

SUNDAY MOORE, Appellant, v. BLAYONDE  
GYE, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,  
MARYLAND COUNTY.

Date of argument not indicated. Decided January 29, 1970.

1. A defendant in an action of ejectment is permitted in his answer to allege his right of occupancy by title or other claim.
2. The defendant's right of occupancy, constituting a denial of plaintiff's ownership, may also be alleged by implication, as in the instant case, where the defendant stated that he was occupying the premises.
3. In an action of ejectment, if neither party establishes any legal right, the plaintiff cannot recover.
4. Questions of fact are to be determined by the jury, and its verdict returned under the law applicable to the facts, as charged by the trial judge.

In an action of ejectment the plaintiff claimed title to real property occupied by defendant. The defendant in his answer set up a defense alleging he was the owner of the property by virtue of a deed which he proferted as part of his answer. The plaintiff replied that the answer should be stricken since defendant neither denied nor admitted the wrongful withholding of plaintiff's alleged property. The trial court agreed with plaintiff's contention and the defendant was ruled to trial on a bare denial. The jury returned a verdict for the plaintiff and the defendant appealed from the judgment of the trial court. *Judgment reversed, case remanded.*

*Wellington K. Neufville* for appellant. No appearance for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

At the August 1964 Term of the Circuit Court for the Fourth Judicial Circuit, Maryland County, Blayonde Gye, of Pleebo, instituted an action against Sunday

Moore, of the same Township, for the recovery of a portion of a two-acre tract of land situated, lying and being on the highway leading from Pleebo to Gbolobo.

After filing his formal appearance as required, defendant, the appellant before this bar, filed a five-count answer to the complaint, challenging the legal validity of the paper title made profert by appellee in his complaint. The claim of plaintiff in ejectment was predicated upon an Aborigine Land Grant Deed issued him by the Republic, dated March 13, 1963, which purports to entitle him to approximately two acres of land.

The appellant contended that he was in possession of a Public Land Sale Deed executed by the President of Liberia on February 21, 1961, for the selfsame portion of property. The relevant deed was annexed to the answer by way of a profert marked exhibit "A." To this answer, a reply was filed, which held that there was no specific denial of ownership by plaintiff, for the appellant, then defendant, should have denied or admitted the wrongful withholding of a portion of plaintiff's land which was described in the title deed proferted. This omission, the appellee contended, constituted a fatal error. The reply further contended that the unsigned deed for the subject property had been presented to Everett J. Goodridge, Administrative Assistant to the President, on February 5, 1959, for the President's signature. This presentation had been effected by attorney H. Nyema Prowd, of Maryland County.

After making profert of a receipt evidencing the above-referred-to submission to the then Administrative Assistant, an undated certificate from the same office was proferted. This certificate substantially stated that the deed of appellee, together with another, had been published and found to have no protest made against them. The reply was the last pleading filed.

Subsequent to hearing argument on the issues of law, Hon. Frederick K. Tulay, Circuit Judge presiding by as-

signment, proceeded to rule thereon on June 22, 1965. The judge overruled all four counts of specific traversals contained in the answer, thus relegating appellant to a bare denial of the facts contained in the complaint. Since the trial judge deemed it best to pursue such a conclusive course, let us, therefore, proceed to carefully examine the counts he overruled.

In count one of the answer, the defendant contended that he held an *older deed* for the "premises occupied by him," since his deed had been signed by the President of the Republic of Liberia on February 21, 1961. Defendant stressed that, in the circumstances, plaintiff could not claim possession of defendant's property. On this score the judge held in his ruling on the issues of law, and we quote, "Defendant in his answer does not admit that he lives on the premises, from which plaintiff seeks to eject him, that he has title to it or denies that he lives on the same premises. This omission is both fatal and incurable. Counts 1, 2, 3, and 4 of defendant's answer are, therefore, dismissed and the case ruled to trial on plaintiff's complaint, and count 5 of defendant's answer which, of course, is a bare denial and it is hereby so ordered."

The position of the judge in striking out the first four counts of defendant's answer for the reasons stated above, is so patently irregular that it needs hardly any sustained discourse on the law to prove it. In *Salifu v. Larsannah*, 5 L.L.R. 152 (1936), this Court held that a plaintiff is precluded from insisting that his adversary cannot set up an outstanding title, or the defense of trespass, and if neither party has any legal right plaintiff cannot recover.

Furthermore, count one of the answer clearly states that defendant was occupying the premises in question. In these circumstances, this Court cannot permit the four essential counts of the answer to be overruled upon legally unfounded premises.

Where there are mixed questions of law and facts, they

must go to the jury for determination, especially when the action is predicated upon a claim in ejectment.

In view of the above, we must hold that the judge erred in his ruling on the issues of law and therefore the trial of the issues of fact was not in accord with the applicable law. Therefore, the judgment is hereby reversed and the case remanded, the issues of law to be first argued. Costs ruled against appellee. And it is hereby so ordered.

*Reversed and remanded.*