

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT THE
MARCH TERM, 1977

BENDU KARPAI, et al., Appellants, v.
SARFLOH, et al., Appellees.

APPEAL FROM THE CIRCUIT COURT.

Argued March 21, 1977. Decided April 29, 1977.

1. A plaintiff in ejectment can recover only on the strength of his own title and not upon the weakness of his adversary's.
2. A witness may testify only to facts within his firsthand knowledge, except an expert witness who may testify as to his opinion with regard to subjects concerning which he is qualified as an expert and except in other special circumstances.
3. Every citizen has the legal right to acquire property anywhere in Liberia regardless of class, creed, or origin.
4. Persons occupying land in a town under a deed granting to their ancestors inhabiting that land the rights to the enjoyment thereof and the right of succession to their heirs under a statute authorizing communal grants to tribal people, cannot be ejected by others claiming rights under the same deed as descendants from the original grantee.

Kema Kpene, the administratrix of the estate of Kindi Worrell, instituted an action of ejectment against Bendu Karpai and other defendants alleging that they were wrongfully occupying 100 acres of land in Kindi Town which had been deeded by the Republic of Liberia to Kindi Worrell, Chief of Kindi Town, and to the inhabitants thereof and their heirs as tenants in common. On the basis of the jury's verdict, the lower court rendered

judgment in favor of plaintiffs. Defendant appealed from the judgment. On the death of Kema Kpene pending the hearing of the appeal, her alleged heirs were substituted as appellees.

The Supreme Court found that the evidence introduced at the trial, while casting doubt on Kema Kpene's relationship to Kindi Worrell, clearly established that Bendu Karpai was descended from him. The land had been deeded to Kindi Worrell under the authority of a statute permitting government grants to tribal persons as trustees of the tribe, to hold for the benefit of the inhabitants of the land and their heirs without power of alienation except with the consent of the Republic of Liberia. The Court concluded that Bendu Karpai as a descendant of Kindi Worrell was entitled to remain on the land. The *judgment* of the lower court was *reversed*.

Toye C. Barnard and *Moses K. Yangbe* for appellants.
S. Benoni Dunbar and *Edward Wollor* for appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

As early as 1905, the government of Liberia by legislative enactment declared:

"Extent of tribal rights in lands. Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the possession of such land as against any person whomsoever.

"The President is authorized upon application of any Tribal Authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying.

"A plot or map of such survey or description shall be filed for reference in the archives of the Depart-

ment of State within six months after the completion of such survey. The omission of a tribe to have its territory so delimited shall not, however, affect in any way its right to use of the land.

“Communal holdings. The interest of a tribe in lands may be converted into communal holdings upon its application to the government. The proposed holding shall be surveyed at the expense of the tribe making the application. The communal holding shall be vested in the members of the Tribal Authority, as trustees for the tribe, but the trustees shall not be able to pass title in fee simple in such lands to any person whomsoever.

“Division of tribal land into family holdings. If a tribe shall become sufficiently advanced in civilization, it may petition the government for a division of the tribal land into family holdings. On receiving such a petition, the government may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres.” 1956 Code 1:270-272.

With this in view, President Arthur Barclay, in 1911, in consequence of an application made by Kindi Worrell, Chief of Kindi Town, Paynesville, Montserrado County, and a number of heads of the various families at the time, granted to the said Kindi and to the inhabitants of Kindi Town and to their heirs as tenants in common forever, the following deed:

“Whereas in a section of an Act of the Legislature of Liberia entitled, ‘An Act for the Government of a District in the Republic Inhabited by Aborigines’ approved January 25, 1895, it was provided that there should be granted to the inhabitants of each town of a district inhabited by aborigines, sufficient land around each town for agricultural purpose; and

“Whereas Kindi Worrell, Chief of Kindi Town in the County or District and the inhabitants of said Town to the number of all heads of families, have

applied for a grant of land in accordance with the provisions of said Act, now therefore I, Arthur Barclay, President of the Republic of Liberia, for myself and my successors in office do give, grant and confirm unto the said Kindi, Chief of Kindi Town and to the inhabitants aforesaid, their heirs as tenants in common forever, all that piece or parcel of land situated, lying and being in the rear of Paynesville in the County of Montserrado and bearing in the authentic records of said settlement the Number 3 of 181 Range and bounded and described as follows:

“Commencing about 100 feet from high water mark on the Western side of a lake on the beach above Kindi Town marked by a soap stick for the purpose being the South East angle of said lot and running North 45 degrees West 25 chains thence running 45 degrees East 40 chains thence running South 45 degrees East 25 chains, thence running South 45 degrees West 40 chains to the place of commencement and contains one hundred (100) acres of land and no more in accordance with the provisions of said Act.’

“To have and to hold the above granted premises together with all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said *Kindi, Chief of Kindi Town and the inhabitants thereof, and their heirs, forever* and I, the said Arthur Barclay, President aforesaid, for myself and my successors in office do covenant to and with the said persons and their heirs, and that at the en-sealing hereof I, the said Arthur Barclay, President aforesaid, by virtue of my office and by authority of said Act had good right and authority to convey the aforesaid premises to the said Kindi, Chief of Kindi Town and to the *inhabitants thereof as tenants in common*; and I the said Arthur Barclay, President as aforesaid and my successors in office, will forever warrant and defend the said lands to the said Chief Kindi

and inhabitants of Kindi Town, their heirs, against the unlawful claim of all persons claiming any part of the above granted premises.

"The above tract of land cannot be sold, transferred or alienated without consent of the Government of Liberia. [Emphasis added.]

"In witness whereof, I, the said Arthur Barclay, have hereto set my hand, and caused the seal of the Republic of Liberia to be affixed this 24th day of February in the Year of Our Lord, Nineteen Hundred and Eleven and of the Republic the 64th.

"[Sgd.] ARTHUR BARCLAY,
President of Liberia."

Thus President Arthur Barclay declared to all mankind that this parcel of land was descendible not merely to the lineal heirs of Kindi Worrell, Chief of Kindi Town, but to collateral relations, according to the rules of descent upon their death. In other words, Kindi Worrell was to possess and enjoy the premises without interruption and his descendants were to succeed to the enjoyment of this property; and the ancestors and their heirs were to take equally as a succession of usufructuaries, each of whom during his life was to enjoy the benefit; but none of whom could lawfully dispose of, or have absolute dominion over the property. The land was to be inalienable unless the Republic of Liberia should give consent to its disposition.

It was also intended by the grantor that in keeping with universal fundamental rules, one tenant in common cannot maintain trespass against another so long as both retain possession of the property. The possession of one tenant in common is presumed not to be adverse but is held to be for the benefit of other tenants in common. He cannot convey his interest in any particular portion of the estate described by metes and bounds, as such a conveyance would injure the rights of his co-tenant in case of partition. Therefore, one of several tenants in

common cannot dedicate a portion of the land to the public.

All co-tenants, communal holders, and inhabitants have entire possession of the whole property, and there is a fiduciary relation among them which imposes on their mutual rights to protection, so any act which any tenant or inhabitant does for the benefit of the property is presumed to be for the benefit of the whole property and no one tenant will be permitted to prejudice the rights of the other tenants. It also follows from the fiduciary relation between co-tenants that one cannot buy an outstanding incumbrance against the property for his own benefit, but any purchases of that nature would inure to the benefit of all the tenants, although the purchaser may be entitled to receive contributions from the other co-tenants for their share of the purchase. 9 MODERN AMERICAN LAW, *Real Property*, § 305.

It is also true that a communal holder has a right to use and enjoy the common property in a reasonable manner to the extent of his own interest but not to impair the interest of any other tenant.

We should not forget to mention that when the grantor of the deed also referred to "the inhabitants" aforesaid and their heirs as "tenants in common" he meant to include any person making that place his principal seat of residence or business, or *intending to make it his home*. He also meant any person who came to Kindi to contribute to the welfare of the people. He meant dwellers or householders, including holders in fee simple, for life, years, or at will and those having no interest in the land except as a place of habitation.

Yet despite this express intention on the part of the Legislature and President Arthur Barclay 66 years ago, from which time the inhabitants of Kindi Town and the heirs of Kindi Worrell have enjoyed in common the peaceful and uninterrupted possession of the parcel of land, on April 25, 1972, Madam Kema Kpene, one of

the inhabitants and administratrix of the intestate estate of the late Kindi Worrell, by and through her attorney-in-fact, Momo Kamara, all of the township of Paynesville, Montserrado County, instituted an action of ejectment against Bendu Karpai, another inhabitant of Kindi Town, Paynesville, Montserrado County, and E. Sumo Jones, Voinjama, Lofa County, and Daniel Tolbert, William Cooper, and A. K. Yar of the City of Monrovia. The complaint alleged:

1. That they [Kema Kpene and Momo Kamara] are the only legal surviving heirs of the late Kindi Worrell, Chief of Kindi Town, who died seized in fee simple of 100 acres of land being the Number 3 of 151 Range, situated, lying, and being in the rear of Paynesville, County of Montserrado and Republic of Liberia, as fully appeared from the document made profert and marked Exhibit "A" to form part of the complaint.

2. That they being the only surviving heirs of Kindi Worrell, Chief of Kindi Town and his people, are entitled under the law of descent to the ownership, possession, and occupancy of the said 100 acres of land hereinabove described from their Exhibit "A."

4. That with respect to their Exhibit "A" herewith referred to, same is a certified copy of the original deed executed to Kindi Worrell, Chief of Kindi Town and his people, by the late Arthur Barclay, President of Liberia, on February 24, 1911; but that through chicanery and deception, the late E. Senesee Freeman obtained the original deed from Madam Kema Kpene, who delivered it in the presence of his wife, Madam Zolen Freeman, which original deed presently is in the possession of one of the defendants, Bendu Karpai, who bears absolutely no relationship to Kindi Worrell and his people.

5. That being the only surviving heirs of the late Kindi Worrell, Chief of Kindi Town and his people, they are entitled under the law of descent to the ownership, possession, and occupancy of the said 100 acres of land, de-

scribed and supported by their Exhibit "A," but that notwithstanding this fact, and being aware of plaintiff's title, defendants have illegally entered, trespassed upon, and occupied said tract of land and are now illegally, wrongfully, and prejudicially withholding possession thereof from plaintiff, despite plaintiff's warning and request in person, as well as letters to defendants to discontinue their encroachment without any color of right; but all efforts have proven futile.

6. Plaintiff therefore prayed the court to eject, oust, and evict defendants from the premises and to have plaintiff repossess the property and to award damages to plaintiff for the unlawful occupancy and use of the land by defendants, and to grant unto plaintiff such other and further relief in the premises as the court would deem equitable and right.

Co-defendant/appellant Bendu Karpai appeared and filed an independent answer containing seven counts, two of which we consider important in the determination of the issues involved in this case. Those counts are succinctly stated as follows:

"4. That the plaintiff is not an heir of the late Kindi Worrell of Paynesville. Rather it was conclusively proven at an executive investigation, that plaintiff was simply a servant girl in the family of the late Kindi Worrell and therefore has no inheritable blood in her veins to lay claim to the estate of the late Kindi Worrell. That her alleged appointment by the Monthly and Probate Court as administratrix is ultra vires inasmuch as the real heirs to Kindi Worrell were not notified of said petition to appoint plaintiff administratrix over the estate of the late Kindi Worrell.

"5. That the defendant is the legal heir of the late Kindi Worrell together with other relatives, and that her late grandfather was seized in fee simple of the premises in question, as will more fully appear by a

copy of the deed for the property herewith proferted as Exhibit 'D' to form part of the answer."

The answer further averred that the validity of defendant's claim to the title to the land in question had been referred to the late President Tubman for determination. Those averments are now immaterial, since on his decision the issue has reverted to the courts.

Plaintiff's reply reiterated her claim that Kindi Worrell was her father and had acquired title to the land in question from the late President Barclay. She contended that defendant was of the Vai tribe whose ancestors came from Grand Cape Mount County and that defendant is not remotely related to the late Kindi Worrell. Plaintiff further claimed that the deed to the 100 acres is presently in defendant's possession, but that the instrument of which defendant made profert and on which she bases her claim to title is without legal efficacy in that it bears no indication of probaton or registration, and that any other deed on which she relies was obtained through fraud.

With the statement of these issues in the complaint and subsequent pleadings, the issues of law were disposed of and the case ruled to jury trial, which culminated in a verdict awarding plaintiff possession of the 100 acres of the land, but without damages as was prayed for by plaintiff for the unlawful detention of the land. Motion for a new trial was heard and denied and final judgment rendered affirming the verdict. Exceptions were noted and an appeal announced and perfected before this Court on a bill of exceptions containing two counts stated as follows:

"1. Because on November 13, 1975, Your Honor overruled the motion for a new trial, sustained the resistance thereto and rendered final judgment against the defendants affirming the verdict of the jury to which defendants then and there excepted.

"2. And also because defendants say that the verdict of the trial jury which the judgment affirmed is

manifestly against the weight of the evidence adduced at the trial.”

During the pendency of the appeal, Sarfloh, Govono Kai, Jaye, Armah, and Gidyca petitioned this Court that they be designated and appointed as substitutes on behalf of Kema Kpene and Momo Kamara, attorney-in-fact, on the grounds that both Kema Kpene and Momo Kamara were deceased and that petitioners were the only bona fide lineal heirs of the late Madam Kema Kpene who are entitled to inherit from her. The petition was granted, and the records in this case were opened to us for review.

Since in ejectment the plaintiff must recover upon the strength of his title, and proof of the plaintiff's title must be beyond question, let us now see if plaintiffs have established their line of title from Kindi Worrell.

Pursuing this inquiry, we shall seek to ascertain whether, as plaintiffs claim, the 100 acres of land have descended to them as heirs of the late Kindi Worrell, who died intestate, and whether, under the provisions of the deed from President Arthur Barclay in keeping with the Act of the Legislature of 1904 and 1905, plaintiffs have the legal right to evict defendants from the premises.

The first witness for the plaintiff was Bondokai, whose testimony showed that the late E. Senesee Freeman took from the late Kema Kpene the original deed for the disputed land for the purpose of surveying a portion of it for the Cultural Center and that Madam Kema delivered it to him reluctantly with the understanding that it would be returned to her after the survey was made, but this was never done up to the time of Freeman's death. Bondokai further testified:

“Bendu went to Senesee Freeman's wife and told her that her late husband had a deed for her. Mr. Freeman's wife, Ma Zoe, told Bendu that she never gave her any deed for him; but that it was another group who gave the deed to her husband. She never gave the deed to Bendu. When Bendu left, Ma Zoe sent

for Mr. Freeman's brother and told him to look for the Kindi Town deed that was brought here by Kema Kpene. When Zinnah came, he found the deed and Ma Zoe told Mr. Zinnah to send for the old lady's daughter (Sarfloh) to give her the deed. Upon hearing that the deed was found, Bendu came along with my sister to Mrs. Freeman. This was said in the presence of many persons by Bendu Karpai."

According to the records and testimony of Bondokai, Bendu Karpai still has the original deed in her possession. At the trial, only a copy was offered by plaintiff. Witness Bondokai testified on direct examination that Bendu Karpai bore no relationship to Kindi Worrell nor was she related to him in any degree. On the cross-examination he stated that he was not present when his mother gave the deed to the late Freeman.

The second witness for the plaintiff was Sarfloh. She confirmed the testimony of Bondokai insofar as it related to the delivery of the deed to E. Senesee Freeman by her mother, Kema Kpene, in order to survey a portion of the land for the Cultural Center, with the understanding that it should be returned to her after the survey was made. Then, continuing her testimony, she said:

"Mr. Freeman said that we could go back home, and assured us that nothing would happen to the deed. Then we went. Unfortunately, Mr. Freeman took seriously sick and he was taken to Kindi Town. While there, my mother again asked him about this deed. He told her not to worry; the deed was in his trunk. When my mother was asking Senesee Freeman for the deed, Bendu whose brother was Consuah and I were there. It was the same day they moved Senesee Freeman from Kindi Town to Gbassy Town. My mother and I went to Gbassy Town. At this time Freeman had died. We met his wife Zoe and asked her for the deed. After we had gone to and fro and did not get the deed one day, Mr. Edwin Free-

man sent word for us to go for the deed. Upon our arrival, he took the deed and gave it to me. Bendu who had accompanied me to Mr. Freeman grabbed the deed from my hand and said that she was carrying it to my mother and would deliver it to her on the following day. In the presence of others persons, she showed the deed to my mother and it was identified to be her deed; but said that she would not give it to my mother until she was ordered by a court to do so. That is what I have to say."

Sarfloh confirmed that Bendu Karpai bore no relationship to the late Kindi Worrell. To the contrary, the witness said Kindi Worrell was her grandfather. On the cross-examination, she stated that Kindi Worrell had only one child and that was her mother, Kema Kpene. She also testified that she did not know anyone called by the name of Fahn Kindi but she knew someone called Fahn Karpai and that was Bendu's father, but that Fahn Kindi alias Fahn Karpai bore no relationship to Kindi Worrell. He was a Gbandi man, who lived in Kindi Town like Fahn Karpai and Bendu Karpai. When asked where did Fahn Karpai come from to be in Kindi Town, she replied that he came from Grand Cape Mount County; but first lived at Fiamah, but later migrated to Kindi Town under unpleasant circumstances.

Commenting on the contention that Bendu Karpai bore no relationship to Kindi Worrell entitling her to the possession, occupancy, and enjoyment of his estate, this Court has consistently held in accord with other legal authorities that "the essential issue in an ejectment action is not ties of blood, but title. A plaintiff in ejectment may recover property which descended to him, if the title was legally vested in him. On the other hand, in an ejectment action, a plaintiff who bears no blood relationship to the original owner may also recover if he took the proper legal steps to secure his title from attack, even against those of the bloodstream of the original owner."

Cooper-King v. Cooper-Scott, 15 LLR 390, 406 (1963). Furthermore, "in ejectment, the plaintiff must recover upon the strength of title, which must be evidenced by a continuous and consistent chain of valid conveyances, and not upon mere speculation or presumption." He must recover "unaided by any defects or mistakes of the defendant; and proof of the plaintiff's title must be beyond question. The plaintiff's title is not presumed, but must be established affirmatively." The plaintiff must recover "upon the strength of a chain which is consistent and continuous, and in which each link can stand by itself." *Id.*, pp. 403, 404, 405.

Common law authorities also establish that to recover the possession of real property by means of an action of ejectment, the plaintiff *must* "have either a title to the property with a present right of continued possession or have had an actual bona fide possession of the property with a right to maintain a continued possession when ousted by the defendant and a present right to the possession when the action was begun. . . . A well-established principle which has acquired the force of a maxim is to the effect that the plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's. . . . In any case, a plaintiff in ejectment cannot recover as against one without title unless he proves title or prior possession in himself; and if he recovers by virtue of prior possession, he may be said to recover as much upon the strength of his own title as if he had shown a good title to the premises." 18 AM. JUR., *Ejectment*, § 20 (1938). In the instant case, plaintiff relies on title that is of communal holding.

The next in line to testify for plaintiff was Momo Kinza. Substantially testifying in the same vein as other preceding witnesses, he stated that he knew Kema Kpene and Bendu Karpai, who was his sister. He stated that Kindi Worrell was the owner of the disputed land, that Kema Worrell was his daughter, and that he, Momo

Kinza, and Bendu had one father. He also declared that "the land does not belong to the defendant Bendu Karpai. When the plaintiff's father died, it was at that time that the defendant took hold of the deed. The old lady asked me to intervene to get the deed from Bendu; but she refused to deliver it. She said the only way the old lady will get the deed will be in court."

He further testified that Kindi Worrell was of the Gbandi tribe and their (his and Bendu's) father was of the Vai tribe. When asked in whose name the deed was issued for the disputed land and for what purpose, he replied: "The deed is for Kindi Worrell. The land is in Kindi Town near E.L.W.A." He admitted he did not know Kindi Worrell, nor did he ever see him. The deed not having been issued in plaintiff's name, any reliance thereon without showing possession of it, we hold would be of no legal effect. When the witness Kinza was further interrogated to tell the court and jury whether or not Kindi Worrell had any child, and, if so, on what did he base his testimony, he replied, "My father Fahn Karpai told me about Kindi Worrell having one child. Her name is Kema Kpene."

The fourth witness for the plaintiff was Momo Kamara. He testified to the following effect: that he knew the plaintiff and defendant in the case; that at one time when he called on Madam Kema Kpene, she informed him that due to her sickness and feebleness, defendant Bendu Karpai was taking an undue advantage of her; that he, Momo, being her first cousin, she had called him to assist in recovering her property; that she told him that the late E. Senesee Freeman's son refused to give it up and is retaining it until otherwise ordered by the court to do so; that she, Kema Kpene, had appealed to Bendu's family to prevail upon her to give up the deed but Bendu had refused; that the matter was once taken to the Executive Mansion for settlement, but she was later advised to take it to court; that she had documents to support her

contention; that sometime in the past, defendant Bendu Karpai had "a deed fixed and sold a portion of this land to the Cultural Center Institute"; that the matter was taken to the Monthly and Probate Court and an order was given appointing Kema Kpene as administratrix of the estate of Kindi Worrell; and that this is all he knew.

Momo Kamara reaffirmed that Kindi Worrell came from Kamatahun in Lofa County, and was of the Gbandi tribe. When asked where did Fahn Karpai come from, he testified that he was told by Kema Kpene and her son that Fahn Karpai came from Grand Cape Mount County and that he was of the Vai tribe. When further asked whether or not Kindi Worrell had any children, and if so, how many, he replied, "My cousin told me Kindi Worrell had only one child and the child was Kema Kpene." Again when asked on the cross-examination, "So then the narrative about the tribal history of Bendu and her family which you have told here is what you were told," he replied, "This is what her brother told me."

He affirmed that Bendu Karpai bore no relationship to the late Kindi Worrell, and that she is still occupying the 100 acres of land, causing confusion and selling the land.

Besides the fact that hearsay evidence is no evidence, in the instant case the testimony of Momo Kinza and Momo Kamara must be rejected because according to established rules, a witness must have knowledge of a fact or occurrence sufficient to testify with respect to it. *BALLENTINE'S LAW DICTIONARY, Witness* (3d ed., 1969). He is restricted to facts within his knowledge, except for expert witnesses, who may testify as to their opinion on subjects concerning which they are qualified as experts. *Ammons v. Republic*, 12 LLR 360 (1956). In the instant case the witness Momo was called upon to state all facts that were within his certain knowledge and manifestly not as to things as to which he had no knowledge

at all or to testify to opinions. The testimony of the witnesses Momo Kinza and Momo Kamara having violated this rule, leaves us with no alternative but to reject it. We feel further that the testimony of Momo Kamara must be rejected because of its intrinsic weakness, its incompetency to satisfy our minds as to the existence of the fact, and the fraud which may be practiced under its cover. In other words, it has no value; hence it is inadmissible. It must be rejected also because, whatever transaction occurred between Momo Kamara and his mother, Bendu Karpai was not a party thereto; neither was she given an opportunity to cross-examine Kema Kpene under oath in order to test the veracity of the statements. Here is our authority:

“The chief reason for the exclusion of hearsay evidence are the want of the sanction of an oath, and of any opportunity to cross-examine the witness. But where the testimony was given under oath, in a judicial proceeding, in which the adverse litigant was a party and where he had the power to cross-examine, and was legally called upon so to do, the great and ordinary test of truth being no longer wanting, the testimony so given is admitted, after the decease of the witness, in any subsequent suit between the same parties. It is also received, if the witness, though not dead, is out of the jurisdiction, or cannot be found after diligent search, or is insane, or sick, and unable to testify or has been summoned, but appears to have been kept away by the adverse party. 1 Greenleaf, *Evidence*, § 163, cited in *Cummings v. Republic*, 4 LLR 284, 291 (1935).”

In the instant case, none of these circumstances prevailed. As we proceed with our inquiry into the merits of the ejectment action, we observe that great emphasis has been placed on the tribal identities of the forebears of both plaintiff and defendant, thus implying prejudice against Kindi Worrell's heirs and the inhabitants of the 100

acres of land in Kindi Town. Even stronger insinuations were made against Bendu Karpai as being a servant girl in the Worrell's family and hence not entitled to the peaceful enjoyment of the property, thus inculcating a caste system among the inhabitants of Kindi Town.

Let us be reminded that under Article I, section 1st, of the Bill of Rights, "all men are born equally free and independent, and have certain natural, inherent and unalienable rights; among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness." In the Republic of Liberia, the acquisition of property is not restricted to any one class, creed, or origin. Every citizen has the legal right of acquiring property anywhere in Liberia so long as he conforms to set principles of law. There is no class legislation or inhibition or limitation to acquiring land in Liberia. It is therefore inconceivable to imagine a prohibition against any citizen attempting to acquire land whether he is from the East or the West.

What does it matter whether or not Kindi Worrell was a Gbandi man, or for that matter, that Bendu Karpai or Fahn Kindi alias Fahn Karpai was of the Vai tribe? Being citizens of the Republic of Liberia they can own real property, especially so being heirs of their ancestors who were inhabitants of Kindi Town and constituted heads of families at the time the grant was made to Kindi Worrell and his people in 1911.

Let us remind you that the intent of the Legislature in making the grant to the inhabitants of Kindi Town by the Act of 1905 was for enjoyment of Kindi Worrell, his heirs, his people, and inhabitants at the time of the grant, and after their deaths to their succeeding generations and offspring whether near or remote. The fact that either of the ancestors immigrated to Kindi Town with a different tribal background and origin could not by any stretch of imagination destroy the rights guaranteed to

him under the provision of the deed granted in 1911. That the ancestors of both plaintiff and defendant lived and dwelled on the 100 acres of land over 60 years ago testifies to the legitimate rights of the heirs of such inhabitants to succeed to the enjoyment and continuous occupancy of the land. In other words, the deed of President Arthur Barclay specifically and unequivocally created communal holdings among the tribal peoples therein indicated. It would be inconceivable and illegal for any legitimate heirs or inhabitants of Kindi Town to institute any proceeding that would eject others who have a joint interest and unity of purpose in the premises and who are entitled to the peaceful occupancy and enjoyment of the 100 acres of land.

Plaintiff having completed his presentation of evidence, defendant/appellant testified as follows regarding the acquisition of the land by Kindi Worrell:

“He [Fahn Kindi] told the late President Arthur Barclay, the land he was occupying was not his, he wanted a piece of land for himself. He told the late President Barclay to place his late father’s name on the deed. The late B. J. K. Anderson surveyed the land and made the deed and gave it to the President. The deed was kept with the late Arthur Barclay until Kindi Worrell died. There was no trouble about this land. At one time, he went to President Arthur Barclay for the deed which he gave it to my father Fahn Kindi. After that no one troubled us about the land. The deed was in the possession of my father Fahn Kindi until he died. Prior to his death he handed it to me. The deed was given to one Senesee Freeman to have the land surveyed for the Cultural Center. After that I asked the witness who was on the stand to help me get my deed. I got it from Edwin Freeman. After this the plaintiff sued me.”

The original deed referred to in her testimony was identified and offered in evidence. On the direct examina-

tion, she testified, as had preceding witnesses, that Kindi Worrell immigrated from Grand Cape Mount County and settled in Sinkor, Monrovia; that while there he befriended the late President Arthur Barclay; that her father Fahn Kindi was the only child her grandfather ever had; that if anyone said that Kindi Worrell had any other children, "then he lied." Significantly, even though this challenging statement was uttered by defendant Bendu Karpai, yet it has remained uncontroverted by plaintiff. It is therefore accepted that Kindi Worrell never had another child. The testimony of Momo Kinza that Kema Kpene was a daughter of Kindi Worrell was therefore destroyed.

As the trial progressed, defendant Bendu stated to the court below in answer to questions propounded to her on the cross-examination that it was not true that the original deed had ever been in the possession of plaintiff Kema Kpene. It was she, Bendu, who delivered the deed to the late E. Senesee Freeman, and that at no time had she and one Sarfloh ever gone to the widow of Senesee Freeman for any deed. Answering a juror's question, she established as a matter of fact that Fahn Kindi was her father.

The first witness for defendant was Gbassy Kindi. He testified substantially that when he was a child, he lived with his father Fahn Kindi, who later took him to the late E. Senesee Freeman; that at his father's death his sister Bendu opened their father's trunk and found a deed for the 100 acres of land, which she showed to him; that at one time when he came to visit his sister, she told him and others present that being unlettered, she could do nothing unless they had consulted the deed from his family. While answering a question on the direct examination, he disclaimed Momo Kinza (the witness who had earlier testified for the plaintiff) as one of the children of Fahn Kindi.

The last two and final witnesses for the defendant were

Counsellor Anthony Barclay and Honorable J. C. N. Howard, the Commissioner of Paynesward City. Because we strongly feel that their testimony bears great weight in reaching a fair determination of this case, we have quoted them *in extenso*:

"Q. What is your name and where do you live?

"A. My name is Anthony Barclay and I live in Paynesville.

"Q. Are you acquainted with one Bendu Kindi Worrell?

"A. Yes.

"Q. One lady by the name of Kema Kpene now deceased has sued the said Bendu Worrell claiming that she owned 100 acres of land in Kindijah. If you know anything how this land was acquired and by whom please tell the court and jury.

"A. Kindijah was acquired by one Kindi Worrell during the administration of my late father, President Arthur Barclay. During that time I do not remember Kindi Worrell in person, but the deed say so but I remember Fahn Kindi who was his son and who visited me after my father's death several times, and I in turn visited the town of Kindijah. At that time it was called the name [*sic*] to be my father's property but in the 50's one old man George Jackson, resident in Paynesville, encroached upon this land. So Fahn Kindi came to me for protection and as I had not found any deed calling for this land among my father's deeds, I asked him if he had a deed for this land. He replied yes. I told him to bring it for me to see. He brought the deed and I noticed that the deed had not been probated, so I asked him why he had not had the deed probated. He said he thought it was not necessary because he got the deed from

the government, so I said I will have it probated for you, then I will take up the question with Mr. Jackson, whom I knew very well. I presented the deed to the Probate Court for probation. The judge, I think was Judge Fiske, who hesitated because he said it was an old deed but after consultation with some lawyers and with the Attorney General I believe, the deed was registered and probated. I then took up the question with Mr. Jackson and he left the land. Seeing that Fahn Kindi had a deed for the place I think the deed is dated 1911 and that time Fahn Kindi had introduced me to Bendu as his daughter and gave one of his sons to my wife and myself for schooling. That boy is still living and we have his child, a girl, with us now. As far as I could see from my dealing with this man, Kindijah was a Vai Town.

“Q. Please look at this document marked by court B/N1 and say whether this is the deed which you had probated by the Registrar for Kindi Worrell which you referred to?

“A. This is the deed. The endorsement is done in my handwriting. Judge Fiske was the judge of the Monthly and Probate Court. Mr. Reuben Logan was the Registrar. And it was signed by Arthur Barclay, President.” Minutes of Court, 39th Day’s Session, Thursday, October 30, 1975.

The second witness:

“Q. What is your name and where do you live?

“A. J. C. N. Howard, and I live in the City of Paynesward, Montserrado County.

“Q. Say whether or not you hold any public office in the City of Paynesward, and if so, state what and how long?

“A. Yes, as Commissioner. I have been Commis-

sioner for the past 25 years, but during the period of three commissioners elected by the Townships I was elected as Township Commissioner in 1950 and re-elected every year up to 1975. And I was commissioned in 1950 and I have been serving up to the present time.

"Q. Say whether or not you are acquainted with Kema Kpene, the plaintiff, and Bendu Kindi, the defendant in this case?

"A. Yes.

"Q. The plaintiff has instituted an action of ejectment claiming that the defendant is withholding and detaining one hundred acres of land which she claims is her property; search your memory please and if you have any facts and circumstances therein, state same for the benefit of the court and jury?

"A. I do not recall Kema Kpene, the plaintiff, owning any land in Paynesville. In fact I only met her about two years. What I do know is one Fahn Kindi was the son of Kindi Worrell who owned the Kindi Town and Fahn Kindi was the father of Bendu. Kindi Worrell is the man who I knew to own the Kindi is the father of Bendu [*sic*].

"Q. State whether or not you know of Bendu ever serving in any official capacity and if so, as what?

"A. Yes, I do know that Bendu up to last year or the latter part of last year was one of my town chiefs. She served up to the time when the dispute came up about pulling up a cotton tree, and the Minister of Local Government sent for me and told me that one of my town chiefs had offered an insult to the President of Liberia by pulling up a cotton tree that he planted and I should do something about it. I went up there

and called the town together that since Kindijah was in Kindi Town and the President will always be going to Kindijah and Bendu in her capacity as town chief will have to meet the President, I will have no alternative but to suspend her and have someone else act in her stead until the cotton tree matter has been adjusted.

“Q. Do you know of a man Kindi Worrell having any other child beside Fahn Kindi?”

“A. I do not know of any nor have I heard of any.”
Minutes of Court, 39th day’s Session, Thursday, October 30, 1975.

Defendant having rested, plaintiff introduced one Morris Alma as rebutting witness, only to prove that Bendu Karpai carried the deed for the 100 acres of land to Kindi Town and showed it to the inhabitants thereof and said that it was for Kema Kpene, but when Kema Kpene offered to accept it, Bendu Kindi refused and said that she could not deliver it to her until ordered by court or some law. This ends the testimony of the witnesses in the case.

The question now arises, has ejectment been proven? We think not. But we focus mainly on whether any of the inhabitants of Kindi Town or an heir of Kindi Worrell has legal competence to evict any of their kith and kin from the 100 acres of land in question, considering the expressed provision of the 1911 deed granting the communal holdings to all the heirs of Kindi Worrell and the inhabitants of Kindi Town. We certainly think not. The legislative will is supreme and when the language of the statute is clear and certain must be given effect.

The Legislature of Liberia in 1905 having empowered the President of Liberia to grant the inhabitants of each town of a district inhabited by aborigines sufficient land around the town for agricultural purposes, and that statute having been carried out by President Barclay, and the right to the land granted to Kindi Worrell and the

inhabitants of Kindi Town in Paynesville, it is our view that it shall forever stand. The institution of this action of ejectment is unmeritorious, and since we are unconvinced that plaintiff has both the legal title and the possessory right in said land, the action is hereby dismissed.

The heirs of Kindi Worrell and inhabitants of Kindi Town are forever entitled to the continuous occupation, possession, and uninterrupted enjoyment of their land in keeping with the express provision of the deed of 1911, with the proviso that it shall not be sold, transferred, or alienated by any person or persons without the will and consent of the government of the Republic of Liberia.

Costs are disallowed. And it is hereby so ordered.

Judgment reversed.