IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH……..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YUSSIF D. KABA…….…… ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YAMIE QUIQUI GBEISAY, SR……ASSOCIATE JUSTICE

The Intestate Estate of Benjamin Franklin, represented by its administrators, Benjamin Franklin, Jr. and Marvee K. Franklin of the City of Monrovia, Liberia…… Appellant

VERSUS

CICO Company, Gbatala Rock Crusher, represented by its General Manger and all of its corporate and authorized agents working under the scope of their authority, and the Intestate Estate of John Vormon, represented by its Administrator and Administritrix Jacob Vermon and Helena Vermon, of Garyea Clan, Suakoko, Bong County, Republic of Liberia …….. Appellees

GROWING OUT OF THE CASE:

CICO Company, Gbatala Rock Crusher, represented by its General Manger and all of its corporate and authorized agents working under the scope of their authority, and the Intestate Estate of John Vormon, represented by its Administrator and Administritrix Jacob Vermon and Helena Vermon, of Garyea Clan, Suakoko, Bong County, Republic of Liberia …….. Movants

VERSUS

The Intestate Estate of Benjamin Franklin, represented by its administrators, Benjamin Franklin, Jr. and Marvee K. Franklin of the City of Monrovia, Liberia…….. Respondent

GROWING OUT OF THE CASE:

The Intestate Estate of Benjamin Franklin, represented by its administrators, Benjamin Franklin, Jr. and Marvee K. Franklin of the City of Monrovia, Liberia……Plaintiff

VERSUS

CICO Company, Gbatala Rock Crusher, represented by its General Manger and all of its corporate and authorized agents working under the scope of their authority of Garyea Clan, Suakoko District, Bong County, Liberia….. Defendant

AND

APPEAL

MOTION FOR JUDGMENT DURING TRIAL

ACTION OF EJECTMENT

)
All residents and occupants, as well as all those under the)
scope of their authority of Garyea Clan, Suakoko District,)
Bong County, Liberia…….. 2nd Defendants)

Heard: July 3, 2024 Decided: August 27, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The genesis of this appeal is an action of ejectment instituted by the appellant herein, the Intestate Estate of Benjamin Franklin, against the co-appellee, CICO Company and the Residents and Occupants of Garyea Clan, Suakoko District, Bong County, the 2nd defendants in the trial court.

The appellant's seven (7) count complaint alleged *inter alia* that it is the bona fide owner of a parcel of land containing100 acres, situated in the territorial boundary of Garyea Clan, Suakoko District, Bong County, which was acquired through lawful purchase from the Republic of Liberia on the 16th day of October, 1948 by the late Benjamin Franklin, Sr.; that co-appellee CICO Company illegally entered upon appellant's property and commenced commercial query business operations thereon; that the 2nd defendants are unauthorized trespassers who are illegally occupying plaintiff's property and have caused damages to said property by defacing same; that notwithstanding several notices to both co-appellee CICO and the 2nd defendants to vacate appellant's property, they have refused and neglected to surrender the subject property to the appellant, but continue to exercise illegal and unauthorized possession thereof to the detriment of the appellant. The appellant therefore prayed the trial court to eject both co-appellee CICO and the 2nd defendants and hold them liable for general damages in the sum of Five Hundred Thousand United States Dollars (US$500,000.00).

On December 13, 2013, and in response to the complaint, the appellant filed an eight (8) count answer wherein it denied the appellant's complaint in its entirety, specifically asserting therein that its right of possession and occupancy of the subject property is predicated on a valid lease agreement entered into on the December 20, 2011 by and between the Intestate Estate of John D. Vormon of Gbartala, Bong County and appellees as Lessor and Lessee, respectively, for a period of ten (10) years certain and ten (10) years optional; that although the appellant notified the appellees to vacate the subject property, the later relying on the validity of its leasehold right in the said property disregarded the said notices; that the appellees has been conducting its business operations within the scope of the lease agreement entered into with its lessor, and at no time encroached on any property owned by the appellant let alone cause damage to same to warrant the imposition of damages in the amount of Five Hundred Thousand United States Dollars. The appellees therefore prayed the trial court to deny the appellant's complaint.

On the same December 13, 2013, the appellee's lessor, the Intestate Estate of John D. Vormon, filed a motion to intervene along with its Answer to the appellant's complaint. In its motion to intervene, the Intestate Estate of John D. Vormon asserted that the latter was

the legitimate owner of 200 acres of land situated in the area of Garyea Clan which was acquired from the Republic of Liberia, and as proof thereof annexed to its motion copy of tribal certificate, Order of Survey from the Director of Deed and Registration dated December 12, 1986, and title deed; that the intervenor having leased portion of its property to the appellee, it was incumbent upon the intervenor to protect the interest of its lessor and that of itself.

Likewise, as in the motion to intervene, the intervenor asserted in its Answer to the complaint that the subject property was purchased by John D. Vormon from the Republic of Liberia; that the late John D. Vormon remained in possession and occupancy of the subject property throughout his lifetime; that the administrators of his Intestate Estate were begotten on the subject property and occupied same without interference from anyone, including the appellant; that having leased the subject property to the appellees, the appellant is for the first time asserting ownership to the said property, notwithstanding the fact that the said property was legitimately acquired from the Republic of Liberia by the late John D. Vormon, and continued to remain his property until his demise and thereafter transitioned to his Intestate Estate which then proceeded to lease a portion thereof to the appellees; that the appellees have not injured the appellant in any form or manner by their occupancy and use of the subject property, and as such, damages cannot attach. Therefore, the intervenor prayed the trial court to deny the complaint in its entirety.

On December 20, 2013, the appellant filed its reply to the appellees' answer, denying the assertions contained therein and reaffirming the averments of its complaint in its entirety.

The records show that following the filing of the motion to intervene, a hearing was had thereon without objection from the appellant; hence the trial court granted the said motion and ordered the interevenor joined to the suit as codefendant. Thereafter, the case was ruled to trial.

While the case was pending trial, the appellant filed a motion for sequestration of rent. Following arguments on the said motion, *pro et con*, the trial judge denied same and ordered the trial proceeded with, beginning with the selection of the *petit jury*.

Following the empaneling of the jury, the appellant commenced the production and presentment of evidence in substantiation of its case which included testimonies from three witnesses, and species of documentary evidence to include title deed to the subject property. Having rested with the production of evidence, the appellant then submitted its side of the case for argument.

Thereafter, the appellees entered upon the records a submission for a motion for judgment during trial on grounds that the appellant failed to prove its title to the subject property, and that the evidence adduced by the appellant was insufficient to legally warrant a judgment in the latter's favor. The appellees relied on Section 26.2 of the Civil Procedure Law which states thus:

"Motion for judgment during trial.

> After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment

> with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2)."

The trial judge entertained arguments on the appellees' motion for judgment during trial *pro et con*, and afterwards ruled granting same, and thereafter directing the jury to return a verdict of not liable in favor of the appellees.

The appellant noted exceptions to the trial court's ruling on the motion for judgment during trial, which ruling brought finality to the entire case, and announced an appeal to the Supreme Court; hence, the present appeal.

The appellant's nineteen (19) count bill of exceptions alleges *inter alia*, that both the appellant and appellees pleaded title to the subject property; hence, it was the province of the jury to view both title instruments and make a determination on which title instrument was superior, and as such, the granting of the motion for judgment during trial was without legal basis; that the trial judge's charge to the jury was made contrary to the applicable law. Having reviewed the bill of exceptions in its entirety, and considered the records pertinent thereto, we find that the germane issue for consideration and determination by this Court regards the applicability of a motion for judgment during trial. Hence, the issue dispositive of this appeal is "*whether or not the appellees were entitled to judgment as a matter of law to warrant the granting of the motion for judgment during trial.*"

A motion of judgment during trial as provided for by the Civil Procedure Law, is a request made by a party asking the judge to rule in their favor on the basis that the opposing party has insufficient evidence to reasonably support their case. Pursuant to Section 26.2 of the Civil Procedure Law, the said motion is applicable in following instances, to wit:

1. **After the plaintiff's presentation of evidence**: The defendant can make this motion, arguing that the plaintiff has not provided enough evidence to support a verdict in their favor;

2. **After the defendant's presentation of evidence**: Either party can make this motion on ground that the movant is entitled to judgment as a matter of law.

3. **Anytime during trial**: Either party can make this motion before the case is submitted to the jury, on the basis that the opposing party made an admission to a claim or issue.

In the present case, the records show that the appellant pleaded a facsimile of the certified copy of its deed along with copy of an extended letters of administration issued to the representatives of the appellant in persons of Benjamin Franklin, Jr. and Marvee K. Franklin.

During trial, the appellant's first witness, Benjamin Franklin, Jr. was asked the following questions on cross examination, to wit:

Q. "Mr. witness, assuming you had authority over the property as administrator, have you at any point conducted a survey to separate your 100 acres?"

A. "Yes. I conducted a survey. I am saying yes because [although] my father is late, at the time of the survey I was small and I followed him during the conduct of the survey; so I can tell you that a survey was done."

Q. "Say Mr. witness if you can remember, what year was the referenced survey done and who was the surveyor?"

A. "…that survey was done in the late 70's…and was done by the resident surveyor of Bong County"

The appellant's second witness testified on the direct that he accompanied Benjamin Franklin, Jr. to see the land commissioner of Bong County regarding the co-appellee CICO Company illegal occupancy of its property and the purported ownership of the subject property by the Vermon Intestate Estate; that the instruments presented to the said Land Commissioner by Benjamin Franklin, Jr. included field notes written by the then county surveyor, James Flomo, a Tribal Certificate for 100 acres of land issued to Benjamin Franklin, Sr., and some past litigation documents involving the Intestate Estate of Benjamin Franklin, Sr. and a company known and referred to as *Porto Torri*.

On the basis of the appellant's witnesses' testimony regarding the survey that was allegedly done in 1978, the appellees entered a submission on the records of the trial court requesting judgment during trial on ground that the evidence presented by the appellant was inadequate to warrant the granting of judgment in favor of the said appellant. The records further show that the appellees alleged that the appellant's deed was fraudulent because the latter's witnesses testified that the subject property was acquired from the Republic of Liberia in 1948 and a Public Land deed executed therefor by President William V. S. Tubman; that in 1978, President William R. Tolbert ordered a survey of the subject property in favor of the appellant. The appellees reasoned that the survey of a property is conducted before the issuance of a deed.

This Court concurs with the appellees that the survey of a property subject to sale must be conducted before a deed can be prepared and executed by the grantor; for it is during the conduct of a survey that the metes and bounds of the property to be deeded is established. Nonetheless, the survey commissioned by President Tubman and conducted in 1978, as alleged by the appellant, does not *ipso facto* render the appellant's deed fraudulent, as contended by the appellees. It is plausible that the alleged survey could have been ordered as a resurvey of the subject property to establish boundaries.

In fact, when questioned on cross examination as to whether the 1948 deed was the outcome of the survey conducted in 1978, the appellant's second witness testified to the contrary stating that "the document in question (deed) is older than the field notes that I saw".

Interestingly, the records also show that co-appellee the Intestate Estate of John D. Vermon also pleaded a certified copy of a Public Land Sale Deed purportedly executed by President

Samuel K. Doe on January 22, 1986 as proof of its ownership of the subject property. Additionally, the said co-appellee pleaded and annexed to its Answer the following instruments, *viz*.:

1) Tribal Land Certificate dated April 17, 1962 for 200 acres of land;
2) Letter of request from the Land Commissioner of Bong County addressed to President Samuel K. Doe for the issuance of an executive order for the survey and conveyance of the subject property, dated December 2, 1986; and
3) Letter from Executive Mansion, under the signature of the then Director of Deeds Registration, ordering the survey of 200 acres of public land, dated December 12, 1986

Suffice it to say that co-appellee the Intestate Estate of John D. Vermon was issued a Public Land Sale Deed, duly executed by the then President of the Republic of Liberia, Dr. Samuel K. Doe, prior to the survey of said property. This anomaly, the appellant alleged in its reply constitutes fraud. As we stated above, the observed anomaly in the appellees chain of title instruments raises doubt as to the authenticity of said instruments, but at the same time does not *ipso facto* render the Vermon Public Land Sale Deed fraudulent. Howbeit, we note that it is for similar reason that the appellees made submission for a motion for judgment during trial.

It is the law that when fraud is alleged, a jury must pass upon the evidence in support of the allegations. *Jallah v. Jallah,* Supreme Court Opinion, October Term, 2015; *National Elections Commission v. Liberty Party*, Supreme Court Opinion, Special Session 2011.

Notwithstanding these glaring issues of alleged fraud as pleaded by both the appellant and the appellees, the trial court proceeded to grant judgment during trial in favor of the appellees, on the basis that the appellant had failed to plead any judgment, writ of possession, or court records to support the appellant's testimony that it had instituted a suit against the company, *Porto Torri*, and judgment had been rendered in its favor; that the appellant failed to prove that it was ever in physical possession of the subject property; and that the appellant failed to substantiate its title to the subject property because the testimonies of its witnesses indicated that the said property although allegedly purchased in 1948 and a Public Land Sale Deed issued thereof and signed by President William V. S. Tubman, same was surveyed in 1978 upon orders of President William R. Tolbert.

As we stated earlier, it is a plausible argument that the survey ordered to be conducted in 1978 could have been a resurvey, and predicated on the testimony of the appellant's second witness to the effect that the 1948 deed was not a product of the survey conducted in 1978, we are inclined to deduce that the survey that was done in 1978, according to the Bong County resident surveyor's field note referenced by the appellant's second witness, was a resurvey; and we so hold.

As to the rationale of the trial judge's ruling on the motion for judgment during trial, this Court says same is without the ambit of the law. The question pertaining to the authenticity of the appellant's deed are all issues of fact that should have been submitted to and passed upon by the trier of facts to determine the probative value of said species of evidence.

Moreover, the trial judge in his ruling on the motion for judgment during trial held that the testimonies of the appellant's witnesses amounted to hearsay, and as such same were inadmissible. We observe from the records that during the direct and cross examination of the appellant's witnesses, the appellee's counsel failed to object to the said testimonies which the trial judge subsequently alluded to as hearsay evidence. In the absence of any objection by the appellees' counsel with respect to the appellant's witnesses' testimonies on the basis of hearsay evidence suggests one of two reasons, *viz*.: 1) that the said counsel did not consider the said testimonies as hearsay evidence; or 2) that the counsel did not know at the time what constitutes hearsay evidence. But considering the caliber of lawyers representing the appellees at trial, we are more incline to believe that their failure to object was on the basis of the first rationale.

After thoroughly reviewing the records and meticulously considering the testimonies of the appellant's witnesses, we question the basis on which the trial judge classified these testimonies as entirely hearsay evidence. But assuming arguendo that the testimonies offered by the appellant's witnesses amounted to hearsay evidence, it was incumbent on the appellees' learned counsels to object to said testimonies. Their failure to object then is an estoppel by lashes for a subsequent request for said testimonies to be disallowed. The Supreme Court has defined estoppel by lashes as *"a failure to do something which should be done or to claim or enforce a right at a proper time; a neglect to do something which should be done or to seek to enforce a right at a proper time." William T. Knowlden v. Willette R. Johnson et al.*, 39 LLR 345, 361 (1999).

Besides, it is trite law in this jurisdiction that the court will not do for a party what that party ought to do for itself; and he who should speak but remains silent is deemed to have assented. *Constance et al. v. Ajavon et al*., 40 LLR 295, 304 (2000).

Finally, the appellee's counsel before this Court, both in his brief and in argument, has conceded that the trial court's judgment on the motion for judgment during trial was untenable, and as such, same should be set aside and vacated, and the case be remanded for a new trial. With this admission, this Court is in full agreement, and herewith holds that Section 26.2 of the Civil Procedure Law, *"Motion for Judgment During Trial"*, being inapplicable to the present case since contentious factual issues remained undetermined, coupled with the appellees legal counsel's admission that the granting of the motion was untenable, the trial court erred by granting the said motion.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Ninth Judicial Circuit, Bong County, is hereby reversed and the case remanded for the conduct of a new trial. The Clerk of this Court is ordered to send a mandate to the trial court, commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are to abide final determination. AND IT IS HEREBY SO ORDERED.

Reversed and Remanded

When this case was called for hearing, Counsellor Viama J. Blama of NELAL appeared for the appellant. Counsellor J. Johnny Momoh of the J. Johnny Momoh & Associates Legal Chambers, Inc. appeared for the Respondent.