that the arbitrators did not present any award to the court based upon which this court can enter a judgment. Therefore, the court hereby returns this matter to the arbitrators to come up with a definite award in keeping with the relevant portion of our Civil Procedure Law on arbitration...”

The records further show that seven (7) months after the trial judge’s ruling mandating the board of arbitration to present a definite award, the arbitrators failed to submit same, leading to the filing of a five-count bill of information by the Intestate Estate of Marboe Tarr and William Clarke on April 22, 2016, requesting the board of arbitration to submit a definite award.

On May 13, 2016, His Honor Johannes Zlahn (deceased) ruled on the appellee’s bill of information incorporating the mandate of predecessor, His Honor Yussif D. Kaba, and further mandating the board of arbitration to state a definite award within one week. The board of arbitration again without any justification and/or legal excuse neglected to submit their findings within the required time, prompting the Intestate Estate of Marboe Tarr and William Clarke to file yet another bill of information on November 7, 2016, requesting the trial court for the second time to mandate the board of arbitration to state a definite award.

It was at this juncture, that His Honor Johannes Zlahn (deceased) issued a writ of arrest for the members of the board of arbitration on November 18, 2016, citing the board’s persistent failure to obey the mandates of the court. The record is void as to the outcome of the said writ of arrest on the members of the board of arbitration. However, we see in the records an arbitration report dated November 25, 2016 and filed with the court on February 14, 2017, in which majority members of the Board awarded 242 acres to the Intestate Estate of Barzoe Tiapon, 60 acres to the Intestate Estate of Marboe Tarr and William Clarke and 180 acres to the King Karley Estate. We quote herein below pertinent excerpt from the said report:

“We hereby conclude that all the contesting parties in this dispute are somehow owners each of the parcel of land according to the deed information. However, the quantity of land claimed by each party according to ground location is more than what each party’s deed information says. Again, the map produced by the Ministry of Lands, Mines and Energy during the University of Liberia Fendell Land Survey in the 1970s, reflected all

of the land owners in that area. During that survey exercise, all the land owners were invited to be a part of the process. The land owners are listed according to the portion of land they owned. Why this information is true, yet some family members are claiming what does not belong to their family.

#### Award

According to all the findings and information gathered from the arbitration survey conducted by the Board of Arbitration members the following families are landowners in that locale under investigation.

1. Barzoe Taipion or the people of Bassa Town owned 242 acres of land according to the deed information and also the University of Liberia Survey Map.
2. Henry Caine (King Karnley) or Chief Lounn and his people owned 180 acres of land according to deed information and also the map produced by the Government surveyors during the survey exercise of the University of Liberia
3. Even though Marboe Tarr and William Clarke or Chief Tarr and his people are claiming more than what they do not own according to the map produced as a result of the University of Liberia Fendell Land Survey exercise shown, Chief Tarr and his people own 100 acres of land. In fact, the 100 acres of land was given to the Republic of Liberia and they were left with only a Town spot that contains 60 acres of land.

#### Recommendation

We wish to recommend to this Honorable Court that the arbitration survey conducted has shown the rightful landowners as mentioned in the conclusion and in the award. Therefore, the Honorable Court is advised to only give good judgment to all the parties that have the land accordingly.”

On November 23, 2017, the appellee, the Intestate Estate of Marboe Tarr and William Clarke, filed a twelve-count motion to correct or modify the arbitration award before His Honor Scheaplor R. Dunbar, notwithstanding the above-mentioned report by the Board of Arbitration. We deem it necessary to quote counts 9, 10, 11 and 12 of the appellee’s motion as follows to wit:

“...9. Movants says that it filed an objection to the arbitration report which was granted under the gavel of His Honor Yussif D. Kaba now Associate Justice Yussif D. Kaba who ordered the arbitration board to correct or modify the arbitration report and submit same to the trial court within the period of two (2) weeks.

10. Movants further say that despite the order from this court the arbitration board failed and refused to submit the modified or corrected award in the report.

11. That further to count ten (10) herein above, the arbitration board having failed and refused to submit the corrected or modified arbitration award within the period of eight (8) months, movants filed a bill of information, informing this court about the deliberate failure and refusal of the arbitration board to correct or modify the arbitration award. The said bill of information was heard, granted and this court under the gavel of His Honor Judge Zlahn again ordered the arbitration board to submit the corrected or modified award within the period of two (2) weeks and that from the date the court ordered the arbitration board to submit the corrected or modified award in the report up to the filing of this motion, the arbitration board has again failed and refused to respond to the order of this court.

12. Your Honor, movants say that you have the authority to modify or correct the arbitration award in the report submitted by the arbitration board as provided in section 64.12.1 of the Civil Procedure Law as follows: “Time limitation and grounds for application. Upon application made within thirty (30) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- a) There was evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award; or
- b) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- c) The award is imperfect as a matter of form not affecting the merits of the controversy.”

On April 17, 2018, His Honor Scheaplor R. Dunbar ruled modifying the arbitration award and adjudging the appellants liable in ejectment and ordered the issuance of a writ of possession in favor of the appellee. Below is excerpt from Judge Dunbar’s ruling modifying the arbitration award, to wit:

“This court says that in the face of the board of arbitration’s persistent failure to correct or modify the arbitration award as mandated by this court on two separate occasions, the court herewith grants the movant’s motion and shall proceed to modify or correct the award consistent with Section 64.12 of the Civil Procedure Law.

The board of arbitration having established in its findings that the defendants’ property fall squarely within plaintiff’s/movant’s Six Hundred Twenty-Five acres of land and that

the plaintiff's deed is older than the defendants' deeds, it is only logical that the disputed property be awarded to the plaintiffs. This court therefore awards the disputed property to the plaintiff in keeping with the findings of the board of arbitration.

This court having modified and/or corrected the board of arbitration's award by awarding the disputed property to the plaintiffs, this court adjudges the defendant liable in ejectment. The clerk of this court is hereby ordered to issue a writ of possession and place same in the hands of the Sheriff who shall proceed to the location of the property and put plaintiffs in possession thereof in keeping with the metes and bounds of the plaintiffs' deed."

It is from this ruling of the trial judge that the appellants noted exceptions and filed a fifteen-count bill of exceptions before this Court for its review. It is the law that "the Supreme Court is not bound to pass on all of the issues raised in the counts in the bill of exceptions but only those that are germane to the disposition of the case." *CBL v. TRADEVCO*, Supreme Court Opinion, October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53 (2002); *Vargas v. Morns*, 39 LLR 18, 24; *Rizzo et. al v. Metzger et. al*, 38 LLR 476 (1997); *Transport of Belgium v. Family Textile Center*, 38 LLR 49 (1995). Hence, this Court will not reproduce the appellant's bill of exceptions in its entirety, but will instead summarize the relevant counts as follows to wit:

That the ruling of the trial judge on the appellee's motion to modify the arbitration award amounted to reversing the rulings of his predecessors; that it was error for the trial judge to have ruled modifying the arbitration report on grounds that the board of arbitration did not present a definite award, contrary to the board of arbitration's presentment of a definite award in its final arbitration report of February 14, 2017; and that the doctrine of superior title on which the trial judge relied in making his final determination is inapplicable to the instant case.

The records reveal that in its brief, the appellee maintained that it was proper for the trial judge to have ruled modifying the arbitration award considering the alleged failure of the board of arbitration to present an award.

Having briefly stated the contentions of the parties, we will now proceed to dispose of the issues raised in the appellants' bill of exceptions in the order of presentment.

First, it is the contention of the appellants that the ruling of the trial judge on the appellee's motion to modify arbitration award amounted to reversing the rulings of his predecessors.



A thorough review of the records reveals a notice of assignment dated September 22, 2016, issued by the trial court and signed for by the counsels representing the parties for a hearing on the appellee's motion to the modify arbitration award scheduled for September 30, 2016. However, the record is void as to any ruling made on the said motion by His Honor Johannes Zlahn. Hence, this Court will not belabor this issue.

As to the issue surrounding the alleged error of Judge Dunbar's modification of the arbitration award, we see in the records an arbitration report dated February 14, 2017, in which the Board of Arbitration used the 1970s map for the University of Liberia Fendell campus, produced by the Ministry of Lands, Mines and Energy in conjunction with the respective title instruments of the parties as recommended in the first arbitration report filed with the court on December 31, 2014. Hence, we find it inconceivable that the April 17, 2018, ruling of Judge Dunbar, whether inadvertently or intentionally, neglected to make mention or consider the February 14, 2017 arbitration report by the Board of Arbitration, wherein a definite award was stated.

It is this failure of the trial judge to take due notice and consider the February 14, 2017 arbitration report which partly led to the trial judge erroneously awarding all of the Six Hundred Twenty-Five (625) acres in contention to the appellee on the doctrine of superior title.

Moreover, we also see that the trial judge in making his determination to award the appellee the disputed property relied on Section 64.12 of the Civil Procedure Law. Section 64.12 provides for the modification or correction of an arbitration award as follows:

“1. Time limitations and grounds for application. Upon application made within thirty days after delivery of a copy of the award to the applicant, the court may modify or correct the award where:

- a) There was evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award; or
- b) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- c) The award is imperfect as a matter of form not affecting the merits of the controversy.”

The statute is clear in outlining the grounds upon which the court may modify an arbitration award to include: mistakes in calculation of figures, evident mistake in the

description of any person, thing, or property, the board of arbitration presenting an award upon a matter not submitted to them, and the arbitration award being imperfect as a matter of form. In the instant case, the trial judge acted ultra vires by setting aside the arbitration award, and proceeding on the principle of superior title.

Section 64. 1 of the Civil Procedure Law on arbitration provides as follows:

“A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract.”

In consonance with the above quoted principle of law, the Supreme Court has held in a long line of cases that “where the parties enter into an arbitration agreement submitting any controversy existing at the time of the making of the agreement or any controversy arising thereafter, the agreement is valid, enforceable without regard to the justiciable character of the controversy.” *Chicri Brothers, Inc. v. Overseas Distribution Corporation*, 40 LLR 128, 132 (2000); *Emirates Trading Agency Company v. Global Africa Import and Export Company*, 42 LLR 204, 213 (2004); *Berry v. Intestate Estate of Bettie*, Supreme Court Opinion, October Term 2013; *Gardiner v. James*, Supreme Court Opinion, March Term 2015. Therefore, it was ultra vires for Judge Dunbar to have modified the arbitration award absent any of the statutory grounds, and we so hold.

Applying the cited principle and precedents of the Court to the case at bar, and further noting that the appellants and the appellee signed an agreement to submit their dispute to arbitration and further noting that the award presented by the board of arbitration remains unchallenged by any of the parties, this Court holds that the February 14, 2017 Arbitration Report and the award contained therein cannot be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial judge is hereby reversed. The February 14, 2017 Arbitration Report awarding specific amount of land of the disputed property to the appellants and the appellee, utilizing the University of Liberia Fendell map produced by the Ministry of Lands, Mines and Energy (now Ministry of Mines and Energy) is hereby upheld. 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 and give effect to this Judgment. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

*Ruling reversed.*

*When this case was called for hearing, Counsellor Wellington G. Bedell of the Garlawolu and Associates Law Offices, Inc. appeared for the appellants. Counsellor Mamie S. Gongbah of the Liberty Law Firm appeared for the appellee.*