IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. ……..….CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA……ASSOCIATE JUSTICE

Nicholas Fayad of the City of Monrovia Republic of Liberia……..……Appellant	)	
Versus	)	APPEAL
The Intestate Estate of the late S.B. Nagbe, Sr., Represented by and thru Sarah Nagbe-Wilson and Catherine Nagbe-Jallah, Administratrixes, of the city of Monrovia, George Zakharia, also of the city of Monrovia, and Metallum Corporation represented by and thru its General Manager of the of Monrovia, Republic of Liberia…….Appellee	)	
Growing of the case:	)	
The Intestate Estate of the late S.B. Nagbe, Sr., Represented by and thru Sarah Nagbe-Wilson and Catherine Nagbe-Jallah, Administratrixes, of the City of Monrovia, George Zakharia, also of the City of Monrovia, and Metallum Corporation represented by and thru its General Manager of the of Monrovia, Republic of Liberia……Petitioners	)	
Versus	)	PETITION FOR THE WRIT OF CERTIORARI
His Honor Yussif D. Kaba, Resident Circuit Judge Sixth, Civil Law Court……..1st Respondent	)	
AND	)	
Nicholas Fayad of the City of Monrovia Republic of Liberia……..……2nd Respondent	)	

Heard: March 24, 2020 Decided: September 4, 2020

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This is the third time that a controversy surrounding the Intestate Estate of S.B. Nagbe, Sr., has come before the Supreme Court. The first time the Supreme Court was called upon to resolve disagreements arising from the Intestate Estate of S.B. Nagbe, Sr., was in 1982, in the case, *In Re: The Intestate Estate of Nagbe v. Nagbe*, 30LLR 278 (1982).

The facts from the 1982 case revealed that one of the daughters of the late S.B. Nagbe, Sr., Sarah Nagbe, filed a petition in the Monthly and Probate Court, Montserrado County challenging the closure of her father's estate by her brother, S.B. Nagbe Jr. She alleged that her brother obtained letters of Administration as the sole administrator without the knowledge of his siblings, namely she Sarah Nagbe, and Christiana Nagbe; and that upon the closure of the estate by the Monthly and Probate Court, certain properties, specifically five (5) acres of land situated on the Bushrod Island were excluded from the distribution process. S.B. Nagbe, Jr., filed returns asserting that Sarah Nagbe and Christiana Nagbe had benefitted from proceeds of the estate and that the properties excluded from the distribution process are not part of the estate since same were held in joint-tenancy between him and his late father, S.B. Nagbe Sr., and that by operation of the principle of law on joint tenancy and survivorship the five (5) acres of land devolve to him upon the demise of his father.

The Probate Court conducted a hearing and thereafter granted the petition of Sarah Nagbe, reopened the estate and ordered that all properties including the five (5) acres of land be divided equally among the three (3) lineal heirs, S.B. Nagbe, Jr., Sarah Nagbe and Christiana Nagbe. The Probate Court also appointed Sarah Nagbe and Christina Nagbe as Co-Administratrixes to their brother S.B. Nagbe, Jr. The latter, upon noting exceptions to the decision of the Probate Court, announced an appeal to the Supreme Court for an appellate review and final determination.

The Supreme Court listened to arguments and thereafter affirmed the decision of the Probate Court in its totality, that is, the Intestate Estate of S.B. Nagbe, Sr. be jointly administered by his children, S.B. Nagbe, Jr., Sarah Nagbe and Christiana Nagbe, thus resolving the first controversy arising from the Intestate Estate of S.B. Nagbe, Sr.

On May 31, 1988, S.B. Nagbe, Jr., took on immortality and rested with his ancestors and was survived by eleven (11) children namely: Eddie Nagbe, George T. Nagbe, Anna Nagbe, Louise J. Nagbe, Lanoel G. Nagbe, Cleopatra D. Nagbe, Samuel B. Nagbe, Precious T. Nagbe, Henry T. Nagbe and Emmanuel Nagbe.

Soon after the demise of S.B. Nagbe, Jr., another controversy began to broil between the heirs of the late S.B. Nagbe, Jr., on the one hand, and on the other hand, Sarah Nagbe and Christina Nagbe who were now the Administratrixes *de bonis non* of the Intestate Estate of S.B. Nagbe, Sr. This controversy necessitated a second judicial review of the Intestate Estate of S.B. Nagbe, Sr., as found in the case, *Nagbe v. Nagbe et al.*, 40LLR 337 (2001).

The facts from the 2001 case, revealed that the heirs and Administrators of the Intestate Estate of S.B. Nagbe, Jr., filed a petition for accounting in the Probate Court against Sarah Nagbe and Christiana Nagbe, the Administratrixes *de bonis non* of the Intestate Estate of S.B. Nagbe, Sr. The Administrators of the Intestate Estate of S.B. Nagbe, Jr., alleged that they were not receiving their full share from their grandfather's estate, the Intestate Estate of S.B. Nagbe, Sr., and that their aunts, the Administratrixes *de bonis non,* had failed to distribute the assets of the estate equally and to close the estate. The Administratrixes *de bonis non* filed returns to the petition for accounting wherein they denied the averments contained in the petition.

On December 30, 1998 and while the petition for accounting remained pending undetermined before the Probate Court, the judge presiding revoked the Letters of Administration *de bonis non* of Sarah and Christiana Nagbe, and then proceeded to and appointed in their stead, one of the heirs of the late S.B. Nagbe, Jr., Mr. Emmanuel Nagbe, and the curator to manage the affairs of the Intestate Estate of S.B. Nagbe, Sr.

The Administratrixes *de bonis non* thereafter, fled to the Chambers of the Supreme Court, via a petition for the writ of certiorari alleging that the Probate Court's revocation of their Letters of Administration *de bonis non* was done without according them due process. The Chamber Justice issued the alternative writ and upon conducting a hearing, ruled that the Administratrixes were removed without cause and due process and that the writ of certiorari will lie to correct the error of the Probate Court.

On appeal, the Supreme Court affirmed the ruling of the Chambers Justice and held as follow:

> "…it was a complete travesty for the trial judge in the instant case to remove a child of the decedent as administratrix of his estate and replace her with a grandchild. That act violated the order of preference, and was clearly erroneous since it was done without any notice to her as the existing administratrix or any hearing or opportunity to defend herself. It is for these two reasons that the appointment of Emmanuel Nagbe has to be declared illegal and null and void, and warrants being set aside and reversed, and the original administratrixes reinstated.
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> Wherefore, and in view of the laws, facts and circumstances hereinabove set forth, it is the ruling of this Court that the Chambers Justice, Mr. Justice Sackor, committed no error in granting the petition for the writ of certiorari and ordering the peremptory writ issued. His ruling is therefore confirmed and affirmed in *toto.* We also hold that the ruling and actions of the probate court judge, being irregular, arbitrary, illegal, and a prejudicial abuse of judicial discretion, the same are all hereby null and void and set aside, and the case remanded to the trial court to recommence the entire proceedings, starting from the disposition of the law issues raised in the pleadings. In that connection, the ruling of the

> probate judge suspending the administratrixes, being illegal and hence reversed, the appellees are ordered reinstated immediately as the legal administratrixes of the intestate estate of their late father. We further hold that the appointment of the curator, being illegal, the same is also reversed. In addition, we direct and order that following the disposition of the petition for proper accounting, the probate court should proceed without undue delay to have the estate closed in keeping with law.
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> The Clerk of this Court is hereby ordered to issue the peremptory writ of certiorari setting aside all the proceedings and reversing all the rulings made in the Court below and returning the parties to *status quo ante*, and to send a mandate to the Monthly and Probate Court for Montserrado County commanding the judge therein presiding to resume jurisdiction over the case and proceed to hear the petition for proper accounting filed by the appellants, commencing with the disposition of law issues raised in the petition and returns thereto…" *Nagbe v. Nagbe et al.*, 40LLR 337, 350-351 (2001)

The above decision of the Supreme Court reinstating Sarah Nagbe and Christiana Nagbe, as Administratrixes *de bonis non* of the Intestate Estate of S.B. Nagbe, Sr., concluded and resolved the second controversy arising from the Intestate Estate of S.B. Nagbe, Sr.

One would rightly assume that the conclusion of the 2001, case brought peace and tranquility among the heirs and beneficiaries of the Intestate Estate of S.B. Nagbe, Sr. To the contrary, the records show that during the pendency of the 2001 case before the Supreme Court a third controversy ensued as regards the leasing of certain properties of the estate to the present appellant.

The records show that during the pendency of the second appeal before the Supreme Court in 2001, Mr. Emmanuel Nagbe and the Curator, while serving as administrators for the Intestate Estate of S.B. Nagbe, Sr., the appellee herein, made and entered into a lease agreement on behalf of the estate with Mr. Nicholas Fayad, the appellant herein. This lease agreement having been out-rightly rejected by the reinstated Administratrixes *de bonis non* give rise to this third appeal surrounding the Intestate of S.B. Nagbe, Sr., which facts we narrate herein below.

The records show that after the Supreme Court rendered its Judgment in the second appeal reinstating Sarah Nagbe and Christiana Nagbe as Administratrixes *de bonis non* of the Intestate Estate of S.B. Nagbe Sr., the appellant instituted an action of specific performance in the Civil Law Court to enforce the lease agreement between him and the Intestate of Estate of S.B. Nagbe Sr., the appellee, on grounds that the Administratrixes *de bonis non* have refused to honor his lease with the estate. On February 19, 2008 the trial court denied the petition for specific performance and the appellant subsequently instituted an action of damages for breach of contract against Sarah Nagbe, Christiana Nagbe and others in their individual capacities rather than Administratrixes *de bonis non.* The records show that Judge Peter W. Gbeneweleh, acting upon a request from Sarah Nagbe and Christiana Nagbe, dismissed the action of damages on grounds that the appellant lacks standing to sue since his lease agreement with the appellee was void and illegal by

virtue of the Supreme Court's Mandate rendered in the 2001 certiorari proceedings.

Thereafter, on April 21, 2017, the appellant again instituted an action of damages for wrong, this time, against the appellee, the Intestate of Estate of S.B. Nagbe Sr. by and through its Administratrixes *de bonis non*. The appellee filed its answer along with a motion to dismiss but amended same on June 12, 2017. On June 22, 2017 the appellant filed amended reply and resistance to the motion and pleadings rested.

On April 17, 2019, the trial court presided over by Judge Yussif D. Kaba, now Mr. Justice Kaba, disposed of the motion to dismiss and ruled that the lease agreement between the appellee and the appellant was valid; that the Supreme Court did not pass on the issue of the lease agreement in the certiorari appeal, and that the parties appearing before the trial court are different from the ones that were before Judge Peter W. Gbeneweleh in 2008. Pertinent excerpts of Judge Kaba's ruling read thus:

> "It is noteworthy that this judge is not competent as a matter of settled principle and practice in this jurisdiction to review the ruling, decision, order, judgment or any of the action taken by his predecessor colleague in the same cause of action involving the same parties. The question that begs the mind of this judge is whether the cause of action before him is the same cause of action that His Honor Peter W. Gbenewelleh decided involving the same parties during the March, A. D. 2014 Term of this court? And whether His Honor Peter W. Gbeneweleh's ruling aforesaid satisfied any of the grounds under section 11.2, 1LCL REVISED? This Judge does not think so. The case at bar was filed before this Court during its March, A. D. 2017 Term in an action of damages for wrong and the defendants named in the instant case are the Interstate Estate of S. B. Nagbe, Sr. represented by its Administratrixes, Sarah Nagbe Wilson and Catherine Nagbe Jallah, George Zakharia, and Metallum Corporation represented by its General Manager. This case is therefore distinguished from the one decided by His Honor Peter W. Gbenewelleh during the March, A.D. 2014 Term of this Court. That said, this judge wishes to add that the ruling of his colleague was not decided on the merit. What then is Movants' basis for relying on the ruling of His Honor Peter W. Gbeneweleh to assert that the instant case be dismissed? To find out, this judge should first revert to the statute controlling.
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> Section 11.2 of the Civil Procedure Law which is the controlling law on a motion to dismiss provides thus: "1. Time; grounds. At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on the any of the following grounds:

a. That the Court has no jurisdiction of the subject matter of the action;

b. That the Court has not jurisdiction of the person;

c. That the Court has not jurisdiction of a thing involved in the action;

d. That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia;

e. That the party asserting the claim has not legal capacity to sue;

This judge finds it difficult to see whether any of the paragraphs under section 11.2 of 1LCL Revised recited above is in support of the arguments advanced by Movants. The action of damages for breach of contract dismissed is no longer pending and it becomes *stare decisis*. The instant case, action of damages for wrong is a new action brought by Respondent to include George Zakharia and Metallum Corporation not previously named in the action of damages for breach of contract. Besides, nowhere in the records is it shown that His Honor Peter W. Gbeneweleh dismissed the first action of damages for breach of contract with prejudice so that Respondent/Plaintiff would be barred from filing a new and different cause of action. Section 2.73 of the Civil Procedure Law Provides thus: "If an action is timely commenced and is terminated in any manner other than by a dismissal of the complaint for failure to prosecute the action or a final judgment on the merits, the plaintiff may commence a new action upon the same right to relief after the expiration of the time limited by statute therefor and within six months after the termination, and the defendant may interpose any defense or counterclaim which might have been interposed in the original action". It therefore follows that not only are the two actions different and distinct, but that the ruling of His Honor Peter W. Gbenewelleh is not one of the grounds under section 11.2 of the Civil Procedure Law to grant Movant's Motion to Dismiss.

A strong assertion made by Movants that Respondent lacks the legal capacity and standing to bring this action against defendants captured the focal point of their Motion to Dismiss because one of the grounds to grant the motion to dismiss under Section 11.2 is that Respondent/Plaintiff does not have the legal capacity to sue. Movant's reason for asserting this point of Law is that the Supreme Court of Liberia reversed the ruling of the Monthly and Probate Court Judge in the Nagbe V. Nagbe et al [2001] LRSC 1; 40 LLR 337(2001) (5 July 2001) appointing Emmanuel Nagbe as administrator of the Intestate Estate of the late S B. Nagbe, Sr. that by virtue of the said Opinion of the Honorable Supreme Court of Liberia reversing the ruling of the monthly and probate judge, all documents as in the case of the respondent's lease agreement are null and void. Movants argued that by the illegality of the Probate Judge's ruling strapped respondent of legal capacity and standing to sue or institute this action. On the other side of the controversy, respondent strongly contested that nowhere in the opinion of the Honorable Supreme Court of Liberia is there a decision

affecting the legality of Respondent's agreement of lease executed with Emmanuel Nagbe whose appointment by the Monthly and Probate Court was revoked in the year 2001. Respondents contends that he has standing to sue…Law Dictionary (5th ed.), at page 803, defines legal capacity to sue as the " Right to come into Court". It is not necessary in pleading to aver the capacity of a party to sue or be sued, except to the extent required to show the jurisdiction of the court. A party desiring to show the issue of lack of capacity shall do so by specific negative averment". Capacity is defined as: legal qualification (I. e. legal age), competency, power or fitness, ability to understand the nature and effects of one's acts. The ability of a particular individual or entity to use, or to be brought into, the courts or a forum. Ibid., page 188. The standing to sue Doctrine "means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. "Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of "standing" is satisfied if it can be said that the plaintiff has a legally protectible and tangible interest at stake in the litigation. Ibid, page 1260. We are of the opinion that the requirement for standing has been satisfied in the instant "case." from the above quoted authority of the Supreme Court and the statute touching on legal capacity to sue, this court entertains the question whether or not Respondent/Plaintiff in the instant case has the legal capacity to sue? This Court says yes. As stated *supra*, the question of legal capacity to sue is conferred by section 5.11of the Civil Procedure Law. This fact is conceded by Movants in count 6 of their amended Motion to Dismiss. The illegality or legality of the Respondent's agreement of lease signed with Emmanuel Nagbe presents mixed issues of law and fact which does not disqualify Respondent from bringing this action. In the mind of this Judge, the question whether Respondent's agreement of lease relied upon to institute this action was nullified and voided by the 2001 opinion of the Supreme Court *supra* is subtle because said opinion relied upon by movants did not expressly cancel or revoke the agreement of lease between Emmanuel Nagbe and Respondent. Rather the said opinion reversed the ruling of the Probate Court Judge appointing Emmanuel Nagbe and order the dismissed administrators reinstated. This judge is yet to figure out by parity of reasoning and law how an innocent third party acting in good faith and in the absence of fraud be made to suffer erroneous ruling of the Probate Court Judge. Movants fail to show either by precedence or statutory law support for this line of argument. This Judge is not persuaded by movants line of reasoning when they assert that Respondent lacks legal capacity to sue on grounds that Respondent's agreement of lease *supra* was annulled and voided in the opinion of the Supreme Court."

Aggrieved by the above ruling of the trial court, the appellee sought relief by applying for a writ of certiorari in the Chambers of the Supreme Court presided over by His Honor, Associate Justice Joseph N. Nagbe. Counts 5, 6, 13, 14, 17 of the appellee's petition for certiorari being germane to this case are quoted, to wit:

"(5) Petitioners submit and say that when Mr. Emmanuel Nagbe and the Curator of the Probate Court of Montserrado County were appointed as Administrators of the Intestate Estate of the late S.B. Nagbe, Sr., by the

then Probate Court Judge, His Honor the late John L. Greaves, Mr. Emmanuel Nagbe entered into a lease agreement for one of the properties of the Intestate Estate of the late S.B. Nagbe, Sr., with the 2nd Respondent. Based on this lease agreement, the 2nd Respondent filed an Action of Damages for Breach of Contract against the Intestate Estate of the late S.B. Nagbe., Sr., by and thru its Administratrixes. The Intestate Estate of the late S.B. Nagbe., Sr., by and thru its Administratrixes filed its Returns and a Motion to Dismiss. The Motion to Dismiss the Action of Damages for Breach of Contract was assigned by the then Presiding Judge, His Honor Peter W. Gbeneweleh, then presiding over the Civil Law Court during its December Term, A.D. 2013. Following the arguments, the Judge ruled based on the determination of a single issue which was WHETHER OR NOT THE RESPONDENT HAS LEGAL CAPACITY OR STANDING TO SUE IN AN ACTION OF DAMAGES AFTER THE PROCEEDINGS AND ACTIONS OF THE PROBATE COURT JUDGE WERE DECLARED NULL AND VOID BY THE HONORABLE SUPREME COURT OF LIBERIA? In answering this question, the Court said "the answered this question in the negative. Section 11.2 Section 2 Subparagraph 1 (e) provides "that the motion can be dismiss where the party asserting the claim has no legal capacity to sue. This court says that the contract out of which the damages grew has been declared illegal, null and void by the Honorable Supreme Court of Liberia and cannot therefore be enforceable in the court of law.

(6) Petitioners say that following the dismissal of the Action of Damages for Breach of Contract, the 2nd Respondent herein sued the Petitioners in an Action of Damages for Wrong based on the lease agreement entered into with Mr. Emmanuel Nagbe, which was amongst those instruments ordered set aside by the Honorable Supreme Court of Liberia and predicated upon which Judge Peter W. Gbenewelleh dismissed the Action of Damages for Breach of Contract. Hereto attached and marked as Exhibit PP/1 in bulk, is a copy of the Ruling of the Civil Law Court dismissing the 2nd Respondent's Action of Damages for Breach of Contract.

(13) Petitioners aver and say that in the case, *Nagbe v. Nagbe et al.*, 40LLR 337, 350-351 (2001) the Honorable Supreme Court of Liberia held: "the ruling and actions of the probate court judge, being Irregular, arbitrary, illegal, and a prejudicial abuse of Judicial discretion, the same are all hereby null and void and set aside….." The Supreme Court further held that "The Clerk of this Court is hereby ordered to issue the preemptory writ of certiorari is setting aside all the proceedings and reversing all the rulings made in the Court below and returning the parties to status quo ante…". It was on the basis of this ruling of the Honorable Supreme Court of Liberia that when the 2nd Respondent filed an Action of Damages for Breach of Contract against the Intestate Estate of the late S.B. Nagbe, Sr., His Honor Peter W. Gbenewelleh granted the Motion to dismiss the said Action of Damages for Breach of Contract, since the 2nd Respondent was relying on the very lease agreement that is used to file this Action of Damages for Wrong against the Petitioners herein. Judge Gbenewelleh reason was that the ruling of the Probate

Court Judge has been annulled and set aside in this very case which included all proceedings coming out of said case.

(14) Contrary to his colleague's decision, the 1st Respondent Judge His Honor Yusif D. Kaba in his ruling on April 17, 2019 used the basis of the Supreme Court of Liberia not singling out the various transactions, and so, the lease agreement which came out of the proceedings from the court below should not be affected by the decision of the Honorable Supreme Court of Liberia. Petitioners say that this decision is erroneous and an attempt by a circuit judge to interpret the Supreme Court's Opinion which in our minds amounts to a review of this High Court decision. By definition, the meaning of **"ALL"** means everything, totally, completely, wholly and entirely, whereas, **"PROCEEDINGS"** means minutes, records, account, report, actions, events and measures. By the plain meaning definition, it is simple to say that the Supreme Court meant in its Opinion that the entire records or events that transpired within the Probate Court concerning the said case should be set aside and reversed. This is what was carried out by His Honor John L. Greaves, then Probate Court Judge for Montserrado County, and His Honor Peter W. Gbenewelleh by not honoring the lease agreement which ruling was also expected to be honored by the 1st Respondent Judge His Honor Yusif D. Kaba. This, the Petitioner say is more than sufficient ground for certiorari to lie.

(17) Petitioners say that they continue to remind judges including the 2nd Respondent's Judge His Honor Yusif D. Kba, when this so-called lease agreement was being used that same has been nullified. Assuming arguendo that the bill of information is on appeal before the Honorable Supreme Court of Liberia, what is before the Civil Law Court out of which this petition for Writ of Certiorari grows is that the instrument relied on by the 2nd Respondent should not be entertained by any court within the Republic of Liberia due to its illegality and that is why, His Honor Judge Peter W. Gbenewelleh dismissed the 2nd action for damages for breach of contract."

The Chambers Justice upon reviewing the petition, ordered issued the alternative writ commanding the appellant to file returns on or before May 26, 2019. In obedience to the said order of the Chambers Justice, the appellant filed returns wherein he denied the averments contain in the petition. We quote herein below counts 1, 7, 14, and 15, of the returns which we also deem pertinent to this case. The said counts read thus:

"(1) As to count 1 of petitioners Petition, 2nd Respondent says he is plaintiff in an Action of Damages for wrong which was commenced on April 21, 2017 which stemmed from the conduct of the petitioners/ defendants in relation to a property duly leased from a former administrator of the Intestate Estate of S. B. Nagbe Sr. it is out of this action that this petition for certiorari emanates, therefore same presents no traversable issue.

(7) In further traversal of Counts 3 through 6, 2nd Respondent posits that the only legally prudent and acceptable option is to apply the opinion, beginning from the very date of its release to the future up to a point

when it is recalled by the very Supreme Court. Clearly, the Supreme Court's Opinion in Nagbe v. Nagbe et al (40LLR337) of July 2001 quoted in Court 4 of the petition did not set aside or declare null and void the June 2001 lease agreement between plaintiff and the estate. The said opinion did not say so, and no interpretation can be made of the opinion of the Supreme Court to give it an interpretation which is not evident in its plain meaning. 2nd Respondent/plaintiff further says that the Supreme Court did not set aside or declare null and void and could not have set aside or declare null and void and lease agreement between Respondent/plaintiff and the estate because the very Supreme Court has on numerous occasions opined that setting aside legal contracts is invasion of personal rights and it destroys the safety of business. Counts 3 through 6 should be denied and it is so prayed.

(14) That counts 16 and 17 of the petitions 2nd Respondent deploys Count 12 of its returns to the petition. 2nd Respondent further maintains that as it relates to the Sarah Nagbe v. Nicholas Fayad, it was denied because the case shows that an appeal is pending in the Supreme Court. However, it should be pointed out that the fact that an appeal is pending in the Supreme Court is not a ground for dismissal of an action except where the case as filed is between the same parties, the same subject matter and the same action of the same relief sought as the case pending on appeal. 2nd Respondent maintains that the Supreme Court's ruling of 2001 did not affect the acts done and decisions taken prior to the ruling as being claimed by petitioners. The Supreme Court did not set aside and could not have set aside the lease Agreement between plaintiff and Intestate Estate of the S. B. Nagbe. Sr. In the case at bar, Co-Respondent/Plaintiff legally entered into a lease agreement with the intestate estate of S. B. Nagbe, Sr, in June 2001 through the estate's lawful administrator, Emmanuel Nagbe, the probate court -appointed administrator of the estate at the time. The lease agreement was legally probated and registered.

(15) Further to count 14 above, in further traversal of Court 16 and 17 2nd Respondent says that a legitimate and legal lease agreement was consummated between Co-Respondent/plaintiff and the estate in June 2001. Later, that is in July of 2001, a new court-sanctioned arrangement removing Emmanuel Nagbe as administrator and replacing him with the two current administratrixes, Sarah Nagbe Wilson and Catharine Nagbe Jallah was made. The replacement was made after a July 2001 ruling by the Supreme Court, which ruling Petitioners/Defendants wrongly say automatically and retroactively nullifies the June 2001 agreement and hence should not be entertained by any court in the Republic of Liberia. 2nd respondent says the primary principle of Law controlling in this jurisdiction which has been upheld by the Supreme Court is that: the appointment of an Administrator by the probate court is conclusive evidence of the authority of the administrator to convey portion of an intestate estate, and that unless the letters of administration is revoked by the issuing court such conveyance is presumed to be and remains valid and legal for all intents and purposes."

On June 17, 2019, the Chambers Justice listened to arguments *pro et con.* On August 22, 2019 he rendered his decision wherein he ruled against the appellant

and ordered the preemptory writ of certiorari issued. In his ruling, the Chambers Justice held that the appellant's lease was illegal since the Supreme Court's Opinion in the case *Nagbe v. Nagbe et al.*, 40LLR 337 (2001) reversed the letters of administration issued in favor of Mr. Emmanuel Nagbe and the Curator. An excerpt of the Chambers Justice's ruling being pertinent to this case is quoted herein below, to wit:

> "To answer this question, we take a recourse to a portion of the Opinion of the Supreme Court in the case: the heirs of the intestate Estate of the S.B. Nagbe, Jr, presented by Eddie Nagbe et al appellant/respondent, V. the Intestate Estate of the later S.B. Nagbe, Sr., represented by Sarah Nagbe et al, appellee/petitioner "we also hold that the ruling and actions of the Probate Court Judge being irregular, arbitrary, illegal and prejudicial abuse of judicial discretion, the same are all hereby Null and void and set aside …." The Supreme Court continued "wherefore and in view of the laws, facts and circumstances here in above set forth, it is the ruling of this Court that the chambers Justice, Mr. Justice Sackor, committed no error in granting the petition for the writ of certiorari and ordering preemptive writ issued. "we also hold that the ruling and actions of the Probate Court Judge being irregular, arbitrary, illegal and a prejudicial abuse of judicial discretion, the same are null and void and set aside…." "the clerk of this Court is hereby ordered to issue the peremptory writ of certiorari setting aside all the proceedings and reversing all the ruling made in the Court below and returning the parties to status quo ante…" "In the mind of this Court the Opinion of the Supreme Court is clear and void of any ambiguity, especially referring to all actions and proceedings being null and void, illegal, arbitrary and irregular and thereby returning the parties to status quo ante.
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> This Court says further that the purported lease agreement entered by Emmanuel Nagbe and the second respondent, Nicholas Fayad, grew out of the S.B. Nagbe's Intestate Estate's case which in the eyes of the Supreme Court, was illegally and irregularly handled by the Probate Court Judge John L. Greaves; which ruling was set aside by the Supreme Court, and same declared null and void. This Court therefore finds it difficult to comprehend why second respondent should continue to rely on a document which was a product of shady exercise, in so far that the ruling of the Probate Court Judge which seemingly gave Emmanuel Nagbe the authority to serve as the administrator of S.B. Nagbe, Sr. Estate which gave birth to the lease agreement was set aside by this Court. The Supreme Court was very emphatic when it held that "a Probate Court Judge cannot remove a child of a descendent from administration of his Estate and replace such administrator with a grandchild, as such act violates the order of preference under the Descendent Estate law, and especially where no notice is given or opportunity provided before the removal is effected by Court", Nagbe V. Nagbe et al, 40 LLR 337, syl. 13 (2001). This goes to support the legal

> maxim which says that: "that which is not done legally is not done at all". In addition, the argument by the second respondent that the Supreme Court did not expressly or impliedly state that the lease agreement entered by Emmanuel Nagbe while serving as administrator of the Estate of S.B Nagbe, Sr. was illegal, has no foundation in Law.
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> In concluding its Opinion in the S.B. Nagbe, Sr, case, the Supreme Court said "the Clerk of this Court is hereby ordered to issue the peremptory writ of Certiorari setting aside all the proceedings and reversing all the rulings made in the Court below and returning the parties to *status quo ante*…" can there exist a lease agreement when in fact and in truth the parties were returned to *status quo ante* and all actions declared null and void. This Court holds that in as much as the ruling and action of the Probate Court Judge were declared null and void and parties returned *status quo ante* by the Supreme Court sitting en banc, by operation of law, the letters of administration so issued by the Probate Court to Emmanuel Nagbe was also revoked; hence certiorari will lie.
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> WHEREFORE, AND IN VIEW OF THE FOREGOING, the clerk of this Court is hereby ordered to issue the peremptory writ of Certiorari; send a mandate to the court below commanding the Judge presiding therein to resume jurisdiction over this matter and proceed according to law. Costs to abide final determination of this matter. AND IT IS HEREBY SO ORDERED."

The appellant excepted to the Chambers Justice's ruling and announced an appeal to this Court *en banc*, thus for the third time bringing the Intestate Estate of S.B. Nagbe, Sr, before the Supreme Court.

Now, having narrated the facts and circumstances constituting the genesis of this case, this Court says that it is trite law that the Supreme Court will not pass on all issues presented by the parties in their arguments. Rather, the Court will only pass on issues that are germane to the final determination of the case.

In view of the aforesaid, we have determined that there is only one issue dispositive of the present appeal which is, whether or not the lease agreement entered by the appellant with Mr. Emmanuel Nagbe and Curator while serving as administrators of the Intestate Estate of S.B. Nagbe, Sr., is binding and enforceable against the estate. In other words, did the Supreme Court Mandate of 2001 by extension vitiate the lease agreement entered into by Mr. Emmanuel Nagbe and Curator while serving as administrators of the Intestate Estate of S.B. Nagbe, Sr.?

The Supreme Court was confronted with similar issue in the case *Mendohdou et al., v. Geah-Doe and Kai,* 39LLR 742 (1999), and relied on Section 107.3 of the Decedents Estates Law to dispose of same.

The facts in the *Mendohdou* case reveal that on June 24, 1993 the Monthly and Probate Court presided over by Judge Gloria M. Scott appointed Sackor Mendohdou et al., to administer the Intestate Estate of Ketekpu Geah-Doe. On March 1, 1994, a court's decree of sale was also granted in favor of the administrators to sell 260 acres of land to settle tax obligation and the administrators accordingly sold these properties.

Also, on July 3, 1995, Judge Gloria M. Scott was succeeded by Judge John L. Greaves. During the stewardship of Judge Greaves over the Monthly and Probate Court, Amos Geah and Rev. David Kai filed a petition praying the trial court to revoke the Mendohdou's letters of administration and the court's decree of sale on grounds that the appointed administrators had no blood lineage to the late Ketekpu Geah-Doe and that they, the petitioners were nephews of the deceased. The administrators filed returns wherein they denied the allegations in the petition and challenged the petitioners to prove that they are not blood relatives of the late Ketekpu Geah-Doe.

Judge Greaves heard the petition and the resistance thereto, and on May 1, 1998, entered a final ruling against the administrators, revoking the letters of administration, the court decree of sale, and the sale of the 260 acres of land on grounds that the administrators had failed to show their blood linage.

On appeal, the Supreme Court was presented with the question as to whether or not the sale of the 260 acres executed by the duly appointed administrators was valid and enforceable against the Intestate Estate of Ketekpu Geah-Doe. The Supreme Court opined thus:

> *"the appointment of an administrator by the probate court is a conclusive evidence of authority of said administrator to convey portion of an intestate estate upon the authority of the court issuing the letters of administration. In the case at bar, the administrators conveyed the parcel of land of the intestate estate under the expressed authority of the Monthly and Probate Court for Montserrado County; and as such the transaction is not void ab initio as contended by [Amos Geah and Rev. David Kai] Counsel."*

This holding of the Supreme Court is in consonance with the Decedents Estates Law Rev Code 8: 107.3 and Id. 109.1 which states:

> *"**§107.3** Letters granted to fiduciaries [administrators] by the court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the court granting them"*
>
> ***"§109.1** In the absence of contrary or limiting provisions in a will, or in the court order or decree, appointing a fiduciary [administrator] or a subsequent order or decree, every fiduciary [administrator] shall have a right to and shall take possession of and manage the property of the estate except where such property is specifically disposed of by will. He shall collect the rents and earnings from such property and pay the taxes thereon until the estate is settled or until the property is delivered by order of the court to the persons entitled thereto. He is authorized to make expenditures for ordinary repairs to the property of the estate, which shall include the buildings and fixtures under his control, and may effect and keep in force, fire, rent, title, liability, casualty or other insurance to protect such property and to protect the fiduciary [estate]"*

In the present case there is no doubt that on December 30, 1998, Mr. Emmanuel Nagbe and the Curator by letters of administration, were appointed by the Monthly

and Probate Court for Montserrado County as administrators of the Intestate Estate of S.B. Nagbe, Sr. As administrators, their letters of administration was conclusive evidence of their authority to convey or lease property. It was this document that the present appellant relied upon to enter into the lease agreement with the estate.

While this Court affirms the Judgment in the 2001 *Nagbe* case, to the effect that the ruling and actions of the probate court judge were declared irregular, arbitrary, illegal, and a prejudicial abuse of judicial discretion, we take judicial cognizance of the law that a party litigant should not be made to suffer on account of acts done or omitted to be done by a judicial officer. *Municipal District of Buchanan v. Bridgeway Corporation*, 36 LLR 470, 481 (1989) As stated above, the appellant entered into a lease agreement with the administrators who were appointed by the probate court, to which appointment proceedings the appellant was not privy; that, no evidence was adduced to show that the appellant knew or had reason to know that the status of his lessors as administrators was questionable. Relying on the authority vested in his lessors by the probate court, which prior to the 2001 Judgment of the Supreme Court was legitimate, the appellant was an innocent leaseholder. We therefore hold that given these facts and circumstances, the appellant is permitted to the quiet enjoyment of the leased property, and is entitled to lost time under the lease agreement commencing as of the date of the rendition of this Opinion.

WHEREFORE and in view of the foregoing, the ruling of the Chambers Justice is affirmed, but with the modification that the appellant remains in possession of the subject property for the duration of his lease agreement in keeping with the terms thereof, and thereafter he shall quietly and peaceably surrender same to the appellee, the Intestate of S. B. Nagbe, Sr. The Clerk of this Court is ordered to send a Mandate to the court below, ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Ruling Affirmed

When this case called for hearing, Counsellors Benedict F. Sannoh, Moifee N. Kanneh and Bobby Livingstone of the Sannoh & Partners, PC. Inc., appeared for the appellant. Counsellor Sylvester D. Rennie of Legal Watch Inc., appeared for the appellee.