

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
MARCH TERM, A.D. 2017

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS IIIASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE YUOHASSOCIATE JUSTICE

The Intestate Estate of the late Mary Deborah)
Carter Cooper Dixon by and thru its)
Administratrix Cum Testamento Annexo,)
Mornjay G. Pratt, of the City of Monrovia,)
Liberia.....APPELLANT) **APPEAL**

VERSUS

Milton & Richard, Inc., an Architectural Engineering)
Consultancy Firm, represented by its Partner,)
Aaron B. Milton, Sr. also of the City of Monrovia,)
Liberia.....APPELLEE)

GROWING OUT OF THE CASE:

Intestate Estate of the late Mary Deborah)
Cater Cooper Dixon by and thru its)
Administratrix Cum Testamento Annexo,)
Mornjay G. Pratt, of the City of Monrovia,)
Liberia.....PLAINTIFF)

VERSUS

Milton & Richard, Inc., an Architectural Engineering)
Consultancy Firm, represented by its Partner,)
Aaron B. Milton, Sr. also of the City of Monrovia,)
LiberiaDEFENDANT)

**SUMMARY PROCEEDINGS
TO RECOVER REAL
PROPERTY**

HEARD: DECEMBER 20, 2016

DECIDED: August 3, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

A writ of summons was issued out by His Honor J. Kennedy Peabody, Stipendiary Magistrate of the Monrovia City Court, Monserrado County, Temple of Justice, Monrovia, Liberia, against Milton and Richards, Inc. and all its tenants, appellees, occupying the building situated and lying on Carey Street, City of Monrovia, Montserrado County. This writ of summons was based on a complaint brought to court by the Testate Estate of Mary Deborah Carter Cooper-Dixon, appellant, represented by Mrs. Mornjay George Pratt, Administratrix Cum Testamento Annexo of the Testate Estate.

Mrs. Mornjay George Pratt complained that the appellee Milton and Richards, Inc. along with its tenants were occupying and withholding the premises of her late grandmother in face of the expiration of a lease agreement by and between the Appellant Estate and the appellee represented by its partner, Aaron B. Milton, Sr. The Appellant Estate, in its complaint before the Magistrate, said that it had declared all of the occupants, including the appellee, undesirable tenants, notifying them to vacate the subject promises but that they had failed, refused and neglected to comply with the demand. The appellant therefore prayed the Magisterial Court to have the appellee and its tenants ejected and evicted from the appellant's premises and the appellant be placed in possession of the premises. The appellant also prayed that the appellees be made to pay damages of Three Hundred United States Dollars (US\$300.00) for wrongful withholding as well as appellant's legal expenses.

When the case was called at the Magisterial Court, the Administratrix Cum Testamento Annexo of the Appellant Estate testified that her grandmother, Mary Deborah Carter Cooper-Dixon, owned and lived on the subject property, and in the 70's she leased the land to the appellee; that her grandmother, who died in 2008, left a Will leaving the property to several of her children, one of whom was J. Eva Coleman George, the mother of the Administratrix Cum Testamento Annexo, Mrs. Monjay George Pratt. Mrs. Pratt stated that she represented her mother and her aunt, Elaine Thomas Moore, in the further issuance of an agreement of lease with the appellant firm on January 4, 2010; that in the absence of her cousin, Irwin O. Coleman, Sr., the executor of the Will, it was agreed that she petition the Probate Court of Montserrado County to give her the authority to represent the appellant estate, and upon her petition, the court duly issued her Letters of Administration Cum Testamento Annexo to manage her grandmother's testate estate. Based on this authority from the Probate Court, Mrs. Pratt testified, she signed several lease agreements on behalf of the appellant estate, and collected and distributed previous rents received from the appellee firm, the last being portion of rent due in 2012. Since this last payment of 2012, however, the witness said, the appellant estate had not received any money from the appellee against the rent. Based on the appellant's family relationship with Mr. Aaron B. Milton, representative of the appellee, she made several appeals, had conferences with him, urging him to live up to his obligation under the lease agreement but that Mr. Milton refused and neglected to pay the rent due and as stipulated under the lease

agreement. She had therefore been constrained to go to the Magisterial Court to have the appellee and its tenants removed from the premises.

Mr. Milton Richards took the stand and admitted to being the Manager of the lessee; that his firm had leased the land from the late Mary Deborah Carter Cooper-Dixon and erected the existing structure thereon, leasing out portion of the premises to other interested parties. He also admitted to having a good relationship with the decedent of the estate, and after her death, her children. Mr. Richards however testified that the appellee had an existing lease agreement with the children of the decedent and that the lease under which he and his tenants occupied the building had not expired and was still in force; however, due to serious national financial problems appellee had not been able to meet up with the payment for the building. At the end of his testimony, he introduced into evidence the lease agreement of January 4, 2010, and a letter from Irwin O. Coleman, signed as executor of the testate estate of Mary Deborah Carter Cooper-Dixon. The lease agreement and the letter from Irwin O. Coleman are inserted herein below:

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE is Made, Entered into and Executed, in the City of Monrovia, County of Montserrado, Republic of Liberia, this 4th day of January, A.D. 2010, by and between Heirs of The Late Mrs. Mary D. Coleman Dixon who are: Eva Coleman George, Claudia Coleman Nelson, Elaine Thomas Moore; and Irwin O. Coleman, Sr., Administrator of the Intestate Estate of the of the Late Joseph S. O. Coleman, Sr., hereinafter known and referred to as the LESSOR; and the Architectual/ Engineering Consultancy *Firm*, a duly Organized Corporation, existing under the Laws of the Republic Of Liberia, represented by and through its Partner, Aaron B. Milton, Sr. of the City of Monrovia, County of Montserrado, Republic of Liberia, herein-after known and referred to as the LESSEE, hereby:

WITNESSETH:

ARTICLE I.

THAT FOR AND IN CONSIDERATION of the rents, stipulations, covenants and agreements hereinafter reserved and contained to be made, kept, paid and performed by the LESSEE and LESSOR, the LESSOR does hereby lease, grant, demise and convey unto the LESSEE, their Four-Storey, Commercial Building Which is located on 152 Carey Street, lying between McDonald and Warren Streets in the city of Monrovia, County of Montserrado, Republic of Liberia; which at LESSEE'S discretion, may be used either for Residential, for Business, Office Purposes, or both.

ARTICLE II

TO HAVE AND TO HOLD the herein described Four-Storey, Commercial Building which is located at 152 Street in the City of Monrovia, County of Montserrado, Republic of Liberia; with all and Singular, the Rights Appurtenances thereto belonging and otherwise appertaining unto the LESSEE

for and during the full and complete period of three (3) calendar years certain; commencing on the 1st Day of January, A.D. 2010, up to and including the 31st day of December, A.D. 2012; yielding and paying therefor, unto the LESSOR, an annual lease rental of US\$28,000.00 (TWENTY-EIGHT THOUSAND UNITED STATES DOLLARS) per annum, payable annually in advance during the first two (2) calendar years and the amount of US\$ 32,000.00 (THIRTY-TWO THOUSAND UNITED STATES DOLLARS) per annum, payable annually in advance during the second one (1) calendar year, which is the end of the three (3) calendar years certain period of this lease as indicated herein below; payable annually in advance, in accordance with the following schedule:

1. For the First Two (2) Years (Jan. 1st 2010 – Dec. 31st 2011), the lease/rental shall be at the rate of US\$28,000.00 per annum; payable annually in advance upon Signing of this Agreement Of Lease.
2. For the remaining One (1) Year (Jan. 1st 2012 - Dec. 31st 2012), the annual lease/rental shall be at the rate of US\$ 32,000.00, per annum, payable annually in advance, in keeping with the terms and condition, of this agreement of lease.

ARTICLE III.

IT IS MUTUALLY UNDERSTOOD AND AGREED BY BOTY PARTIES hereto that the LESSOR shall grant unto the LESSEE who shall be entitled to an optional period of three (3) years with terms and conditions to be negotiated and agreed upon by the Parties hereto. It being mutually understood and agreed however, that the rental amount, during the optional period shall not exceed more than US\$40,000.00 per Annum, for the said three years optional period of the lease as indicated in Item 2, above.

ARTICLE IV.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED by both parties hereto that the LESSEE shall have the right to sub-lease the demised Four-Story Commercial Building for any portion, or all of the period therein granted, but only upon obtaining the written consent of the LESSOR, which shall not be unreasonably withheld.

ARTICLE V.

IT IS FURTHER MUTUALLY Understood and Agreed that with the consent of the LESSOR the LESSEE shall have the right to make changes, alterations and improvements on the herein described and demised Four-Storey Commercial Building thereon as he finds necessary and/or desirable, at his own expense provided that such changes, alterations and/or improvements meet the approval of the LESSOR (in writing) and that they will not damage the structural integrity of/or change the basic design of the building.

ARTICLE VI.

THE LESSEE HEREBY COVENANTS and agrees to undertake any and all necessary repairs for maintenance of the herein described and demised Four-Storey Commercial Building and to keep same in a good and acceptable condition and repair, during the life of this agreement.

ARTICLE. VII.

IT IS FURTHER UNDERSTOOD and Agreed that the LESSEE shall be responsible for and shall pay all of the taxes for the building during the entire life of this Agreement except The Realty Lease (commonly called "Coast Guard") Tax, together with all Utility Bills such as Electricity, Water, Sewerage and Telecommunications, which may be levied, charged, assessed from time to time or imposed upon the demised premises by the government of the Republic of Liberia during the said period granted. LESSEE covenants and also agrees to submit copies of all taxes and utility bills paid by him for the demised premises to the LESSOR for their inspection and approval at the end of every year after the Agreement shall have been executed.

ARTICLE VIII.

IT IS FURTHER MUTUALLY Agreed and Understood that should the LESSEE fail to pay the rents herein stipulated and agreed when due, or to perform or observe any of the covenants contained herein to be performed by the LESSEE, this Agreement shall immediately and automatically lapse and become null and void within -Sixty (60) calendar days after the LESSOR shall have served written notice upon the LESSEE. The LESSOR may then re-enter and repossess the herein described and demised Four-Storey Commercial Building without hindrance and/or molestation from any person(s) whomsoever; in which quiet-and peaceful enjoyment the LESSOR hereby undertakes to WARRANT AND DEFEND the LESSEE during the life of this Agreement.

ARTICLE IX.

IT IS UNDERSTOOD FURTHER and Agreed that should there be any civil commotion, war or any other public disturbance which renders unsafe, the occupation and utilization of the demised premises, LESSEE shall not be responsible to pay rental for the demised premises, during, the period of non-occupancy; it being agreed however, that such period of non-payment shall not exceed six (6) months, after which the parties hereto agree that this agreement shall lapse and be subject to further negotiation.

ARTICLE X.

THE LESSOR HEREBY COVENANTS and agrees that the LESSEE paying all the rents and performing all of the stipulations agreed, shall quietly and peaceably have, hold possess and enjoy the said demised premises without hindrance, trouble or molestation from any person (s) whomsoever; in which quiet and peaceable enjoyment the LESSOR hereby undertakes to WARRANT AND DEFEND the LESSEE during the life of this Agreement.

ARTICLE XL

AND THE LESSEE hereby covenants and agrees that at the expiration of the period herein granted, he shall quietly and peaceably yield and surrender unto the LESSOR, their heirs, executors, administrators, successors and assigns, the said demised premises in as good a condition as reasonable wear and tear will permit; damages by the elements, acts of God and unavoidable accidents excepted.

IT IS HEREBY FURTHER Mutually Agreed and Understood that this Agreement of Lease and the terms and covenants herein contained shall extend to and be binding upon both parties hereto, their heirs, administrators, executors, successors and assigns in office, during the full period herein granted in said Agreement of Lease.

IN WITNESS WHEREOF THE PARTIES HAVE HEREUNTO SET THEIR HANDS AND AFFIXED THEIR SIGNATURES ON THE DAY AND YEAR FIRST ABOVE WRITTEN IN THE PRESENCE OF.....”

The letter from Mr. Irwin O. Coleman reads:

“Irwin Oliver Coleman
1708 – A 065, Sinkor
Monrovia, LIBERIA
Tel: 2316515 515
28 August 2008

“Mr. Aaron B. Milton, Sr.
Milton & Richards, Inc.
152 Carey Street
Monrovia, Liberia

Dear Mr. Milton:

Greetings to you and your staff from the family of the late Mrs. Mary Deborah Carter Cooper-Dixon.

Having gone through the statutory period, as required under the Laws of the Republic of Liberia, the family of the late Mrs. Mary Dixon, submitted to the Monthly & Probate Court, Montserrado County, Republic of Liberia, under petition, her (Mrs. Mary Dixon) Last Will and Testament. Said petition has been honored by the court and Letters Testamentary (copy attached) have been given me, the undersigned, appointing me as the Executor of the Testate Estate of the late Mrs. Mary Deborah Carter-Coleman-Dixon.

In this connection, I request that the balance payment due on the lease agreement, for the year 2007-2008, be remitted to me. I also request that a summary of the payments made for the period under review be prepared for the family's files.

Thanking you for your continued cooperation, I remain.

Truly yours,
Irwin O. Coleman
EXECUTOR”

After the testimonies of the parties and a review of the documents above, the Magistrate found and ruled that the appellee did enter a three (3) year agreement with the appellant and the three (3) year certain period expired December 31, 2012; that though Article 3 of the Agreement spoke of an optional period for three (3) years on terms and conditions to be negotiated and agreed on by the parties, there was no showing by the appellee that the

optional period was ever negotiated and agreed upon on certain terms by the parties; that the appellant on the 13th day of December, 2013, wrote through its lawyer requesting the appellee to turn over the subject property since the certain period had expired and the optional period had not been negotiated and agreed upon; that the letter from Mr. Irvin Coleman introducing himself to the appellee as the executor of the appellant estate and requesting payment of rent did not guarantee the stay of the appellee on the premises after the expiration of the lease. The Magistrate held that though the appellee had erected the subject property, when the lease expired, the appellee had no colour of right to still possess the property against the will and consent of the true owners. The Court therefore ruled adjudging the appellee and its tenants liable, and ordered them ousted from the subject premises.

The appellee excepted to the Magistrate's ruling and announced an appeal to the Civil Law Court filing a three count bill of exceptions as follows:

"And now comes appellant and most respectfully prays Your Honour and this Honorable Court to approve this appellant's Bill of Exception so that the Civil Law Court can review and correct the many reversible errors that were made by Your Honour as result of Your Honour's ruling of January 30, 2015, in the above entitled cause of action.

1. That Magistrate J. Kennedy Peabody erred and made a reversible error when he failed to take Judicial Notice of the Communication from Mr. Irwin Coleman to Aaron B. Milton introducing himself as Executor of the Testate Estate of the late Mary Deborah Carter Cooper Dixon which clearly indicated that he was placed on the subject property by Mr. Coleman on behalf of the family.
2. That Magistrate J. Kennedy Peabody erred and made a reversible error when he heard the case on the 30th of January 2015, without reference to the letters Testamentary issued to Mr. Irwin Coleman from the monthly and probate Court on the 12th day of May A.D. 2008, naming him as Executor and subsequently submitted same to Mr. Aaron Milton indicating that all activities relating to Testate Estate and his occupancy on the said property is not illegal.
3. That Magistrate J. Kennedy Peabody erred and made a reversible error, when Your Honour ignored the many Supreme Court's opinions that legal technicality should not deflect the end of Justice and that the issue of property or land should be handled with the upmost care and precaution. Hence, Your Honour's ruling is a fit subject for reversal.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellant most respectfully prays Your Honour and this Honorable Court to approve this

Appellant's Bill of Exception so that the Civil Law Court can review and correct the many reversible errors that were made by Your Honour to ensure that Justice and fair-play are meted out as required by our law."

Judge Yussif D. Kaba, Resident Circuit Judge of the Civil Law Court, Montserrado County, in his appellate review of the Magistrate's ruling, confirmed the Magistrate's ruling holding that Mornjay George Pratt possessed the legal competence to institute the action on behalf of the appellant estate, she having obtained Letters of Administration from the Monthly and Probate Court to act on behalf of the estate, and that she could act alone in her administration of the estate provided that those acts are done in the regular course of the administration of the estate, and that the court considered the institution of an action against a purported delinquent lessee to be an action that is performed in the course of administering an estate.

The Circuit Judge, however, having confirmed the Magistrate's ruling that Mrs. Pratt had the capacity to sue out the action, with no complaint being made in the bill of exceptions relating to the lease agreement still being in force, the Circuit Judge proceeded *sua sponte* to consider the issue of whether the lease agreement between the parties expired by its terms and for which an action in summary proceeding to recover real property would lie.

In addressing this issue, the Circuit Court Judge referred to Article III of the lease agreement supra which provides for an optional period, and which is reinstated below:

"It being mutually understood and agreed by both parties hereto that the LESSOR shall grant unto the LESSEE, who shall be entitled to an optional period of three (3) years with terms and conditions to be negotiated and agreed upon by the parties hereto. It being mutually understood and agreed however, that the rental amount during the optional period shall not exceed more than US\$40,000.00 per annum for the said three years optional period of the lease as indicated in Item 2, above."

In his interpretation of this provision, Judge Kaba held that from the language of the lease agreement, in order for the lease to expire, the appellee should have been given an opportunity to make a determination as to whether or not he was ready to take advantage of the optional period granted in the lease agreement; that the court observed that during the trial, no evidence was produced indicating that the appellant offered the appellee the opportunity to take advantage of the optional clause and that it

failed to take advantage of said offer. Thus, in the mind of the court, the optional clause in the lease agreement could not be considered as uncertain as argued by the appellant and therefore summary proceeding to recover real property would not lie. The Circuit Judge reversed the judgment of the magisterial court with the proviso that the lessee takes advantage of the optional clause contained in the lease agreement within a reasonable time.

The appellant excepted to the ruling of the Circuit Court Judge and announced an appeal to the Supreme Court sitting in its October Term 2015

The appellant in its appeal to the Supreme Court states in its bill of exceptions that the sole issue raised by the appellee being that of the capacity of Mornjay G. Pratt to sue on behalf of the appellant estate, and the Circuit Judge correctly confirmed the Magistrate's ruling stating that she had the authority to bring the action, having upheld this ruling of the Magistrate, the Circuit Judge should not have gone further to raise the issue of the expiration of the lease since it did not form part of the bill of exceptions of the appellee. The appellant contends that the Judge erroneously expanded his scope of appellate review by touching on a matter that was not an issue of contention in the appellee's bill of exceptions brought up on appeal. The appellant avers that the Circuit Court Judge's ruling on the optional clause of the lease agreement having been raised *sua sponte*, this was a reversible error which violates a legal principle that confines an appellate judge to the issues presented in the bill of exceptions on appeal.

We will now proceed to determine whether or not a circuit court sitting in its appellate jurisdiction in this matter could have *sua sponte* raise an issue in favour of an appellant who failed to put such issue in his or her bill of exceptions on appeal.

Appellate courts possess inherent powers conferred by statutes and rules which define their capacity to hear and decide cases before them on appeal. It is the law extant in our jurisdiction that the appellate courts review only contentious issues raised in a bill of exceptions, which is a complaint against the trial court, and which are arranged by counts, each limited to a specific issue or contention, setting forth the points upon which it is believed the court decided erroneously and contrary to law; and all exceptions taken during the trial of a case not made part of the bill of exceptions are considered waived; *The Insurance Company of Africa v. Fantastic Store*, 32 LLR 366, 384 (1984); *Intrusco v. Osseiley*, 32 LLR 558, 568 (1985); *Kpoto v. Kpoto* 34 LLR 371, 378 (1987); *Ledlow v. R. L.*, 2 LLR 569, 570 (1926); *Vianini v. Marbough et al*, 17 LLR 439, 442 (1966); *Francis v. Mesurado*

Fishing Company, Ltd., 20 LLR 542, 550 (1971). The only exception to this general rule is provided by our Criminal Procedure Law which states that upon an appeal from the judgment by a defendant who has been sentenced to death, the appellate court shall review the evidence to determine if the interest of justice requires a new trial and whether the insufficiency of the evidence is a ground of appeal or not. Criminal Procedure Law, Rev. Code 2:24.18(2); *Gbedeh v. Republic of Liberia*, 30 LLR 144,145 (1982). This exception to the general rule is obviously not applicable in this case since the matter is not an appeal from a criminal conviction in which the defendant is sentenced to death.

The appellee, in its brief filed before us argues that the *Civil Procedure Law, Rev. Code 1:9.12.2* empowers judges to grant relief to a party in whose favour relief is entitled even if the party has not demanded said relief. We hold that the law relied upon by the appellee is reserved for party litigants who are adversely affected on the face of the facts and circumstances to the extent that the court sees it fit to award additional relief to meet the ends of justice even though such relief was not prayed for.

Under the circumstances of this case, it is glaring that the only party grossly affected here is the appellant estate. The appellant estate has lost pecuniary benefits and continues to suffer at the hand of appellee who continues to occupy the property, enjoy possession of the property for which it has not paid rent since the end of the certain period on December 31, 2012, but yet collects rents from its sub-lessees with no rental payments being made to the appellant estate. The appellant argued that the net effect of the Circuit Judge's erroneous ruling overturning the Magistrate's ruling and setting aside the eviction of the appellee, if anything, operates inequitably against the appellant estate.

Assuming *arguendo* that the optional clause was a point of contention in the bill of exceptions or it may in any case, in the interest of justice, be raised and passed upon by the Circuit Judge base on a plain error apparent in the record, this Court is still of the view that the Circuit Judge erred when he interpreted the aforementioned optional clause of the lease agreement against the appellant. The clause says that the lessee shall be entitled to an optional period of 3 years with terms and conditions to be negotiated and agreed upon by the parties, and that the rental amount during the optional period shall not exceed 40,000.00 per annum. The Circuit Judge in his ruling stated that in the mind of the court this clause could not be considered uncertain. This Court disagrees. There is nothing certain in this provision.

The lease agreement of 2010 has numerous terms and conditions which the parties agreed to during the certain period of three years. The agreement further says that for the optional period to become operational, the parties must negotiate and agree on the terms and conditions. This provision is clear and unambiguous. It is unenforceable and the current terms and condition might not be carried forward under the optional period unless negotiated and agreed. Therefore it is neither binding nor certain in the absence of negotiation and subsequent agreement. This Court says that even the stipulation that during the optional period the rent shall not exceed 40,000.00 still presents uncertainty in that the phrase "shall not exceed" prescribes and creates a ceiling, not a fixed amount per annum of the lease during the optional period. The conclusion of this Court is buttressed by the fact that during the certain period, 2010-2012, there was a gradual increment in the rent yearly from US\$28,000.00 to US\$32,000.00. Therefore, the clause was only intended to limit the amount to which the rent could be increased during the negotiations of the optional period. This Court has said in a plethora of cases that an option clause providing for renewal of a lease on terms and conditions to be agreed upon by the parties is unenforceable for reason of uncertainty, and therefore does not constitute a binding agreement; the option to renew would be subject to negotiation and agreement on terms and conditions. *Roberts v. Enaimba Business Center*, 28 LLR 272, 274 (1979); *Mirza v. Crusoe et al.*, (1960); *Agbage v. Brown*, 27 LLR 339 (1978).

Further, and for the sake of argument, we now look into the Circuit Judge's conclusion that that the appellant did not produce evidence that it offered the appellee the opportunity to take advantage of the optional clause as spelt out in the agreement and that the appellee refused and failed to take advantage thereof. Is the Circuit Judge saying that in a lease agreement where an uncertain optional clause is provided and which enforcement requires the negotiation of the parties that the onus is on the lessor to take affirmative steps to induce the lessee to exercise said option? We have been unable to find the law relied on by the Judge. In fact, the reverse is true. It is the lessee who has interest in continued occupancy of the leased premises that should initiate the negotiation of the optional clause in a lease agreement. The lessor has no obligation to advise the lessee to exercise a renewal provision.

Still, for the sake of argument, we now look into the Circuit Court Judge's conclusion that the appellee/lessee was not offered the opportunity to take

advantage of the optional clause. The records show that when the lease agreement expired in 2012, the appellant wrote the appellee notifying it of the expiration and requesting further actions. The exchanges of communication are found herein below:

"December 13, 2013

Mr. Aaron B. Milton, Sr.
Architecture/Engineering Consultancy Firm (AECF)
Carey Street
Monrovia, Liberia

Dear Mr. Milton,

Our Client Mrs. Mornjay G. Pratt has instructed us to inform Architecture/Engineering Consultancy Firm (AECF) that she has observed that the certain term of the January 4, 2010 agreement of Lease between AECF and the heirs of the Late Mary D. Coleman Dixon expired December 31, 2012. As the newly Probate Court appointed Administratrix Cum Testamento Annexo (CTA) of the late Mary D. Coleman Dixon's Estate, Mrs. Pratt is unaware of the time and manner of the AECF exercise its option to renew the aforementioned Lease Agreement of an additional period of Three (3) years as provided for under Article III thereof.

Howbeit, that the Estate of the deceased has not been closed, the January 4, 2010 agreement was executed by Four (4) heirs of the deceased, which included the pre procuracy (pp) signature of Mrs. Eva Coleman George and Mrs. Elaine Thomas Moore whom legal interest are solely represented by our client. As the sole representative of Mrs. Eva Coleman George and Co-CTA of the deceased's Estate, it seems impossible for AECF to have exercised its option under Article III of the Lease Agreement for an additional period of Three (3) years beyond December 31, 2012 without the knowledge and consent of our client.

It is from these above analysis, that our client is concern of AECF current use and occupancy of the late Mary D. Coleman Dixon Estate's property beyond December 31, 2012, without Mrs. Pratt's knowledge and approbation. Because AECF failed to exercise its option, our client instructed us that you kindly turn over the rest of the building to the aforementioned Testate Estate, with the exception of the ground floor which your office is currently occupying until we can reach a resolution of your continue use of the building.

Our client Mrs Pratt also looks forward to a cordial working relationship with you and she can be contacted on (0886672142).

Sincerely yours,

Susannah F. W. Stubblefield
Attorney-at-Law

Cc: Mrs. Mornjay G. Pratt
Mr. Irvin Coleman "

"January 2, 2014

M&R/TS/026a/'14

Susannah F. W. Stubblefield
ATTORNEY-AT-LAW
Monrovia, Liberia

Dear Cllr. Stubblefield:

The Architectural/Engineering Consultancy Firm of Milton & Richards is pleased hereby to acknowledge receipt of your letter dated December 13, 2013, addressed to this Firm, as we acknowledge receipt of your letter, we wish to indicate our sincere apology for the delay in responding to your letter. This was due to the Christmas/New Year Festive Seasons: during this time of the year, all normal work activities in our office is closed to be resumed on January 2.

Meanwhile, we note your various indications of several points regarding obligation of the property leased between this Firm and your client (the Late Mary D. Cooper Dixon) represented by Mrs. Mornjay G. Pratt. In order to maintain our cordial relationship existing between us, we have humbly requested a meeting between us all on Wednesday, January 8, 2014 at the time convenient for you, to initially discuss a cordial conclusion of this matter as noted in your letter to us. We suggest the venue of the meeting be at the offices of Milton & Richards, located at 152, Carey Street, Monrovia.

We trust that this proposed meeting will be convened and discussed. Wishing you continued success and looking forward to meeting with you, we remain with kind regards.

Faithfully

For Milton & Richards

Aaron B. Milton
ARCHITECT"

Notwithstanding these communications and the apparent manifest interest of the appellant to negotiate, the appellee failed to conclude the renewal of the lease. It took two years after the expiration of the lease couple with two years of non-payment of rent, for the appellant to file the action for summary proceeding to recover possession of real property. How much more opportunity should the appellant have provide the appellee to take advantage of the optional clause? We note from the records that in addition to these communications, Appellant Estate's witness before the Magisterial Court, Mrs. Mornjay G. Pratt testified that there were several conferences of the parties aimed at arriving at an amicable solution and settlement. Co-appellee's witness, Mr. Aaron B. Milton, Sr. also alluded to those engagements but asserted that they could not meet the demands of the appellant due to serious national financial and other problems. The administrator of appellant stated that she even suggested to the appellee that appellee turn over the top floors of the building to the appellant and the

appellee continue to operate its offices on the ground floor of the leased building until appellee could reach a resolution as to the settlement of the optional clause, but the appellee refused. What other magnanimity could the appellant have exhibited?

Still on the Circuit Judge's ruling, assuming the lease was renewed consistent with the optional clause, didn't the Judge find it compelling to consider the lease terminated and sustain the Summary Proceedings on behalf of the lessor in light of Article VIII of the lease agreement? Article VIII of the lease agreement stipulates that the lease agreement shall immediately and automatically lapse and become null and void within sixty days if the lessee fails to pay rent as stipulated and the lessee was notified of such failure. We are of the view that it would have been prudent if Judge Kaba had considered Article VIII of the lease in arriving at his final decision based on the appellee's own admission that he failed to pay rent since 2012, although he has tenants occupying the leased property and paying rents to him.

The Circuit Court Judge' ruling reversing the magistrate order to oust the appellee from the leased premises provided therein a proviso that the appellee takes advantage of the optional clause in the lease agreement within a reasonable time. Assuming that the appellee proceeded to exercise the optional clause, it had only four (4) months to occupy the leased premises before the optional period expired under the lease agreement, as said optional period ran from January 1, 2013 to December 31, 2015, and the Judge's ruling was handed down on August 19, 2015. This means that at the time of the handing down of this Court's decision, there exists no further terms under the lease agreement that the appellee could exercise and therefore the appellee is without the colour of right to remain on said property.

This Court must now consider the appellant's claim for damages prayed for before the magisterial court for wrongful withholding as well as appellant's legal expenses. The case having travelled from the magisterial court, to the circuit court, and onto the Supreme Court on appeal, and the facts reveal that the appellee has not only illegally occupied the building after the certain period of December 31, 2012, up to the date of the handing down of this opinion, but that the appellee has contracted tenants who are occupying the leased premises and paying rents to appellee, the Court feels compelled to consider the payment of damages by the appellee in view of the egregious nature of the appellee act in withholding the leased property.

This Court therefore holds that the appellee having remained on the property for about five years after the expiration of the certain period without exercising the optional period, whilst at the same leasing the premises to tenants and receiving rents, its action constitutes wrongful withholding for which damages will lie.

Accordingly, the appellee is ordered to pay the appellant for wrongful withholding of the premises from 2013 - 2017, the amount of One Hundred and Sixty Thousand United States Dollars (US\$160,000.00). This being total calculation of Thirty Two Thousand United States Dollars (US\$32,000.00) per annum, the last annual rental for the certain period.

Wherefore and in view of the foregoing, the Court holds that the Circuit Judge erred by considering and determining issues extraneous to the bill of exceptions brought before him; that his interpretation of the optional clause was flawed and erroneous, and that the optional period was utilized by the appellee even when it had not formally convey an intention to exercise the said option or paid any lease amount therefor. Accordingly, the ruling of the Circuit Court is reversed and the ruling of the Magisterial Court to oust the appellee and its tenants from the leased property is reinstated and ordered enforced.

The optional period having expired on the face of the lease agreement, the Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction of the case and have the appellee and its tenants immediately ejected from the premises, and enforce the judgment of this Court. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR FARMERE G. SUBBLEFIELD OF THE STUBBLEFIELD, NIGBA AND ASSOCIATES, INC. APEARED FOR THE APPELLANT. COUNSELLOR COOPER W. KRUAH OF THE HENRIES LAW FIRM APEARED FOR APPELLEE.