IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
MARCH TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS III .....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE YUOH.....ASSOCIATE JUSTICE

Mrs. Justina Tartue-Higgings of 1203 Prospect Street, Ewing, New Jersey 08630, USA, thru Her Attorneys-in-Fact, Moses F. Quoimie and Mrs. Elizabeth Tartue-Quoimie of the E. Jonathan Goodridge Housing Estate, Barnersville, Montserrado County, Republic of Liberia..... Appellants	) APPEAL
Versus	)
George Otta of the City of Paynesville, County of Montserrado, Republic Liberia.....Appellee	)
GROWING OUT OF THE CASE:	)
Mrs. Justina Tartue-Higgings of 1203 Prospect Street, Ewing, New Jersey 08630, USA, thru Her Attorneys-in-Fact, Moses F. Quoimie and Mrs. Elizabeth Tartue-Quoimie of the E. Jonathan Goodridge Housing Estate, Barnersville, Montserrado County, Republic of Liberia..... Plaintiff	) ACTION OF EJECTMENT
Versus	)
George Otto of the City of Paynesville, County of Montserrado, Liberia.....Defendant	)

Heard: OCTOBER 29, 2015 Decided: April 28, 2016

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal grew out of an action of ejectment filed by and thru Mr. Moses F. Quoimie and Mrs. Elizabeth Tartue Quoimie, attorneys-in-fact of the appellant, Mrs. Justina Tartue-Higgins, residing in New Jersey, United States of America, against the appellee, George Otto, of the City of Paynesville, Montserrado County, Liberia, during the June Term, A.D. 2012, of the Civil Law Court, Sixth Judicial Circuit, Montserrado County.

This action filed before His Honor Yussif D. Kaba, Resident Circuit Judge, was for the recovery of two (2) acres of land lying and situated in Gbengar Town, Paynesville, Montserrado County, which the appellant claimed was purchased on August 20, 2004, from one Pliccaid Garway, one of three (3) administrators of the intestate estate of the late Chief Barclay.

Pleadings having rested, the lower court proceeded with the hearing on the disposition of law issues. At the hearing, counsel for the appellant made a submission on the minutes of court, praying the court to proceed with the hearing of the case as the pleadings of the parties consisted of both issues of law and facts. To this submission, the appellee interposed no objection. The judge, based on the submission made by appellant, proceeded to hear the matter on its merits. The hearing was held without a jury. After the hearing, the Judge ruled dismissing the appellant's claim with cost of the proceedings ruled against her.

The appellant excepted to the ruling and announced an appeal to the Honorable Supreme Court for an appellate review of the trial court's final ruling. Her bill of exceptions, consisting of six counts, reads as follows:

1. That on November 28, 2012, at sheet five (5) of the court's minutes, defendant's counsel requested Your Honor to admit into evidence the documents D/1 thru D/3, confirmed and re-confirmed, to form a cogent part of the court's records. Plaintiff's counsel objected on the ground that these documents should not be admitted into evidence because it is defendant George Otto who is before this Honorable court and not Big George Venture, Inc., because the Honorable Supreme Court has held in 35 LLR that a document can be marked, confirmed and re-confirmed but cannot be admitted into evidence when it has no relevance to the matter. In the instant case, the document marked, confirmed and re-confirmed by this Honorable Court are in the name of a different person who is not before this court. Your Honor overruled the objection and ordered the said D/1 thru D/3 admitted. Your Honor, the plaintiff most respectfully believes that the ruling was an error because D/1 thru D/3 are not in the name of defendant George Otto.

2. That on November 8, 2012, at sheet four (4) of the minutes of court, on cross examination, plaintiff's counsel asked the following question: "Mr. witness, even though you are on record, you did buy the land in question in the name of Big George Venture, Inc., am I correct to say that you were acting as an agent?" The defendant's counsel objected to the said question on ground that same was *stare decisis.* Your Honor sustained the objection to which the plaintiff excepted. The question which was not allowed to be answered was proper in the mind of the plaintiff.

3. That on November 6, 2012, found on sheet 6 of the minutes of court, plaintiff's counsel asked the following question. "Mr. witness, now

that you have informed this court that you confirm and affirm the testimonies herein made by you as it relates to D/2; and you have come to tell this Honorable Court that the very D/2 offered to you by your grantor, you do not know who offered the deed for probation?" Defendant's counsel objected to the said question on grounds that same was vague and indistinct. Your Honor sustained the objection and the question was not allowed to be answered which was not proper in the mind of the plaintiff.

4. On November 4, 2012, found at sheet four (4) of the minutes of court, plaintiff's counsel asked the following question on cross examination: "By that Big George venture, Inc. is an existing entity for which you bought the property in its name?" Defendant's counsel objected to said question on the ground of burden of records. Your Honor sustained the objection to which the plaintiff excepted. The question which was not allowed to be answered was proper in the mind of the plaintiff.

5. That on September 13, A.D. 2012, plaintiff's counsel prayed Your Honor for the following: "one of counsels for the plaintiff begs leave of court that the pleadings of the parties herein named are mixed issues of law and facts, therefore requests court to rule this matter to trial on its merits. And respectfully submits". Defendant's counsel did not object and Your Honor ruled the case to trial on its merits. Your Honor erred when you had the case tried without a jury when in fact the action of ejectment always imports the issues of law and facts which requires jury trial, especially when Your Honor has ruled the case to trial. The fact that the case was ruled to trial which was not allowed to be tried by jury was not proper in the mind of the plaintiff.

6. That the plaintiff excepted to the final judgment and announced an appeal to the Honorable Supreme Court because the evidence produced in the trial by defendant was not relevant; that is, the documents offered by defendant George Otto were in the name of one Big George Venture, Inc.; therefore, same was not relevant to have qualified defendant George Otto to be favored in a judgment of not liable.

WHEREFORE, the plaintiff presents these bill of exceptions to Your Honor respectfully requesting that same be approved so that plaintiff can have her appeal heard. And submits.

The bill of exceptions presents two issues, (1) Whether or not the trial judge acted in error when he admitted into evidence the title deed of Big George Venture, Inc., a corporation, as evidence in support of appellee's claim of title to the subject property, and, (2) Whether the lower court could have proceeded to hear the matter without a jury?

We shall begin with the settlement of the second issue, same being a determining factor as to whether the hearing in the lower court was legally conducted, and in which case a determination by this Court would place the judgment and the entire proceeding as one worthy of review and reversal.

This Supreme Court has held in a long line of Opinions that cases of ejectment, often being an action involving a mixture of questions of law and

fact must be tried by a jury, and in some instances holding that jury trial is mandatory. *Harris v. Locket*, 1 LLR 79, 81 (1875); *Reeves v. Hyder*, 1 LLR 271, 272 (1895); *Karnga v. William and Deshield*, 10 LLR 10, 11(1948); *Lartey v. Corneh*, 18 LLR 177, 179 (1967); 38 LLR 307, 314 (1996); *UMC v. Intestate Estate of Anderson*, 40 LLR 449 (2001); Intestate Estate of *Charles Dunbar Sherman v. Nimely*, 41 LLR 215 (2002).

The records in the file brought up before us reveal that on September 13, 2012, during the disposition of the law issues, and following notation of representations, the appellant's counsel, Counsellor Lawrence Yeakula of the Liberty Law Firm, requested to make a submission on the minutes of court. The court granted leave for said submission and the appellant's counsel placed on the record a request that the issues raised in the pleadings being issues of mixed laws and facts, the matter be ruled to trial on its merit. The court granted the submission. Thereafter, the trial court minutes reflect the following when the hearing convened for trial on September 26, 2012:

> "**CLLR. YEAKULA:** At this stage, one of counsels for the Plaintiff requests this Honorable Court to qualify two of its four witnesses so as to enable them testify for and on behalf of the plaintiff. And respectfully submit.
>
> **THE COURT:** Application noted and the same is hereby ordered granted. The Clerk is ordered to proceed to qualify the two witnesses.
>
> (THE CLERK QUALIFIED THE PLAINTIF TWO WITNESSES)
>
> **THE CLERK:** Your Honor, in keeping with your order, the witnesses have been duly sworn. And I respectfully submit.
>
> **THE COURT:** The Clerk return is noted, and the Clerk ordered discharged. **This matter being a non-jury trial**, [emphasis ours] it is hereby ordered assigned for Wednesday, the 3rd day of October 2012, at the hour of two o'clock. Parties being present, the minutes serve as assignment and the parties are to govern themselves accordingly. MATTER SUSPENDED."

There is no objection on the record by either of the parties to the statement by the judge that this was a non-jury trial. Our Civil Procedure Law, Rev. Code 1:22.1.4(c) provides that a party may waive jury trial in a matter by oral consent in open court.

The submission as made on the record by counsel for the appellant requesting the court to submit the case to trial based on its merits is definitely not a request for jury trial as per the Civil Procedure Law, Rev. Code 1:22.1. Firstly, what the record reveals is that the appellant's counsel after his submission to the court to have the court proceed with the matter on its merit, proceeded to qualify his witnesses without a demand to the

court for a jury trial as required by our Civil Procedure Law, Rev. Code 1:22.1.2. Under the law and procedure, if the parties desire a jury trial the demand is made and the jury is empaneled before a request is made or the judge proceeds to qualify the witnesses. In this case, it was the appellant's counsel that asked for qualification of her witnesses, signifying that appellant had decided to waive jury trial. The appellee did not interpose objection, and by that indicated that he too o decided to waive jury trial. None of the parties, especially the appellant who had made the request for the qualification of his witnesses, can now challenge the court handling of the case without a jury.

Again, after the Judge ordered the Clerk to proceed to qualify the witnesses, stating thereafter that the matter was not a "non-jury trial", the appellant nor the appellee objected to this statement made by the Judge or requested for a jury trial. In the mind of this Court, this statement made by the judge was an emphasis of the understanding reached by the parties that the judge would act as both the trial of the law and facts in accordance with our Civil Procedure Law, Rev. Code 1:22.4. There is also no record of a subsequent demand as per the Civil Procedure Law, Rev. Code 1:22.1.5.

The counsel for the appellant proceeded with presentation of evidence, putting on the stand two witnesses who testified on the appellant's behalf and were crossed-examined; thereafter, appellant rested with oral evidence, admitting into evidence documentary evidence p/1 comprising appellant's Power of attorney to Moses F. Quoimie and Mrs. Elizabeth Tartue Quoimie, and p/2. a warranty deed from appellant's grantor, Pliccaid M. Garway, dated August 20, 2004.

Subsequently, the appellee took the stand along with one of his grantors, Mr. Prince Tarr and they testified as to the conveyance and title of the appellee.

We must now decide whether our present Civil Procedure Law makes a trial by jury mandatory in all ejectment action, so that a judge is under a legal obligation to empanel a jury in an ejectment case regardless of the facts, and when a party not only fails to request for the empaneling of a jury, but by his action, waives jury trial.

In deriving at this decision, we shall go back as far as to 1875, in the case *Harris v. Locket*, 1 LLR 79, 81 (1875), when this Court held: "In ejectment cases, questions of a mixed character are involved and under statute must be tried by a jury under the direction of a court." In *Reeves v. Hyder*, 1 LLR 271, 272 (1895), the Court held that the facts of ejectment being a mixed

question of both law and facts, the statute provides that such trial is to be held with an empaneled jury, with the assistance and under the direction of the court. The Court referred to the statute, *Liberia Statute Book 1*, page 47, sec.3. Subsequent rulings in the cases *John v. Witherspoon*, 9 LLR 376, 376 (1947); *Pratt v. Summerville and Philips*, 9 LLR 446 452 (1947); Pratt v. Philips and Summerville. 10 LLR, 147, 446, 452 (1947); 325, 328 (1950); and *Karnga v. William and Deshield,* 10 LLR 10, 11(1948); enunciated this principle based on the Lib. Stat. Book 1.

Subsequently, the 1956 Code, tit. 6, Section 1125, adopted similar principle in an ejectment action. It stated that when title is in issue in an ejectment action, a jury shall be empaneled if there is any question of fact to be tried.

The Court, in *Larsannah v. Paasawe,* 14 LLR 599 (1961) and *Lartey v. Corneh*, 18 LLR 177, 179 (1967), relying on the 1956 statute above, held that trial by jury is mandatory in an ejectment action where there is any question of fact to be tried and that the trial court exceeded its authority by being the sole judge of the issue. The word "Shall", as used in the 1956 statute, this Court has held, connotes that an action is mandatory, and compulsory. (*Ecobank v. Kakata Holding, Inc.*, Supreme Court Opinion, October Term, A.D. 2012; *Sesay v. Wright et al.*, 38 LLR 49, 553 (1998).

A review of the revised statute, Civil Procedure Law Rev. Code 1:22(1974), "TRIAL BY JURY" however provides the following:

> § 22.1. **Right to trial by jury.**
>
> 1. *Right preserved*. The right to trial by jury as declared by Chapter III, Article 20(a) of the Constitution or as given by statute shall be preserved inviolate.
>
> 2. *Demand*. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties.
>
> 3. *Specification of issues*. In his demand a party may specify the issues which he wishes tried by jury; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten days after service of the demand may serve a demand for trial by jury of any other or all of the issues in the action so triable.
>
> 4. *Waiver*. The failure of a party to serve a demand for trial by jury of an issue as required by this section and to file it as required by section 8.2 constitutes a waiver by him of trial by jury of such issue unless such a demand has been served by another party. If a

demand for trial by jury has been made under this section a party nevertheless waives his right to trial by jury by:

a) Failing to appear at the trial;

b) Filing a written waiver with the clerk; or

c) Orally consenting in open court to trial without a jury.

A party shall not be deemed to have waived the right to trial by jury of the issues of fact arising upon a claim by joining it with another claim with respect to which there is no right to trial by jury, or of issues of fact arising upon a counterclaim by interposing it in an action in which there is no right to trial by jury.

5. *Relief for failure to make demand*. Notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court, in its discretion, upon motion, may order a trial by jury of any or all issues.

6. *Issues triable by a jury revealed at trial*. When it appears in the course of a trial by the court that the relief required, even though not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury trial of such issues. Failure to make such a demand within the time limited by the court shall be deemed a waiver of the right to trial by jury. Upon such demand, the court shall order a jury trial of any issues of fact which are required to be tried by jury."

This matter brings up the several rulings held by this court after the adoption of the Revised Civil Procedure Law (1973). The Court in subsequent rulings carried over the principle adopted in the 1956 statute, that it is mandatory that where issues are joined by the parties to an ejectment suit, a trial by jury is mandatory although no demand was made by the parties for the empaneling of a jury. *Gbassage v. Holt*, 24 LLR 293, 296 (1975); *Scott v. Sawyer*, 24 LLR 500, 509 (1976); Nyumah v Kemokai 34 LLR, 226,234 (1986); *Dukuly v Jackson*, 37 LLR 576, 584-585 (1994); *Clarence Momulu v Cummings*, 38 LLR 307, 314 (1996); *UMC v. Intestate Estate of Anderson*, 40 LLR 449 (2001); Intestate Estate of *Charles Dunbar Sherman v. Nimely*, 41 LLR 215 (2002);

This raises the question, where no request for a jury was made by the appellant, could the judge be said to have erred where he proceeded to hear the matter without a jury? In other words, where this Court favors ejectment action involving mixture of law and facts being tried with a jury sitting, under the present statute, where the appellant failed to request a jury trial and there is no dispute as to the facts in the case, could the judge be said to have erred when he proceeded to hear and determine the case without a jury?

In the case *Vargas v. Eid,* 39 LLR 368 (1998), the Supreme Court held that the Constitutional right to jury trial is not self-executing but requires an enabling legislation to give it effect. In that case, the appellant was denied the right to jury trial because of her failure to request jury trial within the time prescribed by the Civil Procedure Statute (1974). The Supreme Court, in upholding the ruling of the trial court held:

> "We hereby reiterate that the failure of any person to obey, comply with, and abide by the provisions of ancillary or enabling statutes which seek to give meaning to rights guaranteed by the Constitution amounts to a waiver or forfeiture of said rights. .."

Following the holding in the *Vargas v. Eid,* supra, in the case WARDCO v. Arnous and Company, 40 LLR 21, (2000), brought up to the full bench from the ruling of the Justice in Chambers, the facts reveal that appellant WARDCO in an action of debt filed a one count motion for trial by a jury, having raised in its answer the issues of fraud and forgery. The plaintiff, Arnous and Company, resisted the motion contending that the motion was belated as it had been filed thirty three (33) days after pleadings had rested, contrary to the ten (10) days allowed by statute. The trial judge, relying on section 22.1.2 of the Civil Procedure Law (1974), denied the motion as being belated. The defendant went up to the Chambers Justice praying for the issuance of the alternative writ of prohibition, contending as a basis for its prayer that the Constitution provided all parties a right to a jury trial, and that it had demanded trial by jury based on the issue of fraud raised in the pleadings which the judge had ruled to trial. The Chambers Justice initially ordered the alternative writ but subsequently after a hearing quashed the alternative writ and denied the peremptory writ. The Chamber's justice ordered the trial court to resume jurisdiction over the case and proceed to hear the matter on its merits. The petitioner excepted to the ruling of the Chambers Justice and announced an appeal to the Full Bench.

On appeal, the Bench upheld and reaffirmed its holding in the *Vargas* case that section 22.1(2)(4) is Constitutional, valid, legal and enforceable as it gives life, meaning and expression to the Constitution since the constitutional provision is not self-executing. This Court stated that the Supreme Court is a strong advocate for the protection of all the rights of individuals and will not encourage negligence and carelessness by lawyers in handling their clients' cases, especially involving fundamental rights enshrined in the Constitution.

In the ruling, the Court stated that the petitioner tried to impress upon it that once the issue of fraud was raised, it was incumbent upon the trial

judge to grant the motion for a trial by jury. This argument, the Court said, is not totally true, in that, if the petitioner knew fraud was an issue in establishing the debt sued for, then it was petitioner's duty to file a motion for a trial by jury at the time he filed his amended answer, or within ten (10) days after the plaintiff had filed his reply, or to have even raised it as one of the counts in his amended answer if he did not want to file a separate motion.

The Court held, however, that having observed that the petitioner/appellant was delinquent, derelict and negligent in not timely requesting a trial by jury, which is the general rule, and that the trial judge and Chambers Justice did not err in strictly applying the rule, it was left with the question of how the trial would be conducted when the case resumes in the trial court in determining the factual issue of fraud and forgery? Could the judge, sitting alone, determine that fraud and forgery were or were not committed by plaintiff, looking at the documentary evidence attached to the pleadings? The Court referred to the cases *Trokon International et al. v. Reeves, Johnson et al.,* 39LLR 626 (1999); *Nah v. Nagbe* 16 LLR 89, (1964), in which the Supreme Court had held that where the issue of fraud is raised in a case and the case ruled to trial, the judge must empanel a jury to pass on the issue of fraud. The Court held that even though the petitioner was negligent in his request for a jury trial, it was of the belief that the trial judge should have granted the motion to be able to pass on the issue of fraud and still not be in violation of the statute, as the Civil Procedure Law, Rev. Code 1:22.1(5) provides that "notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion, upon motion may order a trial by jury of any or all issues." The trial court, the Court held, should have granted the application for a jury trial considering that the issue of fraud and forgery was raised by the appellant and which issue the Supreme Court has said should be tried by a jury.

Reverting to the matter now before us, and as we have stated, the Court sees nowhere in the record where the appellant demanded a jury trial as prescribed in the Civil Procedure Law, Rev. Code 1:22.2 (1973), or a request made as per the Civil Section 22.1.5 supra.

The appellant also did not allege that the appellee committed fraud in the acquisition of the disputed property or there were facts disputed that would warrant a hearing with a jury sitting.

The issue therefore is whether the facts in the case are of such that the judge could have handled the matter without a jury?

A review of the pleadings and other records in this case reveal that the appellant's grantor, Pliccaid Garway, was one of three administrators duly appointed on May 26, 1994, by the Monthly and Probate Court for Montserrado County to jointly administer the Intestate Estate of the Late Chief Barclay and a decree of sale issued the administrators on the 27th of May, 1994. In 2001, the three administrators, J. Samuel Brown, Morris G. Payne and Pliccaid M. Garway conveyed to Prince Tarr and Julia Tarr two (2) acres of land. Subsequently, on July 11, 2005, the appellee, George Otto brought the property in the name of Big George Venture, Inc. from Prince and Julia Tarr. The records further reveal that after the property had been conveyed by all the administrators to Prince and Julia Tarr, one of the administrators, Pliccaid M. Garway, who signed the administrator deed transferring the proper to the appellee's grantors, unilaterally sold the same property of two (2) acres of land to the appellant, Jestina Tartue-Higgins, on August 20, 2005, issuing her a warranty deed.

The trial court, in addressing the issue of the titles of the parties, held that Pliccaid M. Garway as one of many administrators of the estate could not legally convey any portion of the intestate estate alone, or issue a warranty deed as if he owned the property in fee simple; that Pliccaid M. Garway, having along with the other administrators of the intestate estate signed the appellee's grantors deed conveying the two acres, he could not legally thereafter proceed to resell and dispose of the identical property as a private owner. The trial court therefore concluded that a review of the pleadings and the evidence adduced did not warrant the granting of the prayer contained in the compliant of the appellant.

This Court agrees with the trial judge and notes that it is a law extant that a parcel of land, once conveyed by an individual, cannot subsequently be conveyed to another by the same grantor as he no longer has right and interest in said property (Bailey v. Sancea, 22 LLR 59, 64 (1973). Besides, an administrator who serves along with others as administrators of an intestate estate cannot unilaterally convey the intestate property to the exclusion of other administrators and his act is void ab initio (St. Stephen Church v. John Gbedze, Supreme Court Opinion, March Term, 2013).

The facts, being undisputed in this matter and with no fraud alleged to have been committed by either of the parties, we hold that the issue of the conveyance being one that could be settled as a matter of law, the trial

court's handling of said matter without a jury was proper; more so, that neither of the parties requested a jury trial in accordance with the statute.

Dealing now with the second issue raised in the bill of exceptions that the trial judge acted in error when he admitted into evidence a title deed of Big George Venture, Inc., as evidence in support of appellee's claim of title to the subject property, the appellant contends that the law in this jurisdiction provides substantially that the ejectment action filed by her against appellee, George Otto, did not make Big George Venture, Inc., a party to the ejectment action, and therefore the appellee's proffering of a title deed in his defense which was in the name of the Corporation was not a legal defense; said deed should have been barred and thrown out. Further, the appellant argued that the appellee committed a legal blunder when he neglected, failed and reneged to act in the capacity of an agent, manager or president for the Corporation, Big George Venture, Inc.

The appellant's argument which this Court agrees with is coached in our Association Law which provides that a corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities; the corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right of the corporation, and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation.

We hold that the trial court was in error when it held that the appellee's title to the subject property did not have to be protected by the intervention of Big George Ventures, Inc. For the benefit of this opinion, we shall herewith quote excerpts of the trial court's ruling on the aforesaid issue:

> "Relative to the issue of the defendant relying on the title not vested in him, the court takes judicial notice of the evidence adduced during the trial. During the trial, the defendant's evidence tends to establish that the defendant's grantor purchased the property from the intestate estate administered by Mr. Brown, Mr. Paye and Mr. Garway and that the defendant being the owner of a company known as Big George Ventures, Inc. purchased the property in the name of his company and occupied the property based upon the same. The question is, was it then necessary that in defending this action instituted against the defendant as a person that Big George Ventures, Inc. intervene so as to give the defendant the standing to defend? The court says no. The court says that by the evidence, the

defendant did not need Big George Ventures, Inc. to intervene in this matter in order to establish his status or occupancy.

...In that connection, the court says that the defendant did not have to be protected by the intervention of Big George Ventures, Inc. in this matter so as to be able to defend this action."

We disagree with the Judge that the Corporation, Big George Venture, Inc., did not have to intervene in the matter. Obviously, he based his ruling on this issue from the following questions put to and answers given by one of the grantors of the land, which are as follows:

Q. Mr. Witness, you told this Honorable Court that you did buy this property in question in the name of Big George Ventures, Inc., by that testimony in mind [being] correct, were you acting for and on behalf of Big George Ventures, Inc.?

A. No. The company is mine so I bought the property in the name of the company.

Q. Mr. Witness, please tell this Honorable Court whether this action of ejectment for which you have been named as defendant state your proper name to this Honorable Court?

A. My proper name is George Otto. (*See minutes of Court, November 6, 2012, Sheet Four).*

One of appellee's grantors, Mr. Prince Tarr, was cross examined by the appellant. Excerpts of the testimony which corroborated the testimony of the appellee are as follows:

Q. Mr. Witness, please tell this Honorable Court as to whether you know the name of the defendant in this ejectment action?

A. Yes. I know him because I have been acquainted with him before.

Q. By that answer, please say the name of the defendant?

A. Yes, the name of the defendant is George Otto.

Q. Mr. Witness, you have just testified to document marked D/3, and you have told this court that the defendant in these proceedings is George Otto. Please look at this document properly and tell this Honorable Court and say whose name bears this document?

A. I said previously, I sold the land to Big George Ventures, Inc. represented by George Otto and for what I understand he is the owner.

Q. Mr. Witness, by that answer, is it an established fact by your own testimony that Big George Ventures, Inc. is different from Mr. George Otto?

A. No. I will not say that it is different because when Mr. Otto was buying the property, he said to me the land was for his company, Big George Ventures, Inc....

Q. Mr. Witness, you told this Honourable Court that it is George Otto who bought this land from you for which you issued a title deed thereto. Why did you issue a deed in the name of George Otto instead of Big George Ventures, Inc.

A. Like I said, Mr. George Otto came to me and said that he was buying an area for his company that was named after him, meaning (George), and in doing that said that I should put his company name on the deed, Big George Venture, Inc.. That is how the title deed carried Big George Venture. *See minutes of Court, November 6, 2012, Sheets Four & Five.*

It is undisputed that the appellee purchased the property in the name of his Corporation, Big George Venture, Inc. and might have been the lone shareholder of Big George Ventures, Inc. However, this does not invalidate the fact that a corporation is a legal entity considered in law as a fictional person, distinct from its shareholders or members, and with separate rights and liabilities. The summons having been directed at the appellee, the shareholder of Big George Venture, Inc. and not the corporation itself, the appellee should have moved to have the matter dismissed and the summons directed at the proper party, the Big George Venture, Inc., or the Big George Venture, Inc. should have moved the trial court to intervene.

The Civil Procedure Law, Rev. Code, 1:5.61(1.b) provides for intervention when the representation of the applicants interests by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action.

We believe that the ruling of the trial judge was merely based on the evidence of the purchase by the Appellee George Otto and not on the law. In face of the law and several rulings of this Court, we wonder why the trial judge would intimate that it was not legally necessary for the Corporation, Big George Ventures, Inc. to intervene in this matter in order for the appellee to establish his right to occupancy of the subject property. The rationale of the trial Judge's ruling that the appellee had purchased the property in the name of the company, and as owner of the company who had been in possession of the subject property was sufficient to establish him as owner of the disputed property was quite contrary to the Association Law cited above.

As the evidence show that the appellee was not the proper party to be sued as party defendant, and the ruling of the Judge was neither based on the evidence nor the law, said ruling is reversed. The appellant, if she so desires,

may direct her action against Big George Venture, Inc., the legal and proper party to be sued.

The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to this Judge. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELOR LAWRENCE YEAKULA OF THE LIBERTY LAW FIRM APPEARED FOR THE APPELLANT. COUNSELOR JAMES N. KUMEH OF THE TORCH PROFESSIONAL CONSULTANCY, INC. APPEARED FOR THE APPELLEE.