IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
MARCH TERM, A. D. 2018

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..........................ASSOCIATES JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.........................ASSOCIATE JUSTICE

Olubanke King-Akerele of the City of Monrovia, Republic of Liberia...APPELLANT VERSUS Ezzat N. Eid and International Aluminum Factory, represented by its President, Ezzat Eid, also of the City of Monrovia, Republic of Liberia............APPELLEES	APPEAL
GROWING OUT OF THE CASE: Ezzat N. Eid and International Aluminum Factory, represented by its President, Ezzat Eid, also of the City of Monrovia, Republic of Liberia............MOVANTS VERSUS Olubanke King-Akerele of the City of Monrovia, Republic of Liberia.....................................RESPONDENT	MOTION FOR JUDGMENT DURING TRIAL
GROWING OUT OF THE CASE: Olubanke King-Akerele of the City of Monrovia, Republic of Liberia.......................................PLAINTIFF VERSUS Ezzat N. Eid and International Aluminum Factory, represented by its President, Ezzat Eid, also of the City of Monrovia, Republic of Liberia.........DEFENDANTS	ACTION OF EJECTMENT

HEARD: May 11, 2017. DECIDED: August.2. 2018.

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

An action of ejectment, this Supreme Court has said, is a contest of titles, or at best a clash for the supremacy of titles wherein the stronger and superior title prevails over the weaker one, in consonance with the law on evidence articulated and adhered to in this jurisdiction. *Testate Estate of the late Bernard* *et al. v Intestate Estate of the late Stubblefield-Bernard,* Supreme Court Opinion, March Term, A.D. 2016*; Donzo v. Tate,* 39 LLR 72 (1998). Generally, the question that attend to dispute regarding the supremacy of title has continuously been viewed in this jurisdiction as one of law and, in determining same, the only task for a trial is to examine the title deeds and determine the party with the oldest title traceable to the Republic and which conform to the requirements of the existing law. The crust of ejectment proceedings therefore is to ensure that the oldest title deed meets all of the statutory and other legal requirements to qualify it as a valid and legitimate title. Indeed, it is the law that "Where both sides trace their titles to the State for the same piece of property, and have exhibited deeds in support of their respective claims, the more recent deed is the proper subject for cancellation;" [*Cooper v. Gissie,* 28 LLR 202 (1979); *Walker v. Morris,* 15 LLR 424 (1963); *Davies v. Republic,* 14 LLR 246 (1960)] and that "If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered." *Property Law, Liberian Code of Laws, 29:5.*

However, the acquisition of title to real property and/or its traceability to the Republic does not come without attending circumstances which, when put together, present an evidentiary inquiry in order to arrive at a legal conclusion of the superiority of one's title. This is why our laws are replete with the principle that an action of ejection, although basically a question of law, involves mixed issues of law and fact and that while it is triable by a jury under the direction of a judge, title and possession of the realty can be determined only by a jury trial, except where the parties decide to waive jury trial. *Andrews, Duncan et al. v. Cornomia,* 39 LLR 761 (1999).

The present appeal before us, although emanating from an action of ejectment, is unlike a regular title contest where the parties by the preponderance of evidence attempt to demonstrate their superior title and negate the strength of their adversary's, in that it present circumstances that are unique and distinct since the dispute is predicated upon a controversy surrounding a mortgage transaction involving the disputed property and the alleged redemption of the disputed property by the mortgagor.

The parties herein do not dispute the factual circumstances of the case; they do not differ or disagree that the plaintiff had legitimate title to the disputed property and that the plaintiff surrendered the deed of the disputed property to a third party, the National Housing and Savings Bank, for a sum of money. Their contentions, however, are centered on the mode and legal implication of the transfer of the disputed property to the National Housing and Savings Bank by the plaintiff. It is the contention of the appellant, plaintiff below, that the transfer did not grant the Bank title in fee simple to the property, but instead created a lieu on the property by mortgage and that the property was legally redeemed upon settlement of the mortgage. The appellee/defendant, on the other hand, accepts that the disputed property originally belonged to the appellant/plaintiff but argued that the appellant/ plaintiff parted title to the property by virtue of a warranty deed issued the Bank; that such warranty deed created title to the property in the Bank in fee simple and that the appellee/defendant, having acquired possession of the property by lease from a person who had purchased same from the Bank, an action of ejectment cannot lie against him.

The question that should have confronted us from the contentions of the parties as narrated above is whether or not the transfer of the disputed property by the plaintiff to the National Housing and Saving Bank, which transfer was occasioned by the issuance of a warranty deed, created a fee simple title to the property in the Bank or created a lieu by mortgage on the property. Our answer to this question could have been easily reached by a review of the circumstances surrounding the transfer. However, due to the peculiar nature of the claims and counter-claims of this case as well as the trial judge's action to terminate the case by a motion for judgment during trial irrespective of the evidentiary gaps, we cannot premise our decision on the question as presented above. Instead, we must address the inquiry whether the judgment of the trial judge is consistent with law and the evidence adduced at trial. For the purpose of that determination, we resort to the facts as culled from the certified records transmitted to this Court.

The records reveal that on September 26, 2012, Olubanke King-Akerele, plaintiff herein, filed an action of ejectment against Ezzat Eid and all those occupying the disputed premises under his authority, defendants herein, alleging that she is the owner of two pieces of property being occupied by the defendants; that the first property is a certain parcel of land described as lots 1 and 5, block 74, located at Coconut Plantation, South Beach, City of Monrovia, Montserrado County, the deed to which was probated on July 24, 1980, and registered in Volume 350-80 pages 25-27 of the Archives of Montserrado County; that the second property is described as lots 2 and 6, block 74, also located at Coconut Plantation, South Beach, City of Monrovia, Montserrado County, the title deed to which was similarly probated on July 24, 1980 and registered in volume 350-80, pages 36-38 of the Archives of Montserrado County, and re-registered in Vol. N/N in 2006; that during the Liberian Civil War she resided outside the country; that upon her return in 2006 she found that the properties were being occupied by unknown individuals; and that she contacted the occupants, informed them of her ownership of the properties and ordered them to vacate the properties.

According to the appellant, on August 17, 2010, defendant Ezzat Eid met with her at her Ministry of Foreign Affairs Office, in the presence of three lawyers, and informed her that he had leased the properties from one Mr. Aurelius Dennis, whom he did not know and had never met, but whom apparently resided in the United States of America; that he, the defendant, intimated that he knew that the disputed properties were hers and that he was willing to vacate the properties. Upon receipt of the lease agreement between Mr. Aurelius Dennis and Ezzat Eid, the appellant stated, she made extensive and diligent efforts to contact the lessor, Aurelius Dennis; that she even contacted the purported attorney-in-fact of the lessor, Mr. Dennis, but that all prove futile; and that having been unable to locate the lessor and relying on defendant Ezzat Eid's promise of August 17, 2017, at which time he allegedly promised to vacate the premises, she made a written request to defendant Ezzat Eid on May 13, 2011 to vacate the property but he refused, stating that she should sue him and have him evicted and that when she did sue him, apparently in summary proceedings to recover the possession of real property, the records of which are not available to this Court, defendant Ezzat Eid produced documents showing that the properties have been leased to him by Mr. Aurelius Dennis.

The appellant further alleged that she made efforts to verify the documents submitted by defendant Ezzat Eid and found out that the National Housing and Saving Bank, purported seller of the property to Mr. Dennis, had no records of such sales, that the 6th Judicial Circuit Court had no record of any foreclosure proceedings, which proceedings allegedly occasioned the sale; that there was no records on the registration and depository of the lease with the Archives, and that the purported lessor, Mr. Aurelius Dennis, did not exist. The appellant contended that the documents submitted by defendant Ezzat Eid were fraudulent and only created with the purpose of wrongfully withholding her properties.

In order to grasp the entirety of the appellant's contentions, we hereunder reproduce the full text of the complaint, as follows:

> AND NOW COMES Olubanke King-Akerele, Plaintiff herein, and states as follows:
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> 1. That she is the owner of a certain parcel of land more particularly described as Lots 1 and 5, Block 74, located at Coconut Plantation, South Beach, City of Monrovia, Montserrado County, title to which was probated on July 24, 1980, and Registered in Vol. 350-80 Pages 25-27 of the Archives of Montserrado County. Copy of her title deed is hereto attached as Ex.-1.
> 2. That she is also the owner of a certain parcel of land more particularly described as Lots 2 and 6, Block 74, located at Coconut Plantation, South Beach, City of Monrovia, Montserrado County, title to which was probated on July 24, 1980, and Registered in Vol. 350-80 Pages 36-38 of the Archives of Montserrado County and re-registered in Vol. N/N-2006. Copy of her title deed is hereto attached as Ex.-2.
> 3. That during Liberia's civil war years, Plaintiff resided outside the country, returning periodically as conditions permitted, but returning permanently in 2006, at which time she found said properties occupied by persons unknown to herself.
> 4. That she contacted such occupants, advising of her ownership of and authority over the properties; advised of her desire to move back into the properties, and requested that they vacate the premises.
> 5. On August 17, 2010, one tenant, Defendant Ezzat Eid herein, subsequently met with Plaintiff at her offices in the Ministry of Foreign Affairs in the presence of three lawyers, one of whom was the Legal Counsel of the Ministry. He informed that he had leased the premises from one Aurelius Dennis, whom he did not know and whom he had never met, but who was evidently a resident of the United States of America. Defendant Eid also admitted that he knew that the property

was Plaintiffs property, and that he would vacate the premises at any time, upon her request, at a few days' notice.

6. At that meeting, Defendant Eid also offered to give Plaintiff copy of his lease agreement with Aurelius Dennis, which he would make available to her the following day. Plaintiff accepted the offer; copy of the said lease Agreement given to Plaintiff by Defendant is hereto attached as Ex.-3.

7. With respect to the alleged lessor, Aurelius Dennis, plaintiff made extensive and diligent efforts from August 2010 to May 2011 to contact and/or discover his identity and location, including contacting the person stated to have been his attorney-in-fact for the execution of the alleged lease agreement with Defendant Eid herein, one Mr. Tsorpolor Ben, but without success. Copy of a letter to the alleged Attorney-in-Fact is hereto attached as Ex.-4.

8. On May 13, 2011, in accord with his offer of August 17, 2010, plaintiff did make written request upon Defendant Ezzat Eid to turn over the property to her. Defendant Eid demurred, stating verbally that plaintiff should sue him and evict him. Copy of plaintiff's written request to defendant if hereto attached as Ex.-5.

9. When plaintiff did indeed sue him, Defendant Eid submitted copies of documents, attached hereto in bulk as Ex.-6, through which he asserts that various properties in that location are owned by third parties and leased to himself. Plaintiff, however, is concerned only with her properties in Lots 1, 2, 5 and 6 of Block 74, which Defendant Eid asserts are owned by the said Aurelius Dennis and leased to himself.

10. Plaintiff has attempted to verify the information submitted by Defendant Eid, but has met with the following results:

- The National Housing and Savings Bank ("NHSB"), the alleged seller of the properties to Mr. Dennis, has no record of the alleged foreclosure of mortgage of Plaintiff's property, or of the sale of such to anyone (see Ex.-7).
- The 6th Judicial Circuit Court has no record of a foreclosure of mortgage action by the NHSB against the plaintiff (see Ex.-8).
- The Government repository of land records, the Center for National Documents and Records Agency ("CNDRA"), in which the titles obtained by Mr. Dennis were allegedly registered, is not only unable to verify the registration of the alleged deed(s), but unequivocally states that the purported signature of the CNDRA Registrar on the alleged instrument(s) is a forgery (See Ex. 9).

11. Defendant Eid has failed to produce any evidence of his alleged lessor's existence, and has, despite his obligation to do so, failed to obtain the involvement of his alleged lessor in defense of his claim to rightful occupancy, use and possession of Plaintiff's property

12. As a result of all the above, Plaintiff has come to believe that all the documents thus far presented in the entire chain of transactions alleged by Defendant Eid are in fact fraudulent and manufactured.

13. Moreover, in view of the above, Plaintiff says that she has come to have strong doubts whether in fact the alleged lessor Aurelius Dennis does at all exist. The only contact information that has so far been made available is that shown on the lease agreement itself, which states his location to be "the United States of America." No prior or current address

of this person, whether in Liberia or elsewhere, has ever been discovered or disclosed.

14. Plaintiff hereby gives Notice, in view of the apparent evidence of fraud detailed above, that she will demand proof positive that the supposed lessor, Aurelius Dennis, actually exists, including information sufficient to identify the person with certainty, such as a valid United States Social Security Number and current street address; that said person is in actuality a Liberian citizen rather than a United States citizen -- and thus entitled to own real property in Liberia -- all of which information Plaintiff shall have independently verified through official U. S. Government agencies.

15. Plaintiff further says that this Court has an obligation to ensure, sua sponte, that the Constitution and laws of this Republic are observed. Consequently, under circumstances like these, so strongly suggestive of fraud, this Court has an obligation to ensure at a minimum, that the alleged lessor is indeed a Liberian citizen and entitled to own real property in Liberia.

16. Plaintiff further says that the Court should reject, deny and dismiss all documents submitted thus far by the Defendant (with the possible exception of the alleged lease agreement), because only the alleged lessor -- and NOT the Defendant herein, a mere lessee -- has the capacity and competency both to present and testify to the validity of the alleged chain of transactions and alleged documents in the lessor's supposed chain of title, and to assert that title is in issue between the alleged lessor and the Plaintiff.

WHEREFORE, Plaintiff prays this Honorable Court:

- to evict Defendant Eid and any or all others occupying the premises, or who may claim a right of occupancy by virtue of his authority, and to place Plaintiff in possession of her own property once again;
- to award Plaintiff damages against Defendant Eid at the rate of US$1,500.00 (ONE THOUSAND FIVE HUNDRED UNITED STATES DOLLARS) per month from April 1, 2006 until the present, representing rental payments which Plaintiff has been obligated to make being dispossessed of her own property by the Defendant's wrongful withholding of said property;
- to award Plaintiff general damages against the Defendant for his infliction upon her of great emotional distress, exquisite humiliation and prolonged inconvenience occasioned by Defendant's conduct;

As required by law in this jurisdiction on responsive pleadings, the defendant, on October 5, 2012, filed a 31 count answer, essentially alleging that the National Housing and Savings Bank foreclosed the first property described in the complaint following the failure of Mr. Charles T. O. King, III, brother of the appellant; that following the foreclosure proceedings the property was duly auctioned and purchased by one Patience T. Waire as the highest bidder; that the said Patience T. Waire sold the property to one Arma D. Taylor, who then leased the property to the International Aluminum Factory and predicated on these allegations, counts 1-5 of the complaint should be denied. As to the second parcel of land described in cunt 2 of the complaint, the defendants contended that although the appellant originally owned same, she subsequently mortgaged it to the National Housing & Savings Bank for a loan amount and following her failure to repay the loan it was also foreclosed by the National Housing and Savings Bank and sold at a public auction to one Mr. Aurelius Dennis who leased same to defendant Ezzat Eid.

The defendants also contended that the lower court could not entertain the action of ejectment in the face of the rulings in the foreclosure proceedings arguing that to do so would be tantamount to a review of the rulings of a predecessor judge of equal judicial hierarchy against established principle of law in this jurisdiction. As we have done with the appellant's complaint, we similarly reproduce herein the defendants' answer in order to grasp the fullness of their contentions advanced therein, as follows:

> Defendants in the above-entitled cause of action deny the legal and factual sufficiency of Plaintiffs Complaint and for legal and factual reasons showeth the following, to wit:
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> 1. That as to count One (1) of the complaint, defendants say that the National Housing & Savings Bank instituted foreclosure proceedings against Charles T. O. King, III, and obtained judgment, adjudging him liable to the National Housing & Savings Bank for the amount of US$188,459.49 (United States Dollars One Hundred Eighty-Eight Thousand Four Hundred Fifty-Nine 49/100) plus six percent (6%) statutory interest and cost of the proceedings. The said final judgment was entered on the 30th day of July, 2001, by His Honor William B. Metzger, Sr., then Assigned Circuit Judge presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Attached hereto and marked as Defendants' Exhibit "D/1" is a copy of the referenced final judgment in substantiation of the averment contained herein.
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> 2. That also as to Count One (1) above, Defendants say that in the final judgment (Defendants' Exhibit "D/1" hereto), the court ordered the sheriff, upon the failure of Charles T.O. King, III to satisfy the said judgment, to issue the necessary notice in such manner and place same on the property, subject of the foreclosure proceedings, and other public places and expose said property to public auction in keeping with law. Accordingly, the sheriff, upon the failure of Charles T.O. King, III to satisfy the said judgment, issued Notice of Sale dated August 2, 2001, for the sale by auction of the said property to the highest bidder, on October 1, 2001, at the hour of 10:00 a.m. Attached hereto and marked as Defendants' Exhibit "D/2" is a copy of the herein-mentioned Notice of Sale in substantiation of the averment contained herein.
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> 3. Further to counts one (1) and two (2) above, defendants say that on

October 1, 2001, the property, subject of the foreclosure proceedings, was auctioned and Patient T. Wane was named the highest bidder in the amount of US$184,690.31 (United States Dollars One Hundred Eighty-Four Thousand Six Hundred Ninety 31/100). Accordingly, the said property was sold to Patient T. Wane by virtue of a Sheriff Deed issued in her favor. Attached hereto and marked in bulk as Defendants' Exhibit "D/3" are copies of the Sheriff Deed and Sheriff's Report on the auction of the herein-mentioned property, dated October 30, 2001, in substantiation of the averment contained herein.

4. That on the 6th day of May, 2003, Patient T. Warie, sold and transferred the property, subject of the foreclosure proceedings, to Arma D. Taylor, represented by her then Attorney-in-Fact, Counselor John N. J. J. Caranda, thereby making Arma D. Taylor the legitimate owner of said property. Attached hereto and marked as Defendants' Exhibit "D/4" is a copy of the Warranty Deed from Patient T. Warie to Arma D. Taylor is substantiation of the averment contained herein.

5. That Arma D. Taylor, by and through her natural guardian, Ruby tones Taylor, and Attorney-in-Fact, Counsellor John N. J. J. Caranda, executed a Lease Agreement with International Aluminum Factory, pursuant to which Arma D. Taylor leased the property covered by Defendants' Exhibit "D/4" to said International Aluminum Factory. Attached hereto and marked as Defendants' Exhibit "D/5" is a copy of the referenced Lease Agreement in substantiation of the averment contained herein.

6. That based upon the averments contained in counts one (1) through Five (5) above, defendants say that count one (1) of the complaint should be denied and dismissed.

7. That as to count two (2) of the complaint, defendants say that while it is true that plaintiff was the original owner of the parcel of land referred to in count two (2) of the complaint, defendants say that the plaintiff borrowed money from the National Housing & Savings Bank and offered said property as security for the payment of the herein-mentioned loan.

8. That also as to count seven (7) above, defendants say that plaintiff defaulted on the payment of the loan extended her by the National Housing & Savings Bank. Accordingly, the National Housing & Savings Bank filed a petition for the foreclosure of the referenced mortgage; and at the conclusion of said proceedings, judgment was entered in favor of the National Housing & Savings Bank thereby foreclosing the mortgage and the property subsequently sold to the highest bidder, the National Housing & Savings Bank. Attached hereto and marked in bulk as Defendants' Exhibit "D/6" are copies of the Civil Law Court's final judgment and notice of sale in substantiation of the averment contained herein.

9. That upon the purchase of the property mentioned in counts seven (7) and eight (8) above, the National Housing & Savings Bank in turn sold said property to Aurelius Dennis, who subsequently leased same to Ezzat N. Eid. Attached hereto and marked as defendants' Exhibit "D/7" are copies of warranty deed issued in favor of Aurelius Dennis and the Lease Agreement between said Aurelius Dennis and Co-defendant Ezzat N. Eid in substantiation of the averment contained herein.

10. Defendants say that upon the execution of the Lease Agreement referred to in count nine (9) above, defendants spent US$275,000.00 (United States Dollars Two Hundred Seventy-Five Thousand) to rehabilitate the premises, subject of this action of ejectment, which were badly damaged and destroyed in the wake of the Liberian civil crisis. Defendants give notice that they shall produce evidence, both oral and documentary, in support of the averment contained herein, if and when this case proceeds to trial.

11. That also as to counts one (1) and two (2) of the complaint, Defendants say that based upon the averment contained in counts one (1) through ten (10) above, plaintiff is not the owner of the property, subject of the instant action of ejectment, and therefore lacks the legal capacity and standing to institute the said action.

12. That also as to count eleven (11) above, defendants say that assuming, without admitting, that the plaintiff had interest in the property, subject of the action of ejectment, by virtue of the averment contained in counts one (1) through eleven (11) above, plaintiff's right to said properties has been adjudicated by this court-i.e. plaintiff's interest was foreclosed and her property auctioned by this Honorable Court. Hence, the doctrine of *res judicata* will lie against the re-litigation of the properties, subject of the Action of Ejectment, without a reversal of the judgment of this Court by the Honorable Supreme Court of the Republic of Liberia in respect of the herein-mentioned properties.

13. That based upon the averments contained in counts one (1) through twelve (12) above, Your Honor cannot entertain the instant action of ejection, for to do so would tantamount to reviewing and setting aside of the judgment of your possessions, which has been fully enforced, in violation of the law and doctrine that judges of concurrent jurisdiction cannot review the acts of their predecessor. Hence, this court lacks jurisdiction over the subject matter of the instant action of ejectment, which has its genesis in the foreclosure proceedings adjudicated by this court.

14. That as to counts three (3) and four (4) of the complaint, defendants confirms counts one (1) though thirteen (13) above, and incorporate said counts into this count of the answer in traversal of counts three (3) and four (4) of the complaint.

15. That also as to count fourteen (14) above, defendants say that they were never requested by plaintiff to vacate the herein-mentioned premises as averred in count four (4) of the complaint. Defendants submit and say that even if plaintiff had requested them to vacate said premises, they would not have honored plaintiff's request for reasons stated in counts one (1) through thirteen (13) above, which counts defendants hereby incorporate into this count of the answer in traversal of counts three (3) and four (4) of the complaint.

16. That as to count five (5) of the complaint, Co-defendant Ezzat N. Eid says that while it is true that he met with plaintiff at the Ministry of Foreign Affairs in 2009 during which he informed plaintiff that he is in possession and occupancy of one of the premises mentioned herein-above pursuant to a Lease Agreement between Aurelius Dennis, as Lessor, and Co-defendant Ezzat N. Eid, as Lessee. Co-defendant Ezzat N.

Eid denies that portion of count five *(5)* of the complaint which alleges that he admitted that the herein-mentioned property was owned by plaintiff and that he would vacate same upon few days' notice from plaintiff.

17. Traversable issue, and therefore need not be traversed; but submits and says that by virtue of the Lease Agreement covering the property, subject of the instant action of ejectment, and the averments contained in counts one (1) through thirteen (13) above, an action of ejectment cannot lie against him and Co-defendant International Aluminum Factory.

18. That as to count seven (7) of the complaint, Co-defendant Ezzat N. Eid says that the Lease Agreement, part of defendants' Exhibit "D/5" hereto, was entered into by and between Aurelius Dennis of the United States of America, represented by his attorney-in-fact, Tsorporlor S. Ben and Co-defendant Ezzat N. Eid. Defendants say that Mr. Tsorporlor S. Ben is within the bailiwick of the Republic of Liberia, and therefore plaintiff is at liberty to get in contact with Aurelius Dennis, by and through her attorney-in-fact, Tsorporlor S. Ben. Hence, the allegation of plaintiff as contained in count seven (7) of the complaint has no basis in fact and law, and therefore should be denied.

19. That also as to count eighteen (18) above, defendants say that the law provides the form and manner for person, whose whereabouts are unknown to a plaintiff, to be brought under the jurisdiction of the court. Defendants urge plaintiff to take advantage of the law to bring defendants' lessors under the jurisdiction of the court; for the law provides that that where the lessee is sued, the landlord or lessor must be joined as a party defendant. Accordingly, defendants say that their lessors ought to, and should be made party defendants in this action of ejectment as provided for by law.

20. That as to count eight (8) of the complaint, Co-defendant Ezzat N. Eid denies that upon receipt of plaintiff's letter of May 13, 2011, he verbally told plaintiff to sue and evict him. Co-defendant Ezzat N. Eid submits and maintains that he informed plaintiff that he is in possession of the property, pursuant to and in keeping with a Lease Agreement between he, Ezzat N. Eid, as Lessee, and Aurelius Dennis, as Lessor, and therefore could not vacate said property and surrender same to plaintiff, as to do so would undermine his Lease Agreement with Aurelius Dennis.

21. That as to count nine (9) of the complaint, defendants confirm and affirm counts one (1) through twenty (20) above and incorporate said counts into this count of the answer un traversal of count nine (9) of the complaint.

22. That as to count ten (10) of the complaint, defendants confirm and affirm counts one (1) through twenty (20) above and incorporate said counts into this count of the answer in traversal of count ten (10) of the complaint. Defendants submit that the documents upon which they entered lease agreements with the title holders of the properties, subject of this action of ejectment, are genuine and not products of fraud as alleged by plaintiff. Defendants submit that it is a historical fact that Liberia experienced devastating civil wars during which all branches of the Liberian Government, including the archives were vandalized, looted and

documents thereat destroyed. Furthermore, plaintiff has not alleged that the signatures of the court officers and judges appearing on said documents are not the genuine and/or known signatures of those officers and judges. Defendants request Your Honor to take judicial notice of the records of the Civil Law Court in substantiation of the fact that foreclosure proceedings were instituted against plaintiff and adjudicated by this court as evidenced by copies of documents already attached to this answer.

23. That also as to cunt twenty-two (21) above, Co-defendant International Aluminum Factory says that when this court attempted to enforce the ruling of His Honor Peter W. Gbeneweleh against Co-defendant International Aluminum Factory and its lessor, growing out of the foreclosure proceedings instituted by the National Housing & Savings Bank against Charles T. O. King, III, Arma D. Taylor, by and through her attorney-in-fact, Counsellor John N. J. J. Caranda filed a petition for the writ of prohibition before the Chambers Justice, who cited the parties to a conference, during which the parties agreed that if Charles T. O. King had any claim to the property, he should institute an action of ejectment against Co-defendants International Aluminum Factory's grantor. Attached hereto and marked as defendants' Exhibit "D/8" is a copy of the petition for the writ of prohibition, and Your Honor is requested to take judicial notice of the record of this Court in respect of the mandate of the Supreme Court of the Republic of Liberia growing out of the said prohibition proceedings.

24. That as to counts eleven (11), twelve (12), thirteen (13), and fourteen (14) of the complaint, defendants confirm and affirm counts one (1) through thirteen (13) above and incorporate said counts into this count of the answer in traversal of counts eleven (11) through fourteen (14) of the complaint.

25. That also as to count twenty-four (24) above, defendants say that under our law, practice and procedure, the plaintiff in an action of ejectment must rely on the strength of his title and not on the weakness of defendant's title. Defendants submit that consistent with this law, the burden of proof of title in plaintiff rests with plaintiff and not on any alleged defects in defendants' title.

26. Further to counts twenty-four (24) and twenty-five (25) above, defendants maintain that in an action of ejectment, the lessor must be joined as a party defendant where the lessee is sued; and under our law, there are laid down procedures in bringing a party under the jurisdiction of any court, where the returns of the sheriff show that such party cannot be found. Accordingly, Defendants pray Court that the plaintiff be made, consistent with our law, to take the necessary and appropriate steps in bringing defendants' lessors under the jurisdiction of the court as party defendant to defend these proceedings.

27. That as to count fifteen (15) of the complaint, defendants say that they have not, and will never perpetrate fraud in the production of documents as alleged by plaintiff in count fifteen (15) of the complaint. Defendants submit that under our law, fraud should not only be alleged but must be proved. Plaintiff having alleged fraud, the burden is upon plaintiff to prove fraud as required by law during trial. Mere allegation is not proof. Count fifteen (15) of the complaint, along with the entire

complaint should therefore be denied and dismissed.
28. That as to count sixteen (16) of the complaint, defendants confirm and affirms counts one (1) through twenty-seven above and incorporate said counts into this count of the answer in traversal of count sixteen of the complaint. Defendants submit that under our procedure and practice, all documentary evidence relied upon by a party must be pleaded and annexed to the complaint. Moreover, it is the practice in this jurisdiction that the triers of facts determine the weight to be given to the evidence adduced at trial. Accordingly, it is not the office of a party litigant or court to reject, deny, and dismiss documentary evidence attached to a pleading; to do otherwise would be a gross violation of a party litigant's right to due process of law as enshrined in the 1986 Constitution of the Republic of Liberia.
29. That as to the prayer of the complaint, defendants pray Your Honor to deny and dismiss for reasons stated in counts one (1) through twenty-eight (28) above, which counts are hereby incorporated into this count of the answer.
30. That as to the prayer for the payment of US$1,500.00 per month, commencing April 1, 2006, up to present, representing an alleged rental payment of plaintiff, same constitutes special damages which under our law must be specifically pleaded and proved at trial. In the instant case, said amount not having been pleaded with particularity, certainty, and specificity, same should be denied and dismissed.
31. Defendants deny all and singular the allegations of both law and fact contained in plaintiff's complaint and not specifically traversed in this answer.
Wherefore and in view of the foregoing, defendants pray Your Honor to deny and dismiss plaintiff's complaint in its entirety, and grant unto defendants any other and further relief as Your Honor may deem just, legal and equitable in the premises."

On October 12, 2012, the appellant being the last pleader in accordance with law, filed a twenty three (23) count reply basically confirming and affirming the averments in the complaint that she is the legitimate owner of the properties being contested; that there is no records of any foreclosure proceedings against said properties by the National Housing & Saving Bank at the Civil Law Court; that the documents presented by the defendants are manufactured and hence products of fraud and that she is entitled to damages for the unlawful withholding of the properties by the defendants.

Pleadings having rested, on January 17, 2013 the case was called for the deposition of law issues, but the records reflect that counsel for the appellee/ defendants was absent. Upon submission by counsel for the appellant/plaintiff to the effect that since the pleadings were before the court, the matter should be ruled to trial on its merits and noting that the said submission was sound in law, the court ruled the case to trial on its merits.

During the trial of the case on its merits, the appellant produced three witnesses including herself as the first witness. The appellant's testimony was essentially a summary of what is contained in the complaint and reply filed before the court below; she alleged that the defendant Ezzat Eid acknowledged her ownership to the property during a meeting held at her office; that at no time did the civil law court entertain a foreclosure proceeding from the National Housing & Saving Bank and therefore the documents proffered by the defendants purporting to be records of said proceedings are fabricated and a product of fraud. She also testified to, identified & confirmed the title deeds to the disputed properties, certified copy of a deed to the National Housing & Saving Bank, communications exchanged between the Archives and her lawyer in an effort to verify the title deed allegedly issued to Mr. Aurelius and a letter of non-discovery of Mr. Aurelius's deed from the Archives. All of these documents were marked by the court and admitted into evidence.

The appellant's second witness, Krubo Kollie testified that she was present at the meeting when defendant Ezzat Eid admitted that he knew that the disputed property belonged to the appellant while the third witness, Mr. William R. Slocum, officer in charge of the National Housing & Saving Bank at the time who was called to specifically testified to the foreclosure proceedings allegedly instituted by the Bank, stated that following a diligent search at the Bank there is no showing that such foreclosure proceeding ever occurred.

At the close of the presentation of evidence by the plaintiff, the defendants filed a motion requesting the court to grant them judgment during trial on grounds that the evidence produced by the plaintiff did not establish title to the property in herself and that as such they were entitled to judgment as a matter of law. The defendant indicated that their motion was predicated on the provision of the Civil Procedure Law which states:

> "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)." Civil Procedure Law, Rev. Code 1:26.1.

For the benefit of this Opinion and in order to grasp the full context of the defendants' motion, made following the close of the plaintiff's evidence, we quote the said motion verbatim, to wit:

<u>MOVANT'S MOTION</u>

Movants/defendants in the above-entitled proceedings most respectfully move Your Honour to dismiss the above-captioned case and award movants/defendants judgment as a matter of law, and for legal and factual reasons showeth the following, to wit:

1. Movants/defendants say and submit that it is provided for by law that at the close of the evidence presented by the opposing party with respect to a claim or issue, when said, evidence is insufficient to warrant the defendant taking the stand to defend against it, the defendant may move the court for judgment during trial as a matter of law. 1 LCLR, Page 209, Section 26.2*, captioned "Motion for Judgment During Trial."*

2. Movants/defendants say and submit that respondent/plaintiff filed a complaint before this Honorable Court and averred that she has title to one (1) lot of land, situated, lying and being at Coconut Plantations, South Beach, Montserrado County, Republic of Liberia, and attached as evidence thereof a warranty deed from Etmonia Howard King to Bankie K. Akerele. Respondent/plaintiff also attached a warranty deed from Bankie King Akerele to the National Housing & Savings Bank covering the same and identical property from Etmonia Howard King to Bankie K. Akerele. Your Honor is requested to take judicial notice of the pleadings, specifically Exhibits "EX/1" and "EX/2" attached to the Complaint.

3. That on the basis of the averment contained in count two (2) above, respondent/plaintiff prayed this Court to have movants/defendants ousted and ejected from the property mentioned in count one (1) above, and that respondent/plaintiff be repossessed of same, award respon-dent damages of US$1,500.00 per month for the period covering April 1, 2006, up to present, representing alleged rental payment and wrongful withholding of plaintiff's property, and to award respondent/plaintiff general damages for alleged emotional distress, exquisite humiliation and prolonged inconveniences occasioned by movants/respondents' conduct. Your Honor is requested to take judicial notice of the complaint and the prayer contained therein in substantiation of the averment contained herein.

4. That during trial, respondent/plaintiff paraded three (3) witnesses whose testimonies were to the effect that respondent/plaintiff acquired the property, subject of the instant action of ejectment, from Etmonia King and was accordingly issued a warranty deed therefor; and that said respondent/plaintiff, as security for a loan pledged the said property to

the National Housing & Savings Bank for which she issued a mortgage deed. Your Honor is requested to take judicial notice of the minutes of this Honorable Court dated June 24, 2013, in substantiation of the averment contained herein.

5. Movants/defendants submit and say that the deed issued by respondent/plaintiff is not a mortgage deed or a security/collateral for a loan extended respondent/plaintiff by the National Housing & Savings Bank as alleged by respondent/laintiff. Movants/defendants submit and say that the deed issued by respondent/defendant to the National Housing & Savings Bank covering the herein-mentioned property is a warranty deed, and is hereunder quoted verbatim:

"REPUBLIC OF LIBERIA"

(TRANSFER DEED)

"KNOW ALL MEN BY THESE PRESENTS, that I Bankie King Akerele of Monrovia in the County of Montserrado and the Republic of Liberia for and in consideration of the sum of forty three thousand four hundred fifty six dollars paid to me by National Housing and Saving Bank of the City of Monrovia in the County of Montserrado the Republic of Liberia (the receipt whereof is hereby acknowledged) do hereby give grant bargain sell and convey unto the said National Housing and Saving Bank their heirs and assigns a certain lot or parcel of land with the buildings thereon and all privileges and appurtenances to the same belonging situated in the City of Monrovia County of Montserrado and Republic of Liberia and bearing in the authentic records of said City of Monrovia the number part of Lot No. 2 and 6 Block 74 and bounded and described as follows:

> "Commencing at the Southern corner of Charles E. A. M. King adjoining property and thence running on magnetic bearing thence running South 540 degrees East 82.5 feet to a point thence running South 36^0 degrees West 132 feet to a point thence running North 54^0 degrees West 82.5 feet to a point thence running North 36^0 degrees East 132 feet lock to a point of commencement and containing one (1) lot acre of land and no more."
>
> "TO HAVE AND TO HOLD the above granted premises to the said National Housing and Saving Bank their heirs and assigns and to them and their use and behoof forever. And I the said Bankie King Akerele for me and my heirs executors, administrators and assigns do covenant with the said National Housing and Savings Bank, their heirs and assigns that at and until the ensealing of these presents I was lawfully seized in fee simple of the aforesaid granted premises that they are free from incumbrances that I have good right to sell and convey unto the said National Housing and Savings Bank their heirs and assigns forever and aforesaid and that I and my heirs executors and administrators and assigns shall warrant and defend the same to the said National Housing and Saving Bank their heirs and assigns forever against the lawful claims and demands of all persons.

Your Honor is requested to take judicial notice of the wordings of the warranty deed from Bankie King Akerele to the National Housing &

Savings Bank, which was issued for and in consideration of $43,456.00 on June 12, 1980.

6. Movants/defendants say that a deed is an instrument in writing, signed, sealed and delivered by the grantor whereby an interest in realty is transferred from the grantor to the grantee. It is merely an instrument formally evidencing the transfer of an intangible title interest in and to land and when delivered, it fulfills its purpose and is exhausted and remains only as evidence of the transfer that occurred. See 23 Am Jur. 2d, *Section 1, page* 81. Also, conveyance is a deed whereby title to land is transferred from *one person to another.* See 23 Am Jur. 2d*, Section 2, page 81.*

7. Also as to counts five (5) and six (6) above, movants/defendants say that a deed is to be distinguished from a mortgage or a deed of trust which does not really dispose of the title to the land, but merely provides security for a debt. 23 Am Jur. 2d.*, Section 4;* Black's Law Dictionary with Pronunciation, *Sixth Edition,* defines *"mortgage"* as an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt. In the instant case, respondent/plaintiff did not provide the land in question as security for the performance or a duty or the payment of a debt, but rather made an outright sale of the property to the National Housing & Savings Bank for the amount of $43,456.00.

8. Respondent/plaintiff has alleged that the land, subject of the action of ejectment, was pledged as security for a loan extended Etmonia King, which obligation respondent/plaintiff assumed to pay, and therefore pledged the selfsame property. Movants/defendants submit that under our law, all transactions relating to real property must be reduced in writing. Further, it is the law in this jurisdiction that no oral testimony can vary the terms of a written document, for the document speaks for itself. The transfer deed covering the land, subject of this action of ejectment, from Bankie King Akerele to National Housing & Savings Bank relates to land and it speaks clearly for itself. Hence, the allegation by respondent/plaintiff that the referenced land was pledged as security for a loan has no foundation and basis in facts and law, and therefore should be denied and dismissed.

9. Movants/defendants submit and say that the laws extant in this jurisdiction with respect to establishing a prima facie case are as follows:

(a) That the burden of proof rests on the party who alleges the existence of a fact. Accordingly, he who alleges the existence of a fact must prove it and must do so by the best available evidence. For reliance, see Civil Procedure Law, Revised Code, Sections 25.5 and 25.6; and Supreme Court Opinion in the case Juliana Teah et al. versus his Honor Joseph Andrews et al., 39 LLR 493, text at 501.

(b) That the best evidence which the case admit of must always be produced; that is to say, no evidence is sufficient which supposes the existence of a better evidence (see Civil Procedure Law, Revised Code, Section 25.6; the case *Heith versus Republic,* 39 LLR 50; *In re the Petition of Esther E. Massaquoi;* and *John C. A. Gibson versus George William Weh Dennis,* 40 LLR 698; and *Harouni versus His Honor John H. Mathies and A. A. Shafi,* 38 LLR 27, text at 25.

(c) Further, it is also the law that insufficiency of evidence to support a verdict or to sustain a conviction means that there is no evidence which ought reasonably to satisfy the empanelled jury that the facts to be proved is established or there is evidence but not enough in the light of the evidence to the contrary to support a verdict. However, sufficient evidence is that which is good and sufficient on its face, such evidence as, in the judgment of law, is sufficient to establish a given fact or the group of chain of facts constituting the party's claim or defense and which is not rebutted or contradicted will remain sufficient.

(d) That it is sufficient if the party who has the burden of proof establishes his allegation by a preponderance of evidence (see *Civil Procedure Law, Section 25.5(1) and (2)*; *In re the Petition of Esther E. Massaquoi and John C.A. Gibson versus George William Weh* Dennis, Objector, 40 LLR 698.

(e) That mere allegation is not proof and the burden of proof falls on the shoulder of the party making the allegation. Further, when the facts adduced at a trial do not sufficiently preponderate in proof of a complaint to authorize the award of special damages, the judgment will be reversed. Hiad versus Ebric, 17 LLR 662, 672 (12966); *Mano Insurance Corporation versus Picasso Cafeteria,* 38 LLR 37, 48 (1995).

(f) The law also provides that special damages must be specifically pleaded and specifically proven at the trial by preponderating evidence upon which the trial jury may base its verdict. Hence, where special damages are relied upon they must be laid in the complaint and proved. *Appleby versus Freeman & Son,* 2 LLR 271 (1916); and *Firestone Plantations Company versus Greaves,* 19 LLR 250 (1947); *INTRUSCO Corporation versus Mohammed Osseily,* 32 LLR 558, 568 (1985).

(g) That where the legal sufficiency of proof upon which a case depends is left in the balance or wanting, the respondent is not required to prove the other issues raised in the case. And where the evidence is lacking is probative force, credibility and effect, a verdict based thereon and the judgment confirming same are fit for reversal. For reliance, see the case *Outland versus outland and Weaver,* 32 LLRF 503.

10. That based upon the facts as narrated in Counts Two (2) through Eight (8) above and the laws cited in Count Nine (9) above, Movants/ Defendants say that Respondent/ Plaintiff has not established a prima facie case by proving the allegations contained in the Complaint by the best evidence as required by law, and therefore Movants/Defendants are entitled to judgment during trial as a matter of law.

11. That under our law, special damages must be specifically pleaded and proved at the trial by a preponderance of the evidence upon which trial jury may base its verdict. *Intrusco Corporation versus Osseily,* 22 LLR 558; *Appleby versus Freeman & Sons,* 2 LLR 271 (1916); and *Firestone Plantations Company versus Greaves,* 9 LLR 250 (1947). The Court also held in the case: *Super Cool Services versus American Insurance Corporation,* Supreme Court Opinions, March Term, 2004, that a plaintiff is required to prove his case by a preponderance of evidence, and special damages claimed by him must be specifically stated and proved with particularity. The Court also held the *Super Cool Services* case, and it is provided under our *Civil Procedure Law,* specifically *Section 25.5,* that the burden of proof rests on the party alleging the existence of a fact,

and the party carrying the burden of proof must be establish his allegation by a preponderance of the evidence.

12. That the testimonies of respondents' witnesses or the evidence adduced at trial by the respondent/plaintiff made no reference to special damages, though respondent/plaintiff demanded damages of US$1,500.00 per month covering the period April 21, 2006, up to present. That is to say, respondent/plaintiff did not plead and prove special damages with specificity and particularity as required by law. Hence, the special damages prayed for by respondent/plaintiff are not recoverable. The Supreme Court of Liberia has held in the case *Franco Liberia Transport Company versus John W. Betti,* 13 LLR 318, that special damages must be specifically pleaded and provided, and that uncertain; contingent or speculative damages cannot be recovered. The Supreme Court also held in the case *Brant, Willig & Company (BRAWICO) versus Ralph Captan,* 23 LLR 96, that special damages must be specifically pleaded and provide, and that damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty or must be certain both in their nature or in respect of the cause for which they proceed. Therefore, uncertain, contingent or speculative damages cannot be recovered either in action ex contractu or action ex delicto. The Supreme Court further held in the case *Medvedev versus National Port Authority,* Supreme Court Opinions, March Term, 2007, that-where special damages are claimed they must be particularly alleged and affirmatively proved. Respondent/plaintiff having failed to plead and prove with specificity and certainty the special damages prayed for, same cannot be recovered in keeping with the laws cited herein.

13. Movants/defendants say that all admissions made by a party or his/her agent acting within the scope of his/her duty, are admissible. In the instant case, the respondent/plaintiff admits that she parted with title to the property, subject of the action of ejectment, to the National and Savings Bank as evidenced by a warranty deed issued by respondent/ plaintiff in favor of the National Housing & Savings Bank. Accordingly, respondent/plaintiff having parted with title to said property to the National Housing & Savings Bank, which in turn sold said property to movants/defendants' lessor, respondent/plaintiff lacks the legal capacity and standing to institute the instant action of ejectment against movants/defendants. Hence, movants/defendants are entitled to judgment during trial as a matter of law.

14. In every action of Ejectment, the plaintiff must recover based upon the strength of his title. In the instant case, and based upon the averments contained in counts two (2) through thirteen (13) above, respondent/plaintiff does not have title to the property, subject of the action of ejectment, and therefore movants/defendants are entitled to judgment during trial as a matter of law.

15. Movants/defendants say that this motion is being filed in good faith and not intended to delay and baffle the trial of this case, as same is consistent, and in keeping with Section 26.2 of the Civil Procedure Law.

Wherefore and in view of the foregoing, movants/defendants pray Your Honor to grant and enter judgment during trial in their favor, direct the jury to go into their room of deliberation and return a directed verdict of not liable in favor of movants/defendants; and grant unto movants/ defendants any other and further relief as Your Honor may deem just, legal, and equitable in the premises."

As require by law the appellant filed a fifteen (15) count resistance basically challenging the legal efficacy of the defendants' motion terming same as baseless and has no basis in law. The appellant contended that she having produced evidence both oral and documentary to establish the circumstances of the case and her ownership to the property, it was now left with the defendants to produce evidence to refute and rebut those she had produced. She contended that *"Under the law extant, rebutting evidence is that which is given to explain, repel, counteract, or disprove facts given in evidence by adverse party. Also, it is an evidence given in opposition to a presumption of fact or a prima facie case; in this sense, it may be not only countering evidence, but evidence sufficient to counteract, that is, conclusive."*

This is how the appellant structured her resistance to the motion for judgment during trial:

"Plaintiff/respondent in response to the motion denies the legal and factual sufficiency of the motion and request Your Honour to deny same for the following legal reasons to wit:

1. That as to the motion in its entirety, respondent says same is baseless and presents nothing to claim the attention of this Court. For under our statute, it is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence. See for reliance, I LCLR 198, Section 25.5. Also in the case, *R.L. Versus Ezzat N. Eid et al.*, 37 LLR 761, Syl. 3, text at Page, 777, the Supreme Court held that sufficient evidence is that which is good and sufficient on its face. The court said that such evidence as, in the judgment of the law, is sufficient to establish a given fact or the group of chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted will remain sufficient. Furthermore, the court noted that a litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. Also noted by the court, a prima facie case then, is one which is established by sufficient evidence and can be overthrown by rebutting evidence adduced on the other side. Under the law extant, rebutting evidence is that which is given to explain, repel, counteract, or disprove facts given in evidence by adverse party. Also, it is an evidence given in opposition to a presumption of fact or a prima facie case; in this sense, it may be not only countering evidence, but evidence sufficient to counteract, that is, conclusive. See Black's Law Dictionary, Revised Fourth Edition, Page 1433.

In the instant case, the Plaintiffs having produced a prima facie case, the defendant is indeed under obligation to produce the quality of evidence to repel or counteract the plaintiff's evidence. This not being the case, the burden remains on the defendant.

2. That as to count 1 of the motion, respondent says that same should be dismissed for reason that same is a misstatement of the law cited.

3. That as to the issue of insufficiency of evidence, respondent says she has provided sufficient evidence to substantiate her claim, thereby shifting the burden on the defendant to take the stand and rebut the evidence produced by respondent. Therefore, the motion for judgment during trial cannot lie.

4. The counts 2, 3, and 4 of the motion present no traversable issue to warrant the attention of this court.

5. That as to count 5 of the motion, while it is true that the deed quoted by the defendant does not state that same is a mortgage deed, but the purpose and intent of the parties was to use the property as a security for loan as a requirement of the National Housing & Savings Bank. In fact this contention is admitted by the movant in count 8 of the movant's answer. Further, the issue of the transfer deed was clarified by both the respondent herself and the witness who is officer in charge of the National Housing and Savings Bank when they told the court and jury that the deed is supported by the regular security documents.

6.That further to count 4 hereof, as well as counts 6 and 7 of the motion, respondent says the motion is a fit subject for dismissal because movant admitted the issue of mortgage and foreclosure proceedings in his answer and on the other hand denied the issue of mortgage and foreclosure in his motion. This constitutes admission and avoidance for which inconsistency renders the motion dismissible.

7. That as to count 8 of the motion, respondent incorporates counts 4 and 5 hereof and says that count 8 of the motion should be overruled.

8. That as to count 9a thru g of the motion, same are mere citation of the law which does not mean that the respondent has not proven her case by preponderance of evidence. On the contrary, the respondent has produced both documentary and oral evidence all of which constitute sufficient evidence. Hence, count 9a thru g should be overruled.

9. That as to count 10 which alleges that the respondent has not established a prima facie case, said count should be dismissed and denied for reason stated in count 7 hereof.

10. That as to count 11 which cited the various laws stated therein, specifically special damages, and the burden of proof by preponderance of evidence respondent says she has done just that, by proving her case by preponderance of evidence in keeping with the very law cited by this count.

11. That as to count 12 of the motion regarding the demand of US$1,500.00 monthly, respondent says and the law provides that, in a complaint in an action of ejectment the plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession. In the instant case, the respondent made demand of the damages for reason of the wrongful detention of respondent's property. See Section 62.3, 1 LCLR, page 264.

12. That further to count 10 hereof, respondent says she has proven her case by both documentary and oral evidence which show that the movant

is in wrongful detention of respondent's property and therefore the demand for damages for wrongful detention of the property is proper and in keeping with law.

13. Count 13 of the motion should and must be denied because the respondent has at no time admitted to parting with her title to the property to Housing and Savings Bank. Rather, the deed alluded to represented collateral as security to secure payment of the loan.

14. That count 14 of the motion is also dismissible because respondent has shown sufficient title in herself by her title deed, testified to, identified, marked by court, confirmed and reconfirmed and admitted into evidence. For under the law extant, when documents are admitted into evidence by court, same must be presented to the trial jury who are Judges of the facts; any attempt to do otherwise would constitute an invasion of the province of the Jury.

15. That count 15 of the motion should bé overruled and the entire motion dismiss because same is filed in bad faith.

Wherefore and in view of the foregoing and the law controlling, respondent prays Your Honor and this Honorable Court to deny the motion and order the matter proceeded with; that Your Honor will grant unto respondent all that seem just, legal and equitable in the premises."

Following arguments, *pro and con*, on the motion for judgment during trial, the trial judge granted the motion and without submitting the case to the empaneled trial jury, ruled and dismissed the action of ejectment filed by the appellant/plaintiff below. The judge reasoned that the appellant failed to establish that the disputed property was pledged as a collateral to the National Housing and Savings Bank as a security for a loan taken from that Bank and that the deed executed by her brother in favor of the Bank was a warranty deed which granted the Bank title to the property in fee simple.

We quote the full text of the judge's ruling as follows:

COURT'S RULING ATTACHED

This case was called for trial on June 24, 2013 in keeping with notice of assignment and both parties appeared by counsel. At the close of Plaintiff's evidence defendant file a 15 count motion for Judgment during trial relying on Section 26.2 of the Civil Procedure Law contending that at the close of the evidence presented by Respondent/Plaintiff with respect to her and ownership of and title to one lot of land lying and situated at Coconut Plantation, Montserrado County is insufficient to warrant the Defendant taking the stand to produce evidence in their defense and therefore defendants are entitled to Judgment during as a matter of law because the warranty Deed from Etmonia Howard-King to Bankie K. Akerele attached to the plaintiff's complaint and marked Plaintiff's Exhibit 1 covering one lot. Plaintiff issued warranty Deed to the National Housing and Savings Bank covering the same and identical property as can more fully seen from Plaintiff's Exhibit 2 attached to Plaintiff's complaint. Defendants averred that during trial, plaintiff paraded three witnesses whose testimonies were to the effect that Respondent/Plaintiff acquired the property, subject of the instant action of Ejectment from Etmonai Howard-King and was accordingly issued a warranty deed therefor and that the said land was pledge to the National Housing And Savings Bank as security for a loan and mortgage deed was issued to the National Housing & Savings Bank by plaintiff. Defendants contend that that the deed issued by respondent/plaintiff to the National Housing & Saving Bank is not mortgage deed or a security/collateral for a loan extended plaintiff by the National Housing & Saving Bank as alleged by respondent/plaintiff but rather a warranty deed which defendant/movant court verbatim as follow:

"REPUBLIC OF LIBERIA

(TRANSFER DEED)

"KNOW ALL MU BY THESE PRESENT, that I, Bankie King Akerele of Monrovia in the County of Montserrado and the Republic of Liberia for and in consideration of the sum of forty three thousand four hundred fifty six dollars paid to me by National Housing and Saving Bank of the City of Monrovia in the County of Montserrado the Republic of Liberia (the receipt whereof is hereby acknowledged) do thereby give grant bargain sell and convey unto the said National Housing and Saving Bank their heirs and assigns a certain lot or parcel of land with the buildings thereon and all privileges and appurtenances to the same belonging situated in the City of Monrovia, County of Montserrado and Republic of Liberia and bearing in the authentic records of said City of Monrovia the number part of Lot No. 2 and 6 Block 74 and bounded and described as follows:

> ***"Commencing at the Southern corner of Charles E. A. M. King adjoining property and thence running on magnetic bearing thence running South 54^0 degrees East 82.5 feet to a point thence running South 36^0 degrees West 132 feet to a point thence running North 54^0 degrees West 82.5 feet to a point thence running North 36^0 degrees East 132 feet lock to a point of commencement and containing one (1) lot acre of land and no more."***

"TO HAVE AND TO HOLD the above granted premises to the said National Housing and Saving Bank their heirs and assigns and to them and their use and behoove forever. And I the said Bankie King Akerele for me and my heirs executors, administrators and assigns do covenant with the said National Housing and Savings Bank, their heirs and assigns that at and until the ensealing of these presents I was lawfully seized in fee simple of the aforesaid granted premises that they are free from encumbrances. and I have good right to sell and convey unto the said National Housing and Savings Bank their heirs and assigns forever and aforesaid and that I and my heirs executors and administrators and assigns shall warrant and defend the same to the said National Housing and Saving Bank their heirs and assigns forever against the lawful claims and demands of all persons."

> **"Signed sealed and delivered In Witness Whereof I Bankie King Akerele have hereunto In the presence of: set my hand and seal this 12th day of June in the year of Sgd Joseph Flomo Our Lord one thousand nine hundred eighty (A.D. 1980)**

"$5.00 Revenue Stamp Affixed Sgd. Bankie King Akerele...." Movants/defendants contend that the wordings of the warranty deed from Bankie King-Akerele to the National Housing & Savings Bank which was

issued for and in consideration of $43,456.00 on June 12, 1980 shows that plaintiff parted with title to the one (1) lot of land conveyed to her by Etmonai Howard-King in 1975 in that a deed is an instrument in writing, signed, sealed and delivered by the grantor whereby an interest in realty is transferred from the grantor to the grantee and an instrument formally evidencing the transfer of an intangible title interest in and to land, when delivered it fulfills its purpose and is exhausted and remains the only evidence of the transfer that occurred.

Movant/defendant also contended that in the instant case the respondent/plaintiff did not pledge the land in question as security for the performance of a duty or payment of a debt but rather made an outright sale of the property to the National House & Saving Bank for the amount 43,456.00 because Black's Law Dictionary Sixth Edition defines mortgage as an interest in land created by a written instrument providing security for the performance of a duty or payment of a debt. As to plaintiff/respondent allegation that the land subject of the action of ejectment was pledged as security for a loan extended to Charles Ebu King which obligation respondent/plaintiff assumes to pay and therefore pledged the selfsame property, movant/defendant contended that under our law, all transactions relating to real property must be reduced in writing and that no oral testimony can vary the terms of a written document for the document speaks for itself and therefore respondent/plaintiff allegation that the referenced land was pledged as security for a loan has no foundation or basis in facts and law and therefore movant/defendant is entitled to judgment as a matter of law. As to the insufficiency of respondent/plaintiff's evidences to support a verdict, movants/defendants contend that there is no evidence which ought to reasonably satisfy the panel jury that the fact to be proof is established whereas sufficient evidence is that which is good and sufficient on its face, such evidence as, in the judgment of law is sufficient to establish a given fact or the group of chain facts constituting the party's claim or defense and which if not rebutted or contradicted will remain sufficient.

As to respondent/plaintiff prayer for this court to award respondent damages of US$1,500.00 per month for the period covering April 1, 2006 up to present representing alleged rental payment and wrongful withholding of plaintiff's property and an award of general damages for emotional distress and exquisite humiliation and prolonged inconveniences occasioned by movant/defendant conduct, movant/ defendant contends that our law provides that special damages must be specifically pleaded and proved and that damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty or must be certain both in their nature or in respect of the cause from which they proceed but respondent/plaintiff having failed to plead and proved with specificity and certainty the special damages prayed for cannot be recovered.

Finally movant/respondent contended the respondent/plaintiff having admitted that she parted with title to the property subject of the action of ejectment, to the National Housing & Saving Bank, as evidenced by the warranty deed issued by respondent/plaintiff in favour of National Housing & Savings Bank which in turn sold said property to movants/defendant's' lessor, respondent/plaintiff lacks the legal capacity and standing to institute the instant action of ejectment and therefore movant/defendant are entitle to judgment during trial as a matter of law.

This 15 count motion was countered by a 15 count resistance in which respondent/plaintiff substantially contends that she has produced sufficient evidences to warrant the movant/defendant take the stand and therefore the motion for judgment during trial should be denied. Respondent/ plaintiff contends that while it is true that the Warranty Deed quoted by the movant/defendant does not state that the said deed is a mortgaged deed, the said transferred deed was clarified by respondent/plaintiff and her witness who is officer in charge of the National Housing and Saving Bank when they testified that the deed conveying the one (1) Lot to the National Housing and Saving Bank constitute sufficient oral and documentary evidence.

As to plaintiff/respondent claim of US$1,500.00 monthly, respondent/plaintiff contends that under section 62.3 of the Civil Procedure Law in an action of ejectment, the plaintiff may demands damages for wrongful detention of real property as well as the writ of possession and that in the instant case, the respondent may demand her damages for reason of wrongful detention of respondent's property. Plaintiff/respondent further contended that respondent/plaintiff has shown title in herself by her title deed testified to, identified, marked by court, confirmed and reconfirmed and admitted into evidence and under the law extant when documents are admitted into evidence by court same must be present to the trial juries who are judges of the facts. Respondent/plaintiff therefore prays court to deny movant/defendant motion and order the matter proceeded with.

Arguments were entertained and heard pro et con and the respective law citations noted. The only pivotal issue which this court finds to be the determinative of the motion for judgment during trial and the resistance thereto is whether or not the plaintiff showed title in herself to entitle her to recover in this action of ejectment? The court answers with a resounding no. The respondent/plaintiff pleaded a chain of title from Etmonia Howard King to Bankie K. Akerele and from Bankie King Akerele to National Housing and Savings Bank evidenced warranty deeds which irresistibly points to an absolute transfer of title to the National Housing Savings Bank.

A deed is an instrument in writing, signed, sealed and delivered by grantor whereby an interest in realty is transferred from the grantor to the grantee and it remains the only evidence of the transfer that occurred. See 23 Am Jur. 2d., Section 1, page 81. Respondent/plaintiff testified that the land subject of the action of ejectment was pledged a security for loan extended to her brother, Charles Ebu King, which obligation she assumed and consequently pledged the self-same property to the National Housing and Saving Bank. Respondent/ plaintiff failed to introduce into evidence any document to substantiate this allegation. The law in this jurisdiction is that all transaction relating to real property must be reduced in writing and that no oral evidence can vary the content or written document, for the document speaks for itself. Respondent/plaintiff's exhibit Ex-2, which was testified to, identified, received by court and marked P/1 in bulk speaks clearly for itself and the allegation by the respondent that the transfer of title to the one lot of land and is not outright transfer of interest in real property has no legal or factual foundation. Respondent/plaintiff having miserably failed to show title in herself, the evidence presented by plaintiff is insufficient; hence a motion for judgment during trial would lie. (1 LCLR, Section 26.2). In a long line of opinions of the Honourable Supreme Court of Liberia, the Supreme Court has held that in an action of ejectment the plaintiff must recover on the strength of his/her title unaided by the defendant.

WHERFORE AND IN VIEW OF THE FOREGOING, the motion for judgment during trial is hereby granted and the resistance thereto denied. The defendant/movants are therefore adjudged not liable and the trial jury is accordingly discharged with the thanks of court. Costs of these proceedings ruled against respondent/plaintiff. NAD SO ORDERED."

We wonder how the trial judge arrived at the decision to grant judgment during trial in an ejectment trial being held before a empaneled trial jury and amidst the wanting evidentiary inquiries presented in the pleadings of the parties, the records of the case, as well as the testimonies of plaintiff's witnesses, without the input of the trial of facts who were empaneled and heard the facts throughout the case. Ours concern is not only that the law provides that an action of ejectment, being a mixture of issues of facts and law, must be presented to a jury, but we also see that the trial judge acknowledged the role of the jury not only when he empaneled it to hear and make determination on the facts of the case but even confessed to the jury's role in denying a motion from the counsel of the defendants praying for a denial of the submission of the plaintiff's documents into evidence when he ruled as follows:

"The application for admissibility and the resistance thereto are hereby noted. This court says that following the application of the plaintiff's documentary evidence which have been received and marked by this court, P/1 in bulk and P/2 in bulk, counsel for defendant resisted the application for admissibility on grounds that the clerk certificate and the documentation [from the] and Archives and one from Jane Barker were not testified to by the author. This court says that the said documents being part of court's marked P/2 which were pleaded by plaintiff, testified to and identified by witnesses produced by plaintiff, received by court, marked, confirmed and reconfirmed, they ought to be admitted to the trier of fact to pass on their weight and credibility.

Wherefore and in view of the foregoing, the resistance to plaintiff's application for admissibility is hereby denied and court's marked P/1 in bulk, P/2 in bulk are hereby ordered admitted into evidence to go before the trial jury to pass on their weight and credibility."

Indeed, the judge, being a trial of law only, is to concern himself with the test for admission of evidence while when the evidence is admitted, it is the jury that goes to the authenticity and materiality of said piece of evidence. This Court has said repeatedly that when documentary evidence, which is material to issues of facts raised in the pleadings, is identified, received, marked and reconfirmed by the court, it should be presented to the jury. *Fayah v. Dennis,* 39 LLR 587, 596 (1999); *Walker v. Morris,* 15 LLR 424 (1963). We are therefore taken aback by the action of the trial judge in granting the motion for judgment during trial, especially in the face of the procedure laid in the statute vesting the right in a trial judge. When the statute grants power to a judge to exercise certain powers but lays down the procedure which must be followed by the judge in the exercise of the power, it is not discretionary with the judge to determine whether to follow the procedure or not, especially as in the instant case where the procedure set forth by the statute is mandatory.

But as much as we are anxious to understand the judge's rationale for granting a judgment during trial in the face of this very well established legal principle of law, even recognized by him, couple with the varying factual questions raised in the pleadings and at the trial, we believe that it is important that we pause for now and go further into the examination of the records before us.

We see in the records before us that following the judge's granting of the motion for judgment during trial and the dismissal of the appellant's complaint by the judge but before the filing of the bill of the exceptions, the appellant filed a motion for relief of judgment on ground of newly discovered evidence. In the motion, the appellant brought to the attention of the trial court that in order to respond to the issue of her title as raised during the trial, she had held discussions with her brother, Charles Ebue King, the original holder of the property deed for the loan, during which he indicated that he had received instructions from the National Housing & Savings Bank to have him transfer the said mortgaged property to his sister, the movant/plaintiff herein, so as to satisfy the requirement of the Bank and that there were communications to him from the Bank to that effect which, if properly search amongst family papers, may be found. Mr. King also indicated that he was prepared to issue an affidavit to that effect and that based on this conversation she did conduct a search and fortunately found the two letters, one dated December 26, 1979 from C. Ebue King to Hilary Dennis, President of National Housing & Savings Bank, and the other, a reply dated May 28, 1980 from one Alvin E. Eastman, Manager/Credit of National Housing & Savings Bank.

Because the appellant's motion is vital to the outcome reached herein, we have determined to also quote same verbatim, as follows:

> <u>MOTION FOR RELIEF FROM JUDGMENT</u>
>
> AND NOW COMES MOVANT in the above entitled proceedings and moves this court as follows:
>
> 1. That Movant says and the law provides that on motion and upon such terms that are just, the court may relieve a party or his legal representation from a final judgment for reasons of......newly discovered evidence which if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial...."1 LCLR, Chapter 41, Relief from judgment, section 41.2(2) (b).
>
> 2. Movant says following the production of her side of the case in the above entitled cause of action, the Respondent moved the court for judgment during trial on the ground that the transfer deed issued by Movant to National Housing and Savings Bank is not a mortgage deed but a strict conveyance and therefore the Movant has no title in herself to eject the Respondent, based upon which your Honor granted said Motion thereby dismissing the Movant's Action of Ejectment.
>
> 3. Movant submits that in order to respond to the issue of her title as raised during the trial, she had discussions with her brother Charles Ebue King, the original holder of the property deed for the loan, during which he indicated that he received instructions from the National Housing & Savings Bank to have him transfer the said mortgaged property to his sister, the Movant/Plaintiff herein, so as to satisfy the requirement of the bank and that there were communications to him from the Bank to that effect, which if properly search amongst family papers, may be found. Mr. King also indicated that he was prepared to issue an affidavit to that effect.
>
> 4. Movant says based on this conversation she did conduct a search and fortunately found the two letters, one dated December 26, 1979 from C. Ebue King to Hilary Dennis, President of National Housing & Savings Bank and the other, a reply dated May 28, 1980 from one Alvin E. Eastman, Manager/Credit of National Housing & Savings Bank, which are hereto attached and marked as M1 in bulk and made a part of this Motion. Movantalso requests court to take judicial notice of her affidavit relating to the two letters M/1 in count two of this motion.

5. Further to the above, movant says, she had never before had knowledge of, or access to, or control over the two letters constituting newly discovered evidence, she having had no reason to have ever known of the said two important communication between the Bank and her brother; that prior to the time she discovered them, neither the bank nor her brother had informed her of the existence of such documents. Movant therefore submits that at the time of filing her action and up to the time she testified before this court, she could not have produced or testified to the existence of such important documents relating to the mortgage transaction at the National Housing and Savings Bank. Movant further says the letters, one dated December 26, 1979 and the other dated May 28, 1980 clearly show that mortgage exists between the movant/ plaintiff and the National Housing & Savings Bank, which two letters point to the exact issue of the mortgage and the process and/or requirements of issuing the deed. Movant submits that these two pieces of communication clearly explain and convincingly show that in deed the transferred deed based upon which your Honor ruled as you did is a mortgage deed and not a strict conveyance as mistakenly construed, therefore your ruling of June 28, 2013 must be resented.

6. Movant says as the law requires, she has already filed a Motion for newly discovered evidence along with the necessary affidavit, M/2.

7. Movant further submits that when a document has been testified to, identified and marked by court, it must be submitted to the jury, but to do otherwise constitutes an invasion of the province of the jury, and therefore your Honor's ruling wherein you granted Defendant's Motion for judgment during trial after Plaintiff and her witnesses had produced documentary evidence, constitutes an invasion of the providence of the jury which act may be regarded as mistake, inadvertence, surprise or excusable neglect.

WHEREFORE AND IN VIEW of the foregoing, Movant/Plaintiff prays Your Honor and this Honorable Court to recall and/or set aside your ruling of June 28, 2013 and order the case to proceed with trial based on the newly discovered evidence."

In their resistance to the above motion, counsels for the appellees argued that the two (2) letters attached to the motion, even if introduced into evidence, would make no difference or change the judgment of the court since the title deeds executed by the movant in favor of the Bank created a fee simple title in the Bank and was never the subject of a mortgage arrangement. There is no indication that the trial judge entertained the motion for relief from judgment and the resistance thereto; we see no record that the motion was ever called, heard or decided by the court. What this means is that the trial judge simply sat quietly and ignored the motion and the resistance filed and only waited for the filling or perhaps the appellant's failure to file a bill of exceptions to his ruling granting the motion for judgment during trial.

What is even more puzzling and disturbing to us is that having ruled that the appellant did not provide sufficient evidence to establish that the transaction between the Bank and her brother, Charles Ebu King, was one of a mortgage and not out-right sales, one would have thought that the motions for newly discovered evidence and for relief from judgment based on a newly discovered evidence, and which attempted to sure that the transaction he referenced in his ruling on the motion for judgment during trial was actually a mortgage and not sales of the property, would have necessitated a hearing into the motion. The is especially so since he based his entire ruling on the definition of a deed and its implication on a property deeded relative to the nature of the transfer and since the controversy was centered on the legal effect of a warranty deed issued that Bank versus the explanation for such issuance as provided by the appellant in her pleadings and testimonies of her witnesses.

Our law provides that:

> "the court may relieve a party or his legal representative from a final judgment for the following reasons:
> (a) Mistake, inadvertence, surprise, or excusable neglect;
> (b) <u>Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;</u>
> (c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
> (d) <u>Voidness of the judgment</u>; or Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequitableness in allowing prospective application to the judgment." (Emphasis Ours)

`In the face of the factual circumstances of the case, including the claims and counter-claims made by the parties, we are of the considered opinion that the letters purporting to establish the mode of transaction between the Bank and the appellant's brother and which could have also spoken to the question of whether or not the transfer of the disputed property was done in fee simple or meant to serve as a security for a loan should have been received by the court and investigated thoroughly to determine its veracity and/or authenticity.

Certainly, an investigation by the judge would have clearly revealed the intent of the parties, even in the face of the warranty deed; for if the intent of the parties was not that the borrower would transfer his property in fee simple for a loan or that the transfer was merely a mode of ensuring payment of the loan, the deed would not, in the interest of justice, be deemed to have been intended to be one executed to grant a fee simple transfer. We know that at the time, the banks demanded such guarantee, but they did not claim that by the borrower complying with such guarantee, that automatically mean that the borrower's property had been transferred to the banks in fee simple and that even if one paid back the loan he was not entitled to have his property [the mortgage] returned to him since technically he had granted a fee simple title to the bank. Had the trial judge conducted a hearing into the motion for relief from judgment based on the newly discovered evidence, he would have satisfied himself in respect of the above question and would have rendered a more informed decision on the matter.

Ejectment cases, being matters which present issues of law and facts, are to be broadly investigated taking into consideration all and every piece of instrument which tend to establish one's title to a contested real property. As we noted earlier, the circumstances of this case are not the regular title contestation between parties whereby the court may base its decision solely on the strength of the plaintiff's title and not the weakness of the defendant's title. Rather, it involves the a mortgage transaction wherein a deed to real property was allegedly transferred to the mortgagor by the mortgagee as security for the loan. Although the appellees/defendants contend that by the nature and wording of the deed (warranty deed) transferring the property to the Bank, created title in fee simple in the Bank and not a lieu on the property through security to the loan, their pleadings, positions and the very ruling of the trial judge leave more questions than answer and do not support, even at a very least, the conclusion reached by the judge.

First, and as similarly noted, there is no disagreement that the disputed property originally belonged to the appellant. The records also allude to the fact that the property was mortgaged to the Bank by the appellant. What seems contradictory on the part of the appellees and the trial judge is that why on one hand they acknowledged that the property was mortgaged to the Bank and that the Bank foreclosed the mortgaged and acquired the property, and yet they make the argument on the other hand that in fact the property was out-rightly transfer to the Bank at a cost by the appellant. The question that is left to ponder on with this contradictory statement is why would the Bank foreclose a property that was not a subject of mortgage transaction and was not offered as a security to a loan agreement but instead transferred to the Bank in fee simple? This Court has said on many occasions that it is not concerned merely with a party winning a case on any level of technicality, but more with the administration of justice which the Constitution mandates this Court to pursue and which the members of this Court have taken an oath to uphold.

The above and many more are questions, factual in nature, that are left unanswered in the face of the trial judge's ruling granting a motion for judgment during trial, aside from the fact that a judge should not deprive the jury from deliberating and deciding upon a case which the jury had been sworn in to deliberate and effectively replace his view in the stead of the jury's.

The appellant, apparently noting that the trial judge's silence on the motion for relief from judgment and also perhaps cognizant of the law that a motion for relief from judgment does not suspend the operation of a final judgment or prevent the issuance and execution of final process on it, and that the filing of such a motion does not toll the time for announcing an appeal from the original judgment and filing a bill of exceptions [*Stubblefield v Nasseh,25 LLR, 24 (1976)]*, filed a four count bill of exceptions before the trial court for that court's approval to enable her to perfect her appeal before this Court.

The main contentions in the bill of exceptions are that the trial judge erred when he granted the judgment during trial without submitting the case to the jury who are the trier of facts; that although the conveyance of the property from the plaintiff to the Bank did not indicate mortgage, since the purpose of such conveyance was to secure a loan, the judge should have considered the intent of the conveyance and not the nature of same and that in the face of the evidence produced by the plaintiff, the trial judge should have submitted the case to the jury for determination.

This is how the appellant presented the issues in her bill of exceptions:

PLAINTIFF'S BILL OF EXCEPECTIONS

Plaintiff, Olubanke King Akerele, being dissatisfied with Your Honor's Final Judgment, submits this bill of exceptions for the following reasons, to wit:

1. That Your Honor committed reversible error when you invaded the province of the jury by the rendition of Your Final Judgment without instructing them to retire into their room of deliberation to consider a verdict following the admission into evidence of court's marks P/1in bulk and P/2 in bulk all of which were testified to and identified by the witnesses produced by the plaintiff. Plaintiff says had Your Honor directed the Jury to retire into their room of deliberation to consider a verdict based on the evidence presented by the plaintiff after argument of the motion for judgment during trial, the outcome of the case would had been otherwise, the empanel jury being judges of the facts clothed with the authority to listen to the evidence, sift them and arrive at a verdict. Your Honor having failed to do that which the law requires in an ejectment case, reversible error was committed. Hence, this bill of exceptions, requiring reversal of Your Honor's final judgment.

2. That Your Honor committed reversible error when you ignored the contentions of plaintiff/respondent that under the law extant, it is sufficient if the party who has the burden of proof establishes his allegations by preponderance of evidence; that a sufficient evidence is that which is good and sufficient on its face to establish a given fact or the group of chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted will remain sufficient; that a litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. Notwithstanding the arguments advanced by plaintiff/respondent in her resistance, Your Honor failed to address same in your final judgment. Hence, reversible error was indeed committed.

3. That Your Honor committed reversible when you refused to address the contention of the plaintiff/respondent that although the deed from plaintiff/respondent to National Housing and Savings Bank does not indicate mortgage on its face but since the purpose and intent of the parties was to use the property as a security for loan as a requirement of the National Housing and Savings Bank, which contention is admitted by defendant/movant in count 8 of his answer, Your Honor however ruled otherwise, amidst the argument that: "the law of this land is clear and unequivocal that whenever a conveyance, assignment or any other form of transfer of an estate in land is intended by the parties as security for money, whether this intention appears from the instrument or is established by other proof, the transaction is deemed a mortgage, and consequently the property is redeemable upon the performance of the conditions "agreed to". Hence, this bill of exceptions requesting reversal of Your Honor's final judgment.

4. That Your Honor committed reversible error when you refused to assign and dispose of Plaintiff's "Motion for the Relief From Judgment" and Motion for Newly Discovered Evidence" because had Your Honor assigned and heard the two motions, the result of the outcome of this case would had been otherwise; in that Your Honor would had noticed that the deed from plaintiff to the National Housing and Savings Bank does not divest plaintiff of title because the conveyance was made to secure the repayment of a loan. Hence, error was committed for which Your Honor's final judgment should be reversed.

Wherefore and in view of the foregoing, plaintiff/respondent has filed this bill of exceptions for Your Honor's approval so that the case would be reviewed by the Honorable Supreme Court.

Following the filing of the above mentioned bill of exceptions, the appellant secured, served and filed an appeal bond as well as a notice of completion of appeal thereby giving this Court jurisdiction over the matter.

At the call of the case and during argument before the Bench, lawyers appearing for both parties acknowledged that following the granting of the motion for judgment during trial, the judge should have submitted the case to the jury for a directed verdict. By implication, they agreed that the procedure adopted by the trial judge was erroneous since he failed to submit the case to the jury for the determination of the factual issues raised therein. Counsel for the appellant contended that a motion for judgment during trial is only applicable when the judge is sitting as a judge and jury while counsel for the appellees argued that although the judge should have submitted the case to a jury for a directed verdict, had the judge submitted same the result of the case would have been the same.

In order to clearly appreciate the position taken by the lawyers appearing for the parties we have captured an excerpt of the minutes during the hearing of the case. The following questions were posed to counsel for the appellant and the appellees:

> The appellant's counsel:
> Ques. Did you say that the motion for judgment during trial was not applicable in this case?
> Ans. Yes, Your Honors. Motion for judgment during trial is only applicable when the judge is sitting as a judge and jury.
> The appellees' counsel:
> Ques. Don't you think the judge should have allowed a full array of evidence to allow the jury to make a determination?
> Ans. Either way would have helped our case, your Honors. We had defenses of evidence of foreclosure and evidence of outright sale of the properties.
> .Ques. Ejectment cases are generally decided by a jury. Why did the judge not allow the jury to make determination in this case?
> Ans. There was no need to proceed with the case further, since the appellant had admitted not owning the property. The judge should have retained the jury and charged them to bring a directed verdict.
> Ques. Is the judge's failure to have retained the jury and charge them to bring a directed verdict a reversible error?
> Ans. I cannot say, Your Honors.

The foregoing clearly demonstrates that the action of the judge in regard to the motion for judgment during trial was tantamount to unilaterally depriving the jury of its constitutional and statutory role, contrary to both the Constitution and the provisions of our statute. Firstly, the Constitution, at Article 11(a), clearly recognizes and sets out that every person has certain "inherent and inalienable rights", amongst which is the right to possess and protect property," subject to such qualifications as provided for in this Constitution." Then at Article 20(a), done in furtherance of the Article 11(a) provisions of the Constitution, relative to the protection of property, the Constitution states that: "(a) <u>No person shall be deprived of life, liberty, security of the person, property,</u> privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in <u>all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury."</u> [Emphasis ours] It is in furtherance of the foregoing that the Legislature in enacting into law the Civil Procedure Law, stipulated at Section 22.1(1) states: "*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." Civil Procedure Law, Rev. Code 1:22.1(1). And consistent with the foregoing, the Supreme Court has articulated unequivocally that the jury are the triers of the facts and that a trial judge transgresses the province of the jury in delving into factual issues in the course of disposing of law issues or motions which are primarily legal in nature. This is especially true in ejectment actions, and particularly as in the instant case, where there is an ongoing jury trial.

We recognized the long standing principle of law in this jurisdiction that actions of ejectment involve mixed issues of law and facts and must therefore be determined by a jury. The Supreme Court has further determined and recognized in multiple Opinions that where there is a jury trial, the jury is the sole body having the legal authority to investigate and determine the weight and credibility of documents admitted into evidence, although with the guidance of the court. This position of the Court, long recognized and adhered to remains pivotal to ejectment cases, even as in the instant proceedings, where the case presents more factual inquiries than the regular ejectment actions wherein the contest to title is the sole question.

As we have already opined, the circumstances of this case leave more questions for factual inquiry than the answers that were provided by the trial judge in ruling on the motion during trial. Indeed, as stated above, the jury, as judges of the facts, needed to have investigated the full array of the transactions that were carried out between the Bank and the appellant to ascertain whether the transaction was a mortgage transaction or an outright sale of the property to the Bank. Hence, the court should have allowed the jury to review the testimonies of the witnesses, especially in the face of the allegations that no records of a foreclosure proceedings existed, that the National Housing & Saving Bank had no records of such proceedings, and that the deed issued to Mr. Aurelius did not exist in the National Archives, as well as the appellees' contradictory statements that the property was out-rightly sold on one occasion and that same property was mortgaged and therefore foreclosed on another occasion. All of these allegations fell within the province of the jury as triers of the facts to make a determination thereon, guided only by the court where they bordered on issues that had a mixture of law and facts, so that in reaching the factual conclusions, the jury is guided by the law.

But even more than the foregoing reference to the violation of the Constitution and statute, the trial judge, in granting the motion for judgment during trial was in further abridgement of the very statute upon which he relied for granting the motion. The provision of the Civil Procedure Law, relative to motions for judgment during trial, provides as follows:

> "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)." Civil Procedure Law, Rev. Code 1:26.2.

While a carefully reading of the quoted section of the law dispels the position of the appellant's counsel that a motion for judgment during trial can only be granted when the judge is sitting as a judge and a jury, and that the provision of the statute clearly recognizes that the motion can be granted in the presence of the empaneled jury, it also clearly retains in the jury the right to make the decision as to the liability or non-liability of the moving party. This is what the statute says: ..."*that the motion does not waive the right to trial by jury*" and that: *"if the court grants such a motion in an action tried by a jury, it shall direct the jury what verdict to render...."* [Our emphasis]

The use of the word 'shall' in the wording of the statute requiring the judge to submit a case to the trial jury following the granting of a motion for judgment during trial does not leave said procedure at the discretion of the trial judge; rather, it makes same mandatory. This Court has interpreted the word 'may' constitutes discretion as compared to the word 'shall' which is mandatory, *Brewer v. Mathies et al.*, 41 LLR 229 (2002), *Pioneer Construction Company v Her Honor Morgan et al.,* Supreme Court Opinion March Term, A. D. 2015.

This means that while the judge is authorized to grant a motion for judgment during trial, it is the jury, and only the jury, that can and must enter a verdict. The law is clear and unambiguous; it does not leave to the discretion of the judge whether to pursue the procedure outlined therein, as the judge seemed to have believed and as counsel for the appellees' seems to impress upon us by his answer that "either way would have helped our case..." And even where the jury fails to follow the instructions of the judge to return a directed verdict, the law does not vest in the judge the right to reverse the jury and enter a verdict in favour of the party whom the judge had directed the jury to enter. Rather, it limits the authority and the power of the judge, stating only that if the jury disregards the direction, the court may in its discretion grant a new trial.

Our reading of this law is that although the trial judge directs the jury as to the verdict it should return, the judge may accept a contrary verdict or may overturn the verdict and award a new trial. The judge is precluded under the statute from replacing the verdict of the jury with a contrary judgment of his own in favor of the party against whom the jury has returned a verdict. We hold therefor that the trial judge's action in granting the motion for judgment during trial was a clear misrepresentation of the law under consideration and forms adequate basis for a reversal of his decision granting the motion and dismissing the plaintiff's case.

Further, as we have noted, the circumstances of this case presented more issues of inquiry and answers and transcended the mere determination as to whether a person held deed to the property in question or not. The trial judge, even if he had the authority to pass upon the issue of title in the face of the trial being one before the jury, should have satisfied himself that the evidence adduced by the plaintiff not only could not establish her title or that she admitted that the property is not hers, but as evidenced in the instant case, he should have explored the intent of the parties relative to the execution of the warranty deed.

We see that the appellee has taken a contradictory position in the matter and which we believed warranted the consideration of the Court. The appellee takes the position that the plaintiff had conveyed to the lessor of the appellee, by warranty deed, fee simple title to the property in question, but at the same time asserted that the arrangement between the Bank and the plaintiff was in the nature of a mortgage and that upon the default in the payment of the loan the Bank had proceeded to foreclose on the property. Counsel for the appellee argued further that it was the result of the foreclosure by the Bank that the property was expose to auction and sold by the Court. We note that there are serious implications attached to the contradictory arguments of the appellee. If, as the counsel argued and as stated in the documents filed by the appellee, the appellant had parted out-rightly with her fee simple title to the property by virtue of the warranty deed issued by her to the Bank, and that as of the date of execution of the warranty deed, the plaintiff no longer held title to the property, the what was the necessity in the Bank proceeding to the court to foreclose the mortgage and have the court expose to auction the very property which counsel asserts had already been transferred to the Bank in fee simple by the appellant. Indeed, the argument by counsel for the appellee that the Bank had sought and attained by court action foreclosure of the mortgage and sale of the plaintiff's property, rather than being supportive of the appellee's claim that the plaintiff had parted fee simple title to the property by the execution of the warranty deed in favour of the Bank clearly refute the claim that the plaintiff had out-rightly conveyed a fee simple title to the Bank. The jury could have and should have, in the wake of such disclosure, reached the conclusion that the warranty deed executed by the plaintiff in favor of the Bank was clearly not intended to convey the property out-rightly to the Bank but rather to have the Bank used the deed as a collateral for the loan which it had agreed to extend to the plaintiff. That argument therefore, having not legal or factual basis, should have been left to the jury rather than the trial judge passing thereon and depriving the jury of the benefit of the evidence in that respect; and even had the jury determined otherwise than we have stated herein, a verdict to the contrary would have been a proper basis for an appeal to this Court and for corrective action by this Court.

Perhaps even more perplexing is the fact that in the course of the arguments before this Court, it was revealed that there may have been encroachment on property belonging to the appellant that had nothing to do with the property which is said to have been the subject of the mortgage proceedings said to have been held in the lower court in earlier years, but which the plaintiff denied even being aware of or ever having been summoned or cited to defend. This Court has held numerously that where a party was not summoned as provided for by law any judgment entered against such party is null and void, and any acts or actions growing therefrom are ineffectual and unenforceable. It was therefore important for the allegations to be thoroughly explored. Hence, the trial judge should have granted the motion for relief from judgment so that the matter could be thoroughly explored and justice, true justice, served.

Additionally, counsels for the both parties acknowledge that the case seemed to have generated more confusion than it resolved, and that the best course under the circumstances was to have the case remanded so that a new trial could be conducted. Indeed, they believed, as does this Court, that there is need for the parties to plead anew so that all of the facts surrounding the manifold events which led to the current proceedings could be well articulated and set forth before the trial court.

Constitutionally this Court has the mandate to exercise "final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact..." Lib Const. Art. 65 (1986). In the exercise of such final jurisdiction, the Court may render a final determination or, where necessary or proper, remand to the lower court for further proceedings. *Civil Procedure Law, Rev. Code 1:57.17.*

In consonance with its powers, this Court has held that where the circumstances of the case as well as the arguments of the counsels are so confused and present unanswered questions but regarding which answers are required so that justice is served and a proper basis is for any award made by the jury, this Court shall reversed and remand this case to court below, with instructions that the lower court allows the parties to replead to clarify their positions in respect of this matter, ensuring that such repleading conforms to the time frame provided by law. *McGill v. Mobil Oil Company, Inc.,* 26 LLR 135 (1977); *American Int'l Underwriters Inc. v Fares Import-Export,* 30 LLR 335 (1982). Further, it is the law that when an appellate court reverses and remands to the lower court with instructions that the court below decides certain inconsistences in its prior ruling, decision of judgment, in keeping with law, a new trial has been ordered. *Lamco J.V. Operating Co. v. Kashani et al.,* 35 LLR 524 (1988).

Wherefore and in view of the foregoing facts and circumstances, as well as the legal principles referenced, it is our considered opinion that the judgment of the lower court should be and same is hereby reversed. The case is remanded to the lower with the order that the parties be directed to re-plead, ensuring that all their pieces of evidence in substantiation of their respective claims are exhibited and annexed to their pleadings in accordance with law. The judge of the lower court is hereby ordered to determine the proceedings in consonance with law and the decisions of this Court governing such matters.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein of the decision of this Court and ordering him to proceed as directed herein. Costs of these proceedings are to abide the final determination of the matter. AND IT IS HEREBY SO ORDERED.

Counsellors C. Alexander B. Zoe of the Law Offices of Zoe and Partners, Inc. and Roland F. Dahn of Yonah, Obey and Associates Law Offices appeared for the appellant. Counsellors Luther N. Yorfee, Albert S. Sims and G. Moses Paegar, of Sherman and Sherman, Inc. appeared for the appellees.