

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

Modern Development & Management Corporation (MDMC))	
represented by and thru its CEO & Managing Director, Mr.)	
John S. Youbouty Sr. of the Township of Johnsonville, Mount)	
Barclay, Montserrado County, Republic Liberia)	
.....Appellant)	
)	
Versus)	APPEAL
)	
Otis Kyne et al of the Town of Johnsonville, Montserrado)	
County, Liberia.....Appellees)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Modern Development & Management Corporation (MDMC))	
represented by and thru its CEO & Managing Director, Mr.)	
John S. Youbouty Sr. of the Township of Johnsonville, Mount)	
Barclay, Montserrado County, Republic Liberia)	
.....Plaintiff)	
)	
Versus)	ACTION:
)	EJECTMENT
Otis Kyne et al of the Town of Johnsonville, Montserrado)	
County, Liberia..... Defendants)	

Heard: June 26, 2024

Decided: August 27, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The instant action of ejectment is before us on appeal from a ruling rendered by the assigned trial judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, His Honor Ousman F. Feika, during its December Term of Court A.D. 2022, where the contesting parties for a parcel of land traced their respective title instruments to the same grantor, the Intestate Estate of John Mack Bettie.

The pertinent facts as culled from the records show that on May 9, 2019, the appellant Modern Development and Management Corporation (MDMC), plaintiff in the court below, filed a twelve-count action of ejectment against the appellees before the Sixth Judicial Circuit, Civil Law Court alleging *inter alia* that it is the legitimate owner of sixteen point forty-seven (16.47) acres of land lying and situated in Mount Barclay, Montserrado County, Republic of Liberia; that the appellant purchased the subject

property in 2013 from the Intestate Estate of John Mack Bettie by and thru its administrators Shadrach Bettie, Melvin C. Bettie, Karin Bettie, Ricky Mensah and Richard D.A. Hill for the construction of an asphalt plant; that the appellees without any color of right and in complete disregard of the appellant's property rights illegally encroached on the appellant's premises and have constructed structures thereon despite several verbal warnings and written notices from the appellant to have the appellees vacate its premises; and that damages will lie against the appellees for their illegal and wrongful withholding of the appellant's premises and the construction of structures thereon. To substantiate these allegations against the appellees, the appellant attached three (3) separate deeds: the first deed containing one point three five (1.35) acres of land; the second deed containing five (5) acres of land; and the third deed containing ten point two (10.2) acres of land, all purchased by the appellant from the Intestate Estate of John Mack Bettie in 2013.

We note that the appellant filed the action of ejectment naming a total of 11 (eleven) persons, namely, Otis Kyne, Musa Kanneh, Nyannet N. Nyanett, Annie Nyan, Netty Nyanneh, Debora Dorbor, Mesach G. Wilson, Akin Passawe and Brutus Kind, Morris Barbay, Brutus King.

However, the records show that on May 20, 2019, only co-defendants/co-appellees Otis Kyne, Musa Kanneh, Nyannet N. Nyanett and Annie Nyan jointly filed a twelve-count answer to the allegations contained in the appellant's complaint against them. The crux of the co-appellees' answer is that the appellant's title instruments that were attached to its complaint as proof of ownership for the subject property are fraudulent, because the appellant presented three (3) separate deeds with different volume and page numbers to substantiate its claim of ownership to the disputed property; that they (appellees) have superior titles due to the fact that the fraud contained in the appellant's titles vitiate everything; that the appellant lacks the standing and legal capacity to institute the action of ejectment owing to the fact that all of its purported title instruments contained fraud; and that for these reasons damages will not lie against the co-appellees as they are the legitimate owners of the disputed property.

On May 30, 2019, the appellant filed a twenty-two count reply to the co-appellees' answer reaffirming the averments in its complaint to the effect that it is the legitimate owner of the disputed property; that that co-appellees' contention that its titles are fraudulent is misleading and an attempt to deceive the court; that it is the co-appellees who obtained their titles through fraudulent means; and that damages will lie against the appellees for their unlawful and illegal encroachment on the appellant's premises and for the construction of structures thereon without the consent and authorization of the appellant.

Subsequently, on July 3, 2019, co-appellees Nayttey Nyanneh, Davina Larmee, and Charles Massalay filed a two-count motion to intervene as party defendants to which motion the appellant having interposed no objection, same was granted by the trial judge and the intervenors/appellees ordered to file their answer in ten (10) days. In compliance with the court's order, the intervenors/appellees filed an eleven-count intervenors answer contending that they are legitimate owners of one (1) acre three (3) lots of the disputed property having purchased same from the Intestate Estate of John Mack Bettie in 2015; that the appellant obtained its title instruments through fraudulent means and that it was proper for the court to have granted their motion to intervene to prevent their interest in the subject property from being adversely affected.

The appellant filed a twenty-two count reply to the co-appellees' answer essentially raising allegations of fraud against the intervenors/co-appellees to the effect that had the intervenors/co-appellees conducted sufficient due diligence regarding the disputed property, they would have known of the appellant's ownership rights; notwithstanding, assuming the intervenors/co-appellees properly acquired the disputed property through legitimate means the appellant would still possess superior title to that of the appellees owing to the fact that the appellant purchased the disputed property in 2013 and registered and probated same within the timeframe as provided by law prior to the purchase of the co-appellees in 2015. Hence, the appellant is the legitimate owner of the subject property.

As to the other co-defendants Netty Nyanneh, Debora Dorbor, Mesach G. Wilson, Akin Passawe and Brutus Kind, the records show that by the Sheriffs' returns they were not bought under the jurisdiction of the trial court, as they could not be located despite diligent efforts to have the writ of summons and the complaint served on them. It is the law that "If the return on the writ of resummons shows that the defendant has not been served and if the plaintiff makes an application not later than ten (10) days after such return, the court shall order service of the summons to be made by publication. An order for service by publication shall direct that the summons be published together with a brief statement of the object of the action in a recognized newspaper for a specified time, at least once in four successive weeks. The first publication shall be made within twenty days after the order is granted. On the day of each publication, a copy thereof together with a copy of the complaint shall be mailed by registered mail to the last known address of the defendant." Civil Procedure Law, Rev. Code 1: 3.40; *Estate of Cooper v. Kaba et. al*, Supreme Court Opinion, October Term 2006 *Stevens v. National Housing and Savings Bank*, Supreme Court Opinion, March Term 2012; *Davis Sr. et. al v. LTA*, Supreme Court Opinion, October Term 2016. Hence, the appellant, having complied with the quoted provision of the statute, by operation of the law these named co-defendants were served

the writ of summons along with a copy of the complaint by publication, thereby bringing them under the jurisdiction of the trial court.

On October 8, 2020, the appellees filed a four-count motion requesting the trial court for the conduct of an investigative survey on the basis that it is in the best interest of the contending parties to conduct an investigative survey to determine the legitimate owners of the disputed property. The appellant having interposed no objection to the said motion, the trial judge ordered the clerk of court to request the Chairman of the Liberia Land Authority to submit the name of a licensed and qualified surveyor to lead the Investigative Survey Team and further order the appellees and the appellant to submit the names of their respective surveyors for the conduct of the investigative survey. Surveyor Albert Giah represented the appellees; surveyor Robert B. Thomas represented the appellant; while surveyor Tom W. Nimley of the Liberia Land Authority served as the head of the Investigative Survey Team. The investigative survey team subsequently issued a survey notice on February 5, 2021 informing the parties and the adjacent landowners about the conduct of the survey on Tuesday, February 16, 2021 at the precise hour of 10:30 A.M. The survey was conducted on the said date in the presence of the representatives of the disputing parties and the adjacent landowners.

On July 12, 2021, the investigative survey team through its Head, Tom W. Nimley filed its report with the trial court, which was read in open court by the trial judge His Honor J. Kennedy Peabody and a copy served on each of the contesting parties on different dates. We quote herein below the pertinent portion of the investigative survey report as follows, to wit:

“Findings

1. That plaintiff claimed and owned area as shown on the ground during the survey engulfed the defendant and co-defendant owned and claimed area on the ground during the survey thus causing the dispute.
2. That the plaintiff provided three (3) separate deeds for this investigation with one bearing the total quantity 1.35 acres, 5 acres and 10.2 acres respectively. However, the area shown for the 10.12 acres during the survey is heavily contested by the defendants and several other individuals whose names or title deeds are not before this Court.
3. That portions specifically 3.748 lots of the plaintiff 1.35 acres of land as was shown on the ground during the survey is being occupied and

demarcated with a chicken-wire fence by individuals known as Morris and Joan Barbay who said they have legal title for said area

4. That portion of the heavily disputed area as mentioned in count 2, specifically the 3.25 acres of land is fenced-in and being used as a factory by the plaintiff while the defendants and co-defendants have structures and cornerstones erected to their respective area of claim.

5. That the deeds as being received from all parties show that the plaintiff's three (3) separate deeds are all older than the co-defendants' individual deeds.

6. That the bearings on all the deeds belonging to the plaintiff reflect the disputed area or claimed area but with error in its closure while the bearings on the deeds belonging to Annie Nyannah, Nyannett N. Nyannah, and Otis and Anita Kyne do not reflect the disputed or their individual area of claim.

7. That the bearings on the deeds belonging to Annie Nyannah, Nyannett N. Nyannah, and Otis and Anita Kyne are inappropriate and fake. Please see deed for verification.

8. That portion of the plaintiff's already fenced-in 3.25 acres of land used as a factory (1.308 lots and 0.668 lots) is being claimed by Davina Larmee and another individual with initials "B.H".

9. That the information on the plaintiff's deed states that he acquired his three separate deeds from the Intestate Estate of James Mack Bettie with Melvin Bettie, Karim Bettie, Ricky Mensah and Richard D. A. Hills being the administrators of the said estate while co-defendants Annie Nyannah, Nyannett N. Nyannah and Abraham G. Weah acquired their individual land from within portion of the Intestate Estate of James Mack Bettie with Shedrick A. Bettie Sr, Recky P. B. Mensah, Karein E. Bettie being the administrators that conveyed title to Abraham G. Weah while Shedrick A. Bettie Sr, Recky P. B. Mensah, Karein E. Bettie and John O. Bettie were the administrators that conveyed title to Annie Nyannah, Nyannett N. Nyannett, Otis Kyne and Anita Kyne.

10. That plaintiff's 3.25 acres of fenced-in land being used for factory fall within portion of both the 5 acres and 10 acres of land.

Conclusion:

Having considered all the technical realities of all title deeds and information obtained from the ground through a detailed investigative survey, the investigative survey hereby concludes the following:

1. That the plaintiff is the holder of the oldest deed among all disputants and that the disputed parcel of land falls within the Intestate Estate of James Mack Bettie in which all disputants individual parcel of land is ideally lying and situated.
2. That Recky P. B. Mensah and Karein E. Bettie were part of the four (4) administrators from the Intestate Estate of James Mack Bettie that conveyed title to the plaintiff and later joined Shedrick A. Bettie, Sr. and John O. Bettie that conveyed title to the defendants and co-defendants.
3. That the bearings on the deed belonging to Annie Nyanneh, Nyannett N. Nyanneh, Otis and Anita Kyne are inappropriate and fake and do not reflect their individual area of claim...”

Upon receipt of the investigative survey report, on August 9, 2021, the appellees filed a six-count objection to the report which we summarize as follows:

That the investigative survey report should be denied and dismissed on grounds that the report showed only seven acres of land owned by the appellant contrary to the purported 10.2 acres of land as mentioned in one of the appellant’s title instruments; that the survey note from which the survey report was made stated with absolute clarity that the quantity of land on the appellant’s title instruments could not be verified due to error on the closure and same was not reflected in the conclusion of the report; and that the lack of closure of the appellant’s title instruments makes same inaccurate and defective.

On August 17, 2021, the appellant filed a nineteen-count resistance to the appellees’ objection to the investigative survey report. Counts 1, 2 and 4 of the appellant’s resistance being relevant for our discussion of the issues we quote same herein below:

“1. That as to the entire Objector’s Objection, the respondent (appellant) says that it is a fit subject for dismissal for reasons that:

- a. The objectors’ objection which is characterized by confusion, contradiction, fabrications, and inconsistency is a sham objection filed for dilatory purposes;

b. Findings and recommendations of the court-appointed surveyors are conclusive and binding on the objectors, as the objectors were duly represented by their designated surveyor as their technical representative who acquiesced to the survey report by not filing any objections or exception to the investigative survey report;

c. That the Objector's assertion that the report is fraudulent is a mere allegation, made solely by objectors on a fishing expedition which is unsupported by any empirical fact and or expert opinion on the investigative survey report.

2. As to count one of Objector's Objection, and in traversing objectors' claim that the court-appointed surveyors' report is fraudulent because it failed to show plaintiff's seven acres of land as per plaintiff's purported title instrument bearing the 10.2 acres, Respondent says that said count should and ought to be denied and dismissed as the objector demonstrates in said count the lack of capacity to read and interpret a survey report which is technical in nature.

4. As to count two (2) of the objector's objection, respondent says and submits that said count should be denied and dismissed on ground that said count is self-contradictory. The reason is that the objector is quoting a portion of count six (6) of the surveyor report alleging that the plaintiff's title instruments do not close and at the same time alleging that the surveyor neglected to mention same in his report, thus impeaching his credibility..."

On January 7, 2022, the trial judge rendered his ruling on the appellant's objection to the investigative survey report. We also quote relevant excerpts from the judge's ruling as follows, to wit:

"The court identified the following issue to be controlling in the determination of this Objection to the Investigative Survey Report, and that is whether the survey should be set aside based on the facts and circumstances?"

The Supreme Court has held in numerous Opinions that whenever it is discovered that gross irregularities exist in the trial proceedings conducted by the Board of Arbitration, the trial court is not bound to wait for objection but may proceed *sua sponte* to set aside the award and adopt such course as will ensure justice to the parties concerned. *JS Taylor v. DF Howard and*

Board of Arbitration, 3 LLR 15, 16 (1928). This Court says that a survey report will only be set aside if this Court finds that there were irregularities during the conduct of the arbitration survey by the board of arbitration.

The primary contention of the Objector is that the Survey Report as presented by the Board of Arbitration is fraudulent and contradictory because the quantity of land the respondent's title deed could not be verified due to error on the closure and same was not reflected in the conclusion of the arbitration survey report.

The court observes that the respondent submitted to this court three (3) distinct and separate title deeds (A) 1.35 acres of land surveyed on August 10, 2013 (B) 5 acres of land surveyed on July 22, 2013 (C) 10.12 acres of land surveyed on September 12, 2013. All of these deeds clearly state the quantity of land on the face of the deeds. How then can the Objector argue that the quantity of land was not verified and reflected in the Report? However, Count Three of the Survey Report clearly states that the co-defendants Annie, Nyannah and Otis title deeds do not describe their respective positions. This implies that the contentions of co-defendants Annie, Nyannah, and Otis in their pleadings are contrary to the facts found on the ground by the surveyors. Therefore, the Survey Report is clear as to who owns the land on the ground location as per the Investigation.

First, this court's instruction to the surveyor was to 1. Conduct a reconnaissance survey and present cost to the court 2. To only use deeds, maps, and diagram pleaded by the parties and issue notice of the survey and file same with the Clerk of Court 3. To notify all technical representatives of the parties and if they fail to appear having been served and refuse to send excuse to the Chairman, the Chairman is to proceed according to the notice 4. Any party who failed to nominate a technical representative to the Board of Arbitration will not be a ground to the arbitration survey; hence, the arbitration survey report will be binding and enforceable against them, and finally any dissatisfied party may file their objection prior to their submission of the Report.

The court observes from the records of the case file that the surveyors notified the contending parties and all adjoining land owners both through physical service, electronic and print media about the conduct of the survey.

The court further says that the Objector failed to support his claim by evidence. Mere allegation is not proof and one who alleges has the burden of proof. It is also the law that mutual agreement of the parties to submit their agreement to arbitration is binding and enforceable. *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; *Chambers v. NEC*, Supreme Court Opinion, October Term 2023.

The surveyors are technical people who are trained to interpret deeds and other instruments. It is their office to determine the sufficiency of the evidence based upon which the surveyor proceeded with the process so as to reach the conclusion that gives the subject for consideration by the court and the jury. This court observes from the Findings of the Arbitration Survey Report that the plaintiff's 10.12 acres of land are heavily contested by the defendants. This implies that all of the defendants are contesting over the same area of land claimed by the plaintiffs. Count Five of the Report also states that the plaintiff's deeds are the oldest compared to that of the defendants. Finally, count seven of the survey report states that the bearing on the deeds of defendants Annie, Nyannah, Otis and Annie Kyne are inappropriate and fake. Contrarily, there is nowhere in the Report wherein it is mentioned that plaintiff's deed is defective. Indeed, as earlier stated herein above, the surveyors followed the instructions of the court regarding what to do before conducting the survey. An investigative survey report does not award any of the parties the property in dispute as same is to be used as an evidentiary tool and is not in the nature of an award. It is used by the court to determine a particular technical controversy of a matter before it. *Gardiner v. James*, Supreme Court Opinion, March Term 2015. Therefore, this court holds that the conduct of the survey was free of fraud and there was no misrepresentation or irregularities as claimed by the Objector."

Following the denial of the objectors' objection to the investigative survey report, the trial was proceeded with by the production of oral and documentary evidence by witnesses of both the appellant and the appellees.

At the close of the evidence, the trial judge forwarded the matter to the jury for their determination. Following deliberation, the jury returned a unanimous verdict of non-liable in favor of the appellees. The appellant thereafter filed a motion for new trial and same was resisted by the appellees, heard and denied by the trial court. The court entered

a Final Ruling affirming the jury's unanimous verdict, holding that the trial jurors are the sole judges of the credibility of each witness and they are the sole judges of the value or weight to be given to the testimony of each witness; that in the mind of the court, the evidence that was made available to the trier of facts was sufficient to enable them reach a verdict; that only the Honorable Supreme Court is competent to re-evaluate, re-weigh or re-determine evidence presented by the parties during the trial, and overturn the conclusion reached by the jurors.

We also quote herein below excerpts from the trial court's final ruling as follows, to wit:

“The investigative survey report submitted to this Court on July 12, 2020, is inherently contradictory on grounds that it states clearly that plaintiff's three title instruments could not be verified as indicted on the survey plan and the survey notes.

Co-defendants in persons of the Nyannah family and Otis Kyne individual deeds cannot be plotted to the information obtained from the ground because their deeds are all wrong and don't reflect their claimed areas. This Court maintains that the aforesaid points being clear and unequivocal observations of the court-appointed surveyor, it is inconceivable for said surveyor to say on the contrary in his conclusion that: “Plaintiff is the holder of the oldest deed among all disputants and that the disputed parcel of land fall within the Intestate Estate of John Mack Bettie that all the disputant individual parcel of land is ideally lying and situated.” The observation by the surveyor is indeed contradictory to say the least and does not seek to present a tangible solution to the dispute.

As to issue number Two (2), whether or not the plaintiff should recover on the strength of its own title and not on the weakness of the co-defendants' titles, this Court answers in the affirmative on the ground that the Honorable Supreme Court has held in the case *Suah-Belleh v. Oniyama*, Supreme Court Opinion, October Term 2023 “In an ejectment action, the plaintiff shall recover on the strength of its own title and not on the weakness of the defendant's title.” In the instant case, plaintiff proffered three separate title instruments that have been declared by the investigative survey to be unverified. This court wonders how plaintiff can recover on the strength of such unverified titles.

As to issue number three (3), whether or not co-defendants have established titles to the disputed properties, this Court answers in the affirmative and

says that co-defendants have proffered to this court title instruments conveyed by the Intestate Estate of John Mack Bettie by and thru its administrators Shedrick Bettie, Karim Bettie, Ricky P. Mensah, and John Bettie. This Court maintains that the investigative survey report states in count one (1) of the conclusion that the parties' respective parcels of land are ideally lying and situated.

Having heard and denied the motion for new trial in this case, it is the final judgment of this court that the "Not liable" majority verdict of the trial jury brought in favor of the defendants is hereby affirmed."

The appellants noted exceptions to this ruling of the trial judge by filing a twenty-six-count bill of exceptions. We have determined that only counts 1, 2, 12 and 14 are germane for the disposition of the issues raised, and will limit our review to same accordingly. The Supreme Court has opined that "it is not bound to pass on all of the issues raised in the counts in the bill of exceptions but only those it finds pertinent 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, 478 (1997); *Transport of Belgium v. Family Textile Center*, 38 LLR 49, 52 (1995).

We quote the counts below:

1. That the majority verdict of the petit jury and Your Honor's confirmation and affirmation of the said verdict are manifestly against the weight of the evidence adduced at the trial of the underlying cause of action, and should therefore be set aside on a review and a judgment centered in favor to the appellant for all the reasons stated therein.

2. Appellant says and submits that the majority verdict of the petit jury is contrary to the weight of the evidence adduced at the trial and should therefore be set aside for reasons that:

- A) Appellant established and proved by the preponderance of the evidence that (i) both the appellant and all the appellees purchased the disputed property from the same grantor, the Intestate Estate of John Mark Bettie and (ii) the appellant has superior deeds as against all the appellees, yet the petit jury found the appellees not liable, and the said verdict is contrary to law on superior title in this jurisdiction;

B) Appellant established and proved by the preponderance of the evidence that all the appellees except one did not probate and register their various title deeds within four (4) months statutory period required by the law in vogue yet the petit jury found the appellees not liable and the verdict is contrary to the requirements of the law on the probation and registration of title instruments or any interest in real property;

C) The appellees miserably failed to challenge or produce any counterevidence to the investigative survey report and the testimonies of the court-appointed surveyor which findings and conclusions, found among other things that, (i) “the bearings on the deeds belonging to Annie Nyannah, Nyannet N. Nyannah, and Otis & Anita Kyne are inappropriate and fake.”

D) The appellees alleged fraud as the principle defense of their respective title but miserably failed to prove any elements of fraud, or attributed the alleged perpetration of fraud to any particular person, yet the petit jury found the appellees not liable contrary to law on the burden of proof of one who alleges a fact.

12. Appellant submits that the verdict is manifestly against the weight of the evidence adduced at the trial because notwithstanding the fact the appellees’ evidence clearly showed that they purchased the property from the same Estate, miserably failed to probate and register their respective title deeds within the four-month statutory period following the date of execution of such deeds, the jury found the appellees not liable. As the objector demonstrates in said count the lack of capacity to read and interpret a survey report which is technical in nature. As to count two (2) of the objector’s objection, respondent says and submits that said count should be denied and dismissed on ground that said count is self-contradictory. The reason is that the objector is quoting a portion of count six (6) of the surveyor report alleging that the plaintiff’s title instruments do not close and at the same time alleging that the surveyor neglected to mention same in his report, thus impeaching his credibility.

14. Appellant submits that the legal requirement for the probation and registration of all title instruments is to observe the fundamental principle of notice to the whole world that the grantor has parted with title of the subject property to the grantee effective as of the date of execution of the title by the grantor to the grantee and anyone purchasing the subject property subsequent thereto, without the required due diligence from the same grantor

does so at his or her own peril for the grantee with the older or superior title deed is the rightful owner of the property.

We will proceed to address these counts in the appellant's bill of exceptions in the order of presentment beginning with counts 1, 2 and 3 since they raise similar issues.

In counts 1, 2 and 3 of the bill of exceptions, the appellant has contended that the jury verdict as presented by the petit jurors is manifestly against the weight of the evidence and that it was improper for the trial judge to have confirmed same.

It is trite law, practice and procedure in this jurisdiction that issues of fact are within the exclusive province of the jurors or where a party waives the right to jury trial the judge sits alone as the trier of facts and the Supreme Court has been unwavering in holding that it is the function of a jury or a judge sitting without a jury, to hear and decide the factual issues upon the evidence adduced at a trial; that a verdict presented by the petit jurors may be set aside, where the verdict is contrary to the weight of the evidence or in the interest of justice. *Embassy Suites Corporation v. The Management of Ecobank*, Supreme Court Opinion, March Term 2023; *Ketter v. Jones et al.* 41LLR 81, 85 (2002); Civil Procedure Law, Rev. Code 1: 26.4.

In the instant case, both the investigative survey report and the survey site plan revealed that the appellant's three deeds presented as evidence of its ownership of the disputed property were not verified; that although the bearings on the appellant's deeds reflected the disputed area, but there were errors in their closure. This Court notes that while the investigative survey report or the surveyor's site plan lacked explanation of the phrases, viz.: "*lack of verification of the appellant's deeds*" and "*error in the closure of the appellant's three deeds*", the testimony of the said surveyor did provide clarity thereto. We quote hereunder excerpts from the testimony of Mr. Nimely:

"Mr. witness, during your testimony you testified that there is an error in the plaintiff's deeds. For the benefit of this court and jury, what do you mean by that?

ans.: Said particular count under my findings clearly informed this court that the metes and bounds of the plaintiff's three (3) deeds are open traverse instead of close traverse. In simple terms all parcel of land commences from a known point and closes at said known point. It is deemed to be error in its closure [if it does not close at the point of commencement].

Q. The surveyor's site plan attached to the investigative survey report states that the plaintiff's three title deeds are not verified. What do you mean by that?

A. This means as was previously mentioned that the three (3) title deeds belonging to the plaintiff had errors in its closure, thereby making said traverse an open traverse, and as such said quantity of land contained within the metes and bounds of said deeds could not be verified because said polygon did not close back to where it commences from."

Whether it was on the basis of the lack of the clarity in the investigative survey report, or whether it was based on their interpretation of said report, the jurors however rendered a "not liable verdict" against the appellees, and same was subsequently confirmed by the trial judge.

This Court has held in numerous Opinions that the purpose of an investigate survey is to help the court to settle certain technical aspects of a case which will aid the court in determining an issue and can be used as an evidentiary tool in helping the court to determine a particular technical nature or controversy of a matter before it. This is done, as in the case of a land dispute, when the technicians, under the direction of the court, conduct a survey identifying the metes and bounds and exact location of a parcel of land that may be a subject of controversy. *Gardiner v. James*, Supreme Court Opinion, March Term, 2015; *KML v Metzger, Sr. et al*, 42 LLR 216, 218 (2004).

In the present appeal, the appellant has argued that it possesses the oldest deed amongst the contesting deeds; that by virtue of the principle on older title, its deed is superior to that of the appellees. The records do support the appellant's contention that it purchased the subject property prior to the appellees, and that the survey investigative report did match the metes and bounds of the appellant's deed with the ground location of the site.

However, the quantity of the land represented in the appellant's deeds could not be verified; alternatively stated, predicated on the testimony of the surveyor, because the appellant's deed had error in its closure, the metes and bounds surveyed could not be calculated to determine if same matched the quantity of land represented in each of the appellant's deed (5 acres, 10.12 acres, and 1.35 acres).

We take judicial cognizance of the law that "where the contesting parties derive their respective titles from the same grantor, the party with the older deed holds a superior title and is therefore entitled to the property." *Kamara v. The Testate Estate of Isaac K. Essel*, Supreme Court Opinion, March Term 2012; *Subah-Belleh v Oniyama*, Supreme Court

Opinion, October Term 2015. These holdings, however, have been predicated on the assumption that both parties hold deeds that are issued legitimately. Moreover, the plaintiff's title must be clear and free of doubts and uncertainties and the burden of proving a clear title in an ejectment case rests not on the defendant but on the plaintiff, a burden which is not exonerated by any alleged defects in the defendant's title. *Kiazolu v. Cooper Hayes*, Supreme Court Opinion, March Term 2011.

The investigative survey report, which is the technical instrument intended to aid the court and jury in determining ownership of a contested parcel of land, indicated that the geographical bearings of the appellees' deed did not correspond with the ground location of the area they claimed; that the said bearings were fake and inappropriate. On the other hand, the report stated that the appellant's deeds corresponded with the ground location of the property, albeit with a technical error in their closures. By virtue of this report which was subsequently testified to by the surveyor and subjected to direct and cross examinations, we are of the view that the appellant proved, by preponderance of the evidence, its title to the subject property against the present appellees. It was therefore erroneous for the jury to have returned a verdict of not liable against the appellees, given that their title deeds were classified as non-representative of the portion of the subject property they claimed. The records having established that the appellant did establish its ownership of the subject property, especially against the appellees, the trial court's confirmation of the jury's verdict constituted reversible error.

It is the law that where the verdict is contrary to the weight of evidence adduced at trial, or it is in the interest of justice to do so, the court may set aside the verdict and award a new trial. *Civil Procedure Law*, Rev. Code 1: 26.4. Hence, we hold that given the oral and documentary species of evidence presented by both the appellant and the appellees in substantiation of their respective claims to the subject property, *vis-à-vis* the investigative survey report which indicated that the appellant's deed matched the ground location of the subject property albeit with technical errors, the verdict returned by the jury is contrary to the weight of the evidence.

Before concluding this Opinion, we note that the trial judge interchangeably used the terms "arbitration agreement" and/or "investigative survey" in his final ruling. The records show that the appellees filed a motion for the conduct of an investigative survey and not an arbitration agreement which was granted by the trial judge. Hence, this Court deems it necessary to reiterate the distinction between investigative survey and arbitration survey as espoused in the case *Gardiner v. James*, Supreme Court Opinion, March Term 2015, which we quote as follows:

“Chapter 64 of the Civil Procedure Law titled "Arbitration" sets out a proceeding where parties to a dispute who want their matters settled by arbitration must submit a written agreement to court agreeing to submit their dispute to a board of arbitrators. This agreement effectively ousts the court from delving into the hearing of a matter except to confirm the awards made by the arbitral board with exception as set forth by section 64.10 of the Civil Procedure Statute. An arbitration agreement further sets out issues decided by the parties to be put before the board to be settled and the parties must agree as to those issues to be settled in the written agreement. An Investigative survey, on the other hand and which we have already noted in this Opinion, is one requested or directed by the court as a means of helping the court in settling certain technical aspects of a case which will aid the court in determining an issue.” The Court upon the filing of a report by the members of the investigative survey team must submit same to the triers of facts to weigh its probative value.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Sixth Judicial Circuit, Civil Law Court, which confirmed the verdict of the jury, is hereby reversed. The appellees are ordered ejected, ousted and evicted from the subject property and the appellant 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 appellees. AND IT IS HEREBY SO ORDERED.

Ruling reversed

When this case was called for hearing, Counsellor Abraham B. Sillah, Sr. of the Heritage Partners and Associates, LCC appeared for the appellant. Counsellor Amara A. Kenneh appeared for the appellees.