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
BEOFRE HIS HONOR: YUSSIF D. KABA……..…..……..……...ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YAMIE QUIQUI GBEISAY, SR……..….....ASSOCIATE JUSTICE

Madam Seluminee Bloyougar and all those under)
her authority of Paynesville City, Montserrado County)
Republic of Liberia.....Appellant)
)
VERSUS) Appeal
)
The Intestate Estate of Kollie by and thru its Administrator)
David Kollie, SKD Boulevard, Paynesville City, Montserrado)
County, Republic of Liberia.....Appellee)
)
GROWING OUT OF THE CASE :)
)
The Intestate Estate of Kollie by and thru its Administrator)
David Kollie, SKD Boulevard, Paynesville City, Montserrado)
County, Republic of Liberia.....Plaintiff)
)
Versus) Ejectment
)
Madam Seluminee Bloyougar and all those under)
her authority of Paynesville City, Montserrado County)
Republic of Liberia ……Defendant)

Heard: December 7, 2023 Decided: February 7, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The instant appeal grows out of an action of ejectment filed before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, by the appellee, the Intestate Estate of Edwin Kollie by and thru its administrator, David K. Kollie, against Madam Seluminee Bloyougar et al., the appellants herein, in which the said appellee alleged that it is the owner of one (1) lot of land lying and situated in the Samuel Kanyon Doe Boulevard Community, Paynesville, Montserrado County; that the defendant without any color of title or right illegally and intentionally encroached on a portion of its premises against the will and consent of the administrator of the estate; that all efforts exerted by the appellee to have the appellants vacate the subject premises proved futile. Hence, the appellee prayed the trial court to have the appellants evicted from

its property and to award damages in the amount of Fifty Thousand United States Dollars (US$50,000.00) for the appellants' illegal occupation and wrongful withholding of the appellee's property.

On February 15, 2016, the appellants filed a nine-count answer to the appellee's complaint contending as follows: that contrary to the assertion of the appellee, the appellant is the bonafide owner of the one (1) lot of land in contention, having obtained said property through legitimate purchase from William F. Snorton and Benjamin Payegar in 1986; that she (appellant) has been occupying the contested one (1) lot of land for nearly thirty (30) years openly, notoriously, and uninterrupted without any complaint by the appellant; that the appellee's grantor William F. Snorton is one of the grantors of her grantors, and as such, she being vested with the older title is the rightful owner of the disputed property; that the appellee's title deed is a product of fraud considering that William F. Snorton's original signature on her deed is different from that of his purported signature on the appellee's deed; and that the appellee is not entitled to any damages as a matter of law as she is the legitimate owner of the disputed property.

On February 19, 2016, the appellee filed a ten-count reply to the defendant's answer basically denying the averments in the appellant's answer and affirming the allegations contained in its complaint.

Pleadings having rested and the law issues disposed of, the appellee, the Intestate Estate of Edwin Kollie, filed a five-count motion before the trial court requesting the conduct of an investigative survey. On the scheduled date for the hearing of the appellee's motion for investigative survey, the appellant made a submission to the court requesting the constitution of a board of arbitration for the purpose of presenting a definite award to the court. The appellee interposed no objection to the appellant's motion for the constitution of a board of arbitration; hence, the trial judge ruled on the appellant's submission to arbitrate stating thus:

> "The submission of counsel for defendant (appellant) to which the counsel for plaintiff (appellee) interposes no objection is hereby noted. The court says the submission and the insertion thereto is in the nature of an agreement to arbitrate the dispute between the parties by an arbitration survey. The parties having entered this agreement as per records of court, the parties are hereby ordered to nominate their respective surveyors and submit their names to this court no later than October 2, 2017; and the clerk of this court is hereby ordered to write

the Liberia Land Authority to submit the name of a qualified licensed surveyor to chair the board of arbitration in this case not later than October 5, 2017."

Hence, a board of arbitration was constituted. Surveyor Henry K. Lamadine represented the Intestate Estate of Edwin Kollie as its representative on the board of arbitration; Surveyor Maxwell C. F. Gweh represented the appellant as its representative; and Samuel S. Danway Jr., of the Liberia Land Authority served as chairman of the board of arbitration.

On August 6, 2018, the court issued a survey notice notifying the public, the adjoining landowners, and representatives of the respective parties of the conduct of the survey on Thursday, August 16, 2018 at the precise hour of 10:00 am.

The arbitration survey was conducted on the scheduled date and the board of arbitration submitted its report to the trial court on September 30, 2018. We quote excerpts from the arbitration survey report as follows, to wit:

"…During and after the arbitration survey the following observations were made:

1. That both parties are claiming the same parcel of land according to their ground locations:

2. That the plaintiff purchased his property from William F. Snorton on the 25th day of August 1989;

3. That the defendant purchased her property from William F. Snorton and Benjamin Paygar on the 18th day of May, 1986;

4. That the plaintiff's deed commenced from the northeastern corner of Emma Dahn's property and indeed Emma Dahn is still existing on the ground as good reference;

5. That the defendant's deed commenced from itself despite the total layout of all the properties in the same block;

6. That the defendant presented a public land sale deed as mother deed and mentioned William K. Snorton and David Paygar as grantors when Benjamin Paygar is not any land owner in this mother deed;

7. It is observed that if Benjamin Paygar is a son of the late David Paygar, then the defendant's deed would not have been a warranty deed but an administrator's deed; and

8. It is observed that both deeds again call for the same parcel of land

Findings

1. That the area bordered Red (A, B, C, D-A) represents [1.7] lots of land claimed by Edwin Kollie and Selminee Bloyougar according to ground location (both parties are claiming the same parcel of land or ground;

2. That the area bordered Blue (A, E, F, G-A) represents one (1) lot of land owned by Edwin Kollie according to the deed information;

3. That the area bordered Green (A, K, M, L-A) represents one (1) lot of land owned by Selminee Bloyougar according to the deed information.

Conclusion

Your Honor, after a careful look at all the technical details of the deeds presented by the parties to the court for their technical defense, plotting of all ground information gathered and the super imposing of all deeds on the site plan or map, we then conclude the arbitration survey report indicating that the deed presented by plaintiff reflects the lot identified as the ground location. Its metes and bound are in conformity with the parcel of lot claimed and owned by the plaintiff according to ground and deed information. Again, we must make it clear that the defendant's deed does not support its argument because all the initials on its deed do not conform to the ground location. The plaintiff's deed commenced from one Emma Dahn's property and indeed Emma Dahn's property is still in existence as evidence.

Recommendation

Your Honor, after a careful and technical analysis of all deed presented by the parties to court and the plotting of all information gathered from all points shown by all parties as their ground location; it is proven that the deed presented by the plaintiff reflects and represents his claim to the disputed parcel of land that contains one (1) and that this Honorable court may consider the plaintiff legitimacy to this parcel of land under investigation."

On April 1, 2019, the appellee filed a four (4) count motion for the enforcement of the arbitration award on grounds that the appellant, having noted exceptions to the board of arbitration's award, neglected to file an objection within the required thirty-day statutory period.

On April 15, 2019, the then trial Judge Yussif D. Kaba, now Associate Justice Yussif D. Kaba, issued a notice of assignment for the hearing of the appellee's motion on April 17, 2019. The motion was heard and on the selfsame day the trial Judge ruled stating as follows:

> "Our law provides at Section 64.1 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 or irrevocable except upon such ground as exist for the revocation of any contract. By this statutory provision, arbitration becomes a contract executed by the parties to the arbitration.
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> It is the law that the court cannot impute in the contract executed by parties what is not agreed upon by the parties. Arbitration being a matter provided for by law, the terms and conditions provided for the procedure of handling matters subjected to arbitration are provided for by the law. The law is specific when it comes to parties expressing objection to arbitration report. Failure on the part of parties to follow the dictates of the law as to how to except to a report constitutes a waiver of that right and the parties cannot benefit from their own negligence. Section 64.11 of our Civil Procedure Law provides for how arbitration awards are vacated. It expressly states that "an application for the vacation of an arbitration award shall be made within thirty (30) days after delivery of the copy of the award to the applicant except that if the application is predicated upon fraud or corruption or other undue means, it shall be made within thirty days after such grounds are known or should have been known."
>
> It is worth noting that the language adduced by the writers of our statute is mandatory. Failure therefore to adhere to the mandatory provision of the statute constitutes a default and waiver. And once a party waives a right and defaults on an action, the party cannot have the right to resurrect such issue. This court, therefore, says that the arbitration being a contract, and that the

> contract being guided by law this court is duty bound to follow the dictates of the agreement entered by and between the parties. This court, therefore finds no legal justification to disturb the award presented by the arbitrators to this court."

The appellant noted exceptions to the above-stated ruling of the trial judge and filed a three (3) count bill of exceptions for this Court's review, raising two issues which we have summarized as follows to wit:

> "That notice of assignment was not served on the appellant regarding the conduct of the arbitration survey; and that the trial judge erred when he proceeded to hear the appellee's motion to enforce the arbitration award after which he confirmed the arbitration award made by the board of arbitration without first having a hearing on a bill of information filed by the appellee on the basis that the appellant did not pay her arbitration fees."

As to the first issue raised by the appellant to the effect that she was not served notice regarding the conduct of the arbitration survey, our review of the records shows a letter dated August 6, 2018 titled "Survey Notice," and filed with the court on August 8, 2018. In the said letter bearing the signature of Maxwell C.F. Gweh, the appellant's representative on the board of arbitration, as well as that of the appellee's and the chairman of the board of arbitration Mr. Samuel S. Danway Jr., all parties including adjacent landowners were duly notified about the conduct of the survey on August 16, 2018 at 10.00 am. This Court reiterates the settled principle that "mere allegations do not constitute proof, and unless said allegations are supported by the evidence, they shall remain mere allegations as it is only evidence which enables the court to pronounce with certainty the matter in dispute. *Kuteh v. NEC et.al*, Supreme Court Opinion, October Term 2023; *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term 2015; *Kamara et. al v. The Heirs of Essel*, Supreme Court Opinion, March Term 2012; Kpoto v. Williams, Supreme Court Opinion, March Term 2008. Hence, the records having shown that the appellant was duly notified regarding the conduct of the arbitration survey, her allegation of non-notification must crumble and we so hold.

As to the next issue which is whether the trial judge erred when he proceeded to have a hearing on the appellee's motion to modify arbitration without first disposing of a bill of information filed by the appellee on the basis that the appellant did not pay her arbitration fees. Our review of the records shows a bill of information filed by the

appellee, the Intestate Estate of Edwin Kollie before His Honor Yamie Quiqui Gbeisay on March 12, 2018, informing the court of the alleged failure of the appellant to pay its share of the arbitration survey fees. However, the record is void as to a hearing had by the court on the said bill of information. Notwithstanding the above, a further review of the records indicates that both the appellant and the appellee participated in the arbitration survey, making this contention of the appellant irrelevant as the primary essence for the payment of the arbitration fees was to facilitate the conduct of the arbitration survey. More importantly, the appellant in count two (2) of her bill of exceptions stated that she paid her fair share of the arbitration fees. Hence, we fail to see the injury suffered by the appellant for which it included this count in its bill of exceptions.

Arbitration is a method of settling differences through investigation and determination by one or more persons selected for the purpose of some disputed matter submitted to them by the contending parties for decision and award; that the object of arbitration proceeding is the final disposition of differences between parties in a faster, less expensive, more expeditious, and perhaps less formal manner than is available in ordinary court proceedings; and that courts are obligated to affirm an award made by the arbitrators where the parties by stipulation agreed the award shall be binding, unless statutory grounds for vacating or nullifying the arbitration award exist. *Chicri Brothers v. Isuzu Motor*s, 40 LLR, 128 (2000); *Karen Maritime v. Metzger*, 42 LLR 255 (2004); *Koon v. Jleh*, 39 LLR 340, 341 (1999).

In the instant case, the records reveal that both the appellant and the appellee agreed for their dispute to be submitted to arbitration by signing an arbitration agreement; that the parties selected their respective representatives to serve on the board of arbitration; that the board of arbitration having reviewed the evidence as presented by each party submitted its findings to the court; that the court upon receipt of the findings of the board of arbitration scheduled a date for hearing at which time the findings of the arbitrators were read in open court; that the appellant noted exceptions to the arbitral award as presented by the board of arbitration. However, the records are void as to any objection filed by the appellant within the timeframe provided by law.

It is the law that "an application for the vacation of an arbitration award shall be made within thirty (30) days after delivery of the copy of the award to the applicant except that if the application is predicated upon fraud or corruption or other undue means, it shall be made within thirty days after such grounds are known or should have been

known." *Civil Procedure Law*, Revised Code 64.11(2). This, the appellant failed to do.

Before concluding this Opinion, we note that the appellee's request for damages in the amount of Fifty Thousand United States Dollars (US$50,000) was not passed on by the trial judge and the appellee did not except to this portion of the trial Judge's ruling for same to form a part of the records in this case. Hence, it would be *ultra vires* for this Court to delve into issues not forming a part of the records of this case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial judge affirming the arbitration award is hereby affirmed, and the appellant ordered ousted and evicted from the disputed property and the appellee placed in possession thereof. 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 the Judgment of this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

Affirmed

When this case was called for hearing, Cllrs. Mamee S. Gongbah, Jr. and Lawrence Yeakula of the Liberty Law Firm appeared for the appellant. Cllr. Samuel S. Pearson of the Consortium of Legal Practitioners appeared for the appellee.