

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER 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. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....”.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Nwosu Chimnuike Justin of the City of Monrovia, Montserrado
County, Republic of Liberia.....appellant
Versus
Madam Comfort D. Taye by and thru her Attorney-In-Fact
Wilson Taye also of the City of Monrovia, Montserrado
County, Republic of Liberia.....appellee

} APPEAL

GROWING OUT OF THE CASE:

Nwosu Chimnuike Justin of the City of Monrovia, Montserrado
County, Republic of Liberia.....petitioner
Versus
Madam Comfort D. Taye by and thru her Attorney-In-Fact
Wilson Taye also of the City of Monrovia, Montserrado
County, Republic of Liberia.....respondent

} PETITION
FOR THE
CANCELLATION OF
LEASE

HEARD: July 2, 2020

DECIDED: February 8, 2021

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On December 21, 2018, Nwosu Chimbuike Justine (appellant) filed an action of cancellation of lease agreement in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against Comfort D. Taye, by and thru her Attorney-In-Fact, Wilson Taye (appellee).The appellant alleged in his petition for cancellation of lease that he entered into a lease agreement with the appellee on August 25, 2009, for the lease of a portion of land, 37ft by 50ft on lot No. 0806-A095, lying and situated behind the Vamoma House, Sinkor, Monrovia, Liberia, for the period of ten (10) years. We quote the lease agreement:

“REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE is made and entered into this 25th day of August A.D. 2009, by and between Madam Comfort D. Taye of the City of Monrovia, County of Montserrado, Republic of Liberia (hereinafter known and referred to as LESSOR) and Nwosu Chibuike Justine also of the City of Monrovia, County of Montserrado, Republic of Liberia (hereinafter known and referred to as LESSSEE); hereby

WITNESSETH:

1. That for in consideration of the rents, covenants and agreement hereinafter to be paid, kept and performed by the LESSEE, the LESSOR hereby rents and leases unto the LESSEE a portion of the parcel of land (37ft X50ft.) No. 0806-A095 situated and lying in Sinkor, behind the VAMOMA HOUSE, Monrovia, Liberia.
2. TO HAVE AND HOLD the above demised premises unto the LESSEE together with all and singular the rights and privilege and appurtenances hereto belonging and appertaining for and during the full and complete period of ten (10) years certain commencing from the 25th day August A.D. 2009 up to and including the 24th day July A.D. 2019.
3. THAT the LESSEE shall pay or cause to be paid to the LESSOR for the use and occupancy of the premises herein described the amount per year as follows to wit:
 - a. That for the first five (5) years LESSEE shall pay or cause to be paid the amount of USD 3,000.00 (Three Thousand United States Dollars) at the rate of USD 600.00 (Six Hundred United States Dollars) per year at USD 50.00 (Fifty United States Dollars) per month. And that same shall be paid immediately following the signing of this agreement.
 - b. That for the second five (5) years, the LESSEE shall pay or cause to be paid the amount of USD 600.00 (Six Hundred United States Dollars) annually in advance.
4. IT IS MUTUALLY AGREED AND UNDERSTOOD, that upon the signing of this Agreement, the LESSEE shall proceed to develop and transform the said portion of land for use as a spare parts dealership center. And that the said development and transformation of the leased portion of the land shall be at the expense of the LESSEE and not the LESSOR.
5. IT IS MUTUALLY AGREED AND UNDERSTOOD, that at the expiration of the period granted, the LESSEE shall have the option to renew this agreement for an additional ten (10) years term with new terms and conditions to be negotiated by the parties, with first right of refusal to the LESSEE. The LESSEE shall demonstrate [his] desire to exercise the option herein granted ninety (90) days before the expiration of the certain ten (10) years period or shall waive the right for renewal.
6. IT IS ALSO MUTUALLY AGREED AND UNDERSTOOD by the parties herein , that the LESSEE shall be responsible to pay the coast guard tax commonly referred to as municipal tax such as water, sewer, electricity, power, telephone, etc., that will be consumed by the LESSEE, while the LESSOR will be responsible to pay the real estate tax, that will be levied on the demised premises by the Government of Liberia.
7. IT IS FURTHER MUTUALLY AGREED AND UNDERSTOOD by the parties, that the LESSEE for the paying of the rents herein stipulated and performing the covenants and agreements herein provided, the LESSOR, shall allow [him] the LESSEE to directly and peacefully have, hold and possess, and enjoy the said

premises without any hindrances, trouble or restriction from any person whomsoever and the LESSOR hereby undertakes to warrant and defend the LESSEE.

8. THE PARTIES HEREIN AGREED that, in the event of a FORCE MAJEURE situation occurring in Liberia , herein defined to mean civil commotion, armed conflict or insurrection, flood, acts of God or other events beyond LESSEE control, causing damages to the demised premises, this agreement shall be suspended for that period.
9. THAT THE LESSEE do thereby covenant and promise to faithfully keep and perform their side of this agreement and that upon the expiration of the terms herein granted they shall peacefully and quietly surrender the demise premises in good a condition as reasonable wear and tear thereof shall permit, acts of God and accident not traceable to LESSEE negligence accepted.
10. That the LESSEE shall at all times during the life of this agreement of lease repair and maintain in good and safe condition at their own expense said demised premises to prevent wastes, damages and injuries.
11. This agreement shall extend to and be binding upon the parties thereto, their heirs and successors in office or assigns during the full period herein granted as though they were specifically named therein.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE HERETO
UNTO SET THEIR HANDS AND AFFIXED THEIR SIGNATURES ON
THE DAY AND DATE FIRST ABOVE WRITTEN

MADAM CONFORT D. TAYE
LESSOR

NWOSU CHIBUIKE JUSTINE
LESSEE”

The appellant said that the appellee misled and deceived him into believing that the property, subject of the above lease agreement, legally belonged to the appellee. He also said that after the consummation of the lease agreement he constructed a building on the premises; that upon the completion of the building, the appellee took him to one Varney Walker where the appellee stated for the first time that the land belonged to Varney Walker and not to the appellee as she had initially intimated. The appellant further said that because he had invested on the property, he was left with no alternative but to enter a new negotiation with Varney Walker, the actual owner of the property; that the appellee subsequently gave a power of attorney to her brother, Wilson Taye, to administer the same property and thereafter travelled to the United States of America; that the brother of the appellee, Wilson Taye, was in the constant habit of harassing the appellant for rental payment; that he refused to pay

rental to Wilson Taye, the appellee's brother and attorney-in-fact, because he (appellant) had entered a new lease agreement with Varney Walker, the legitimate owner of the property; that he cannot be paying rental to the appellee, who doesn't have any legal claim or title to the demised property and at the same time paying rental to Varney Walker, who is the legitimate owner of the property; that he is now under a legal duty to request the cancellation of the lease agreement he entered into with the appellee; and that because the appellee deceived and misled him to believing that she was the owner of the property, her action was fraudulent and deceitful, therefore the remedy available to him is to file a petition for the cancellation of the lease agreement of August 25, 2009, entered into by him and the appellee. The appellant prayed the trial court to terminate and set aside the lease agreement between him and the appellee, so that the lease agreement he entered with Varney Walker can be the only lease agreement covering the property. He also prayed that the rentals he paid to the appellee be refunded.

On December 31, 2018, the appellee, by and through her brother and attorney -in-fact, Wilson Taye, filed returns to the petition for the cancellation of lease in which she denied that she deceived and misled the appellant. The appellee maintained that the property leased to the appellant is her lawful property. She denied ever informing the appellant before Varney Walker that the leased property belongs to Varney Walker as alleged by the appellant; she contended that the appellant did not annex any title instrument to his petition for cancellation of lease to show that Varney Walker owns the property in question. She further contended that the appellant had no authority to enter into an agreement with another party for the same property; and that as a lessee, the appellant cannot challenge the title of his lessor. She informed the trial court that because she is the real owner of the leased property, she constructed a two - bedroom house on portion of the property, adjacent to the property she leased to the appellant which she currently uses as her dwelling place. The appellee also informed the trial court that besides the two - room house on the property adjacent to the property which she leased to the appellant; she previously had a four -bedroom house on the exact portion of the property leased to the appellant which got destroyed by fire as the result of the Liberian civil war. She further said that the appellant had not established fraud, deception or misrepresentation by her to warrant the termination or cancellation of the lease agreement of August 25, 2009; and that it is rather the appellant who had engaged into fraudulent acts by entering into an illegal lease agreement with Varney Walker who does not own the property, subject of this case.

On January 8, 2019, the appellant filed reply reiterating that that the property leased to him by the appellee belongs to Varney Walker and not the appellee, and that his petition for the cancellation of the August 25, 2009 lease agreement is in keeping with the law.

When pleadings had rested, the trial court issued a notice of assignment for the disposition of law issues in the case. On February 26, 2019, the trial court entertained arguments from the parties *pro et con* and on April 8, 2019, the court ruled denying and dismissing the petition for cancellation of the lease agreement between the appellee and the appellant. Here is an excerpt from the trial court's ruling:

"The prayer of the Petitioner in the petition for the cancellation of lease agreement filed with this court on the 21st day of December 2018 is for the court to cancel a lease [agreement] consummated by and between the respondent, refund or cause to be refunded the amount of Six Thousand United States Dollars (US\$6,000.00) paid to the respondent by the petitioner as rent in consideration of the terms and conditions of the lease agreement referred to herein supra. The justification for the prayer is that the property, the subject of the lease agreement is owned by a person other than the respondent and that the petitioner, having learned of this fact, entered another lease agreement with the purported actual owner and therefore this court should proceed to cancel the lease agreement with the petitioner and relieve the petitioner of any and all obligations under the lease agreement which is the subject of these proceedings.

The respondent for his part deny that the property, the subject of the lease agreement, is owned by someone other than the respondent and that the respondent and the petitioner, having executed a valid lease agreement, the petitioner cannot now come and pray for the cancellation of that lease agreement on grounds that the petitioner believes that the property is not owned by the respondent and therefore the respondent was not the proper party to consummate a lease agreement.

The court says that it is a principle of law that a tenant cannot, should not and must not challenge the title of his grantor. The Petitioner herein has not averred that there was a contest of title between the respondent herein and the purported real owner referred to by the petitioner which ended in to a declaration that the title of the respondent was invalid as against the title of that purported owner thereby taking away from the respondent the right to have the said property leased out to another person. The petitioner has brought before this court no instrument executed by the respondent to the effect that the respondent is admitting that the property is not owned by the respondent, but rather that the said property is owned by a third party which will make unnecessary to have a lease agreement executed by and between the petitioner herein and the respondent a fit subject for cancellation. Therefore, this court sees absolutely no legal basis for the application for cancellation as filed by the petitioner in these proceedings.

Wherefore and in view of the foregoing, the petition for cancellation of lease agreement is ordered denied with cost ruled against the petitioner. AND IT IS SO ORDERED.

Given under my Hands and seal of Court this
18th day of April A.D. 2019

Yussif D. Kaba
Resident Circuit Judge
Sixth Judicial Circuit, Civil Law Court

Montserrado County, Republic of Liberia”

The appellant noted exception to the ruling of the trial court and announced an appeal to the Supreme Court, sitting in its October, A.D. 2019 Term. In its bill of exceptions filed and approved by the presiding judge, the appellant assigned two errors that he said were made by the judge in the determination of the case. We quote the two -count bill of exceptions:

1. That Your Honor ruled on April 15, 2019 denying Plaintiff’s petition for the cancellation of the lease agreement on the law issue without going into the merits of the case.
2. That Your Honor erred when you dismissed the entire cancellation proceedings during the hearing on the law issue whereas the Honorable Supreme Court has opined in many cases that courts of law should exercise due diligent in disposing of cases involving real property.

On June 18, 2019, the appellee’s counsel filed a request with the Clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, for a clerk’s certificate to the effect that the appellant failed or neglected to perfect his appeal announced during the rendition of the final judgment in this case. Based on the request, the Clerk of the Civil Law Court issued a certificate stating that the appellant had failed to carry out three of the mandatory steps for the perfection of an appeal, namely, the filing of a bill of exceptions; the filing of an appeal bond; and the serving and filing of a notice of completion of appeal. We quote the certificate issued by the Clerk of the Civil Law Court:

“REPUBLIC OF LIBERIA) IN THE SIXTH JUDICIAL CIRCUIT, CIVIL LAW COURT,
MONTSERRADO COUNTY, SITTING IN ITS JUNE TERM A.D. 2019

BEFORE HIS HONOR.....YAMMIE QUIQUI GBEISAY, SR.....ASSIGNED
CIRCUIT JUDGE

Nwosu Chimnuike Justin of the City of Monrovia, Montserrado County, Republic of Liberia.....	PETITIONER	
Versus		
Madam Comfort D. Taye by and thru he Attorney-In-Fact FOR THE	}	PETITION
Wilson Taye also of the City of Monrovia, Montserrado CANCELLATION OF County, Republic of		
Liberia.....		
		LEASE

CLERK’S CERTIFICATE:

A careful inspection of the case file in the above captioned cause of action reveals [that] there is no Bill of Exceptions, Appeal Bond, and/or Notice of Completion of Appeal filed or placed in the case file up to and including the date of the issuance of this clerk’s certificate.

Hence, this Clerk's Certificate.

Given under our hands and seal of Court this
18th day of June, A.D. 2019
Victor G. Gailor/Assistant Clerk, Sixth Judicial Circuit
Civil Law Court, Montserrado County, RL

Co-Signed: Nancy Washington/Files Clerk/Records
Civil Law Court, Montserrado County, RL.”

The appellee, after receiving the certificate issued by the Clerk of the Civil Law Court, filed a motion to dismiss the appellant's appeal on the grounds that the appellant had failed or neglected to a) file a bill of exceptions; b) file an appeal bond; and c) serve and file a notice of completion of appeal.

In response to the appellee's motion to dismiss his appeal, the appellant, while conceding that the final ruling of the trial court was rendered on April 18, 2019, however contended that a copy of the final ruling was not furnished him until much later. The records show that the appellant filed his bill of exceptions on May 31, 2019 and the trial judge approved it on the same day. After hearing arguments *pro et con* on the motion to dismiss the appeal, here is how the trial court ruled:

s:

“...[This] is a motion] to dismiss appeal for failure to comply with the rules governing appeal process in this jurisdiction. The rule is that when a judgment is entered, the person against whom the judgment is entered must, in open court except to the judgment; and in ten days file a bill of exceptions, and in sixty days file a notice of completion of appeal and have it served. In the instant case, the movant contends that the respondent filed the bill of exceptions over and beyond the ten days. This court says with the introduction of the recording system, the Honorable Supreme Court has opined that the ten days allotted to a defeated candidate runs as of the date he receives copy of the ruling and not the date on which the judgment was rendered. It is observed from the facts and circumstances in this case that the defendant/respondent herein received copy of the ruling more than one month after the ruling had been entered even though this court believed it may have happened because of his own negligence. However, be that as it may, this court cannot, should not and ought not to dismiss an appeal when in fact the judgment was not received on the day of entering the judgment, which the movant herein has wrongfully calculated.

Wherefore and in view of the foregoing facts and circumstances, the movant's motion to dismiss appeal, not being supported by facts and circumstances in these proceedings, and not being supported by the latest Supreme Court opinion, same should be and it is hereby dismissed in its entirety. And it is hereby so ordered.

Given under my hands and seal of Court this
10th day of July, A.D. 2019

Yamie Quiqui Gbeisay
Assigned Circuit Judge
6th Judicial Circuit Court, Montserrado County”

The appellee noted exception to the ruling of the trial judge dismissing the motion to dismiss the appeal. But no appeal was announced and the appellee, through his counsel did not file a remedial writ. We take it, therefore, that the appellee consciously elected not to pursue the exception she noted to the ruling of the trial judge dismissing her motion to dismiss the appellant's appeal. The case is now before us for appellate review from the appeal announced by the appellant from the final ruling of the trial judge dismissing the petition for cancellation of lease agreement.

As we see it, the lone deciding issue is - whether the trial judge in this case acted properly in dismissing the appellant's petition for the cancellation of lease agreement without ruling the case to trial? We hold that given the facts and circumstances the trial judge acted within the pale of the law when he dismissed the appellant's appeal without ruling the case to trial. We must say, from the onset, that the law in this jurisdiction allows a court of law to enter a summary judgment in favor of a party without the benefit of a trial, if the court is satisfied that the party in whose favor the judgment is entered is entitled to it as a matter of law. Reliance: *Section 11.3, 1LCL Revised, Civil Procedure Law.*

It is also the law in this jurisdiction that factual issues raised in a case can only be entertained and passed upon by the trial court after the court has first entertained and disposed of the law issues raised in the pleadings. See *Tuckle v. Wright and the United Methodist Church of Liberia*, [1995] LRSC 15; 37 LLR 829 (1995); *Kamara et al, v Heirs of Essel* [2012] LRSC 6 (5 July 2012).

A review of the case before us will show that the appellant's petition for the cancellation of the lease agreement was assigned for the disposition of law issues on August 25, 2009. After carefully reading the pleadings, affidavits, and other documentary evidence submitted by the parties, the trial judge determined that there was no factual issue presented to warrant submitting the case to trial; he therefore entered a judgment dismissing the petition for cancellation in favor of the appellee. In the judge's opinion, the final determination of the controversy could be reached without the taking of evidence.

We are in full agreement with the judge. We are aware that ordinarily, law issues are disposed of first, followed by the consideration of the facts presented in the case, and thereafter, the trial court will enter final judgment. However, this Court has said in a litany of cases that there may be instances when solely based on the law presented in the case and raised in the pleadings, the court, in disposing of the law issues, may dismiss a case. Reliance: *J. J.*

Roberts Foundation v. Meridien Properties Incorporated, Inc., [2000] LRSC 32; 40 LLR 309 (2000); *Jawhary v. Hassoun*[2001] LRSC 8; , 40 LLR 418 (2000). And in cases wherein the facts are entirely undisputed by the parties and the determination of the case boards on the application of the law controlling, there is no reason why the trial court should not enter final judgment at the disposition of law issues. Reliance: *Liberia Trading and Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency*, [1998] LRSC 36; 39 LLR 272 (1999). So, while the process and procedure required of the trial court is normally to first dispose of the law issues before proceeding to delve into the factual issues, the Court may be justified in dismissing an action when disposing of the law issues and not await the factual disposition before dismissing the case.

In our view, the facts in the case before us are not in dispute. The parties agree that a lease agreement was executed between them on August 25, 2009; the appellant was placed in actual physical possession of the leased property (land) on which he constructed a building and stayed without any molestation, intimidation or harassment for more than nine years before instituting this action of cancellation of lease on December 21, 2018. The appellant failed to state in his pleading any legal basis for questioning the validity or authenticity of the appellee's ownership to the property.

Even though the appellant alleged that the appellee took him to one Varney Walker and informed him that Varney Walker was the legitimate owner of the property, a claim the appellee vehemently denied, Varney Walker has not laid any claim to the property; neither did the appellant even attach to his pleadings (for whatever it is worth), a title instrument from Varney Walker. So, there is no evidence to indicate that the appellant's occupancy of the demised premises was or is being challenged by a third party.

The appellant also alleged fraud; he contended that it was fraudulent for the appellee to have leased a place to him which did not belong to the appellee, therefore he said that this case should have been submitted to trial for the jury to determine the issue of fraud. But as we have said, the appellant did not particularly show that the property belonged to any person other than the appellee. Under *Section 9.5(2), 1LCL Revised, Civil Procedure Law*, it is required that in all averments of fraud, the circumstances constituting fraud shall be stated with particularity. And this Court has said consistently that fraud must be squarely raised and evidence pleaded; that it is the pleaded evidence that would go to the jury as triers of facts and determination would be made.

Mr. Chief Justice Grimes, speaking for this Court in the case: *John v. Republic*, [1941]LRSC 13; 7 LLR 261 (1941) said: "In equity, fraud may be presumed from circumstances, but in law it must be proved.". And at common law, it was said that:

"When relied on as a cause of action or a defense, fraud must be specifically alleged, and the mere pleading of a conclusion is insufficient. The rules of pleadings in civil actions generally apply. In alleging fraud, it is well settled that a mere general averment, without setting out the facts on which the charge is predicated, is insufficient, as it must be made to appear by the facts alleged, independent or mere conclusions, that, if the allegations are true, a fraud has been committed. It is essential that the facts and circumstances which constitute the fraud should be set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what he is called on to answer, and to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, on the charge of fraud." 37 C.J.S., Fraud, § 78, p. 370."

Moreover, the controlling law in this jurisdiction is that the tenant cannot challenge the title of his/her/its grantor. Under clause 7 of the Lease Agreement, the appellee guaranteed that the lessee, while paying rents and performing the covenants provided in the Lease Agreement, shall peacefully have, hold, possess and enjoy the leased premise without hindrance, trouble or restriction from any person whomsoever and the lessor undertook to warrant and defend the lessee. The appellant has not shown that the quiet enjoyment of the premises guaranteed by the appellee has been hampered by anyone, in which case the appellee should defend the appellant. Therefore, his refusal to pay rent to the appellee on the pretext that the property does not belong to the appellee is without legal basis.

Wherefore and in view of all that we have said, we hold that the appellant's petition for the cancellation of the August 25, 2009, lease agreement between him and the appellee, being legally baseless and untenable in law is denied and dismissed. The ruling of the trial court is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to this Judgment. IT IS HEREBY SO ORDERED.

Counsellor James N. Kumeh of the Torch Professional Consultancy, Inc. appeared for the appellant. Counsellor Festus K. Newon of the Dugbor Law Firm appeared for the appellee.

Appeal denied.