

C.Y.K. Enterprise, Inc. by and thru its General Manager, Frank Hodge of the City of Monrovia, Liberia APPELLANT VERSUS **Tropical Investment Corporation** by and thru its Authorized Representative, Kekura B. Kpoto, Jr. of the City of Monrovia, Liberia 1st APPELLEE AND The **Republic of Liberia** by and thru the Ministry Of Justice, Republic of Liberia 2nd APPELLEE

APPEAL

HEARD OCTOBER 23, 2007 DECIDED: DECEMBER 21, 2007

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This is an appeal from a Judgment in a Petition for Declaratory Judgment instituted by the Appellant against the Appellees before the Circuit Court of the Sixth Judicial Circuit, Montserrado County.

According to the records certified to us, on January 4, 1982, the GOVERNMENT of Liberia, through the Ministry of Agriculture, entered into a Lease Agreement for twenty (20) years with the Liberia Investment Corporation (LIBINCO), a corporation owned and operated by the late Kerkura B. Kpoto, to manage and operate the Slaughter House, a property owned by the Government of Liberia. However, the Government of Liberia through the Ministry of Justice filed an action of cancellation of the Lease Agreement in the Sixth Judicial Circuit for Montserrado County. On August 14, 1992, the Sixth Judicial Circuit Court for Montserrado County entered final Judgment against LIBINCO; a writ of possession was issued and the Government placed in possession of the premises.

Appellant, C.Y. K. Enterprises, Inc. on January 24, 1994, executed a Lease Agreement with the Republic of Liberia, represented by the Ministry of Agriculture and the Ministry of Finance, for a period of ten (10) calendar years certain commencing from the 20th day of December, 1994, up to and including the 31 st day of December, 2004, subject to renewal on terms and conditions to be agreed upon. Included in the Agreement was a force majeure Clause (Article IV) requiring that time periods specified in this Agreement would be extended by the period of time equal to the time any such force majeure is in effect. Said agreement was attested to by the Ministry of Justice.

Appellant occupied the premises on the strength of the Lease Agreement from 1994

until 1998, when the police, acting on the orders of Senator Kerkura B. Kpoto, Managing Director of LIBINCO, the Corporation whose lease had been cancelled by the Government, evicted Appellant and took possession of the premises and occupied said premises until the demise of Kerkura B. Kpoto. When it became clear that the Government of Charles Taylor was about to crumble, the son and "successor" of the late Senator Kerkura B. Kpoto, Kerkura Bayor, Jr. formed a Corporation, Topical Investment Corporation, on January 9, 2003, and entered into a ten (10) year Lease Agreement with the Ministry of Agriculture while the Agreement between C.Y.K. Enterprise, Inc., Appellant and the Government was still in full force and effect. Topical Investment Corporation's agreement commenced the 1st day of day of May, 2003, up to and including the 30 April, 2013.

The Topical Investment Corporation Agreement was not signed by the Minister of Finance nor attested to by the Minister of Justice. In January 2004, Appellant sought to dispossess Tropical Investment Corporation from the premises when it had the Ministry of Justice move onto the premises and put the Appellant in Possession.

Tropical Investment ran to this Court on a Writ of Prohibition which was granted and Tropical Investment was put back on the premises. On November 30, 2004, Appellant filed a four count Petition for Declaratory Judgment before the Civil Law Court, Sixth Judicial Circuit for Montserrado County as follows:

1. That the Appellant and the Republic of Liberia entered into a Lease Agreement to manage the Slaughter House on the Somalia Drive for a period of ten (10) Calendar Years certain commencing the 20th day of January A. D. 1994, up to and including the 31st day of December, A. D. 2004, which was acknowledge by the Minister of Finance and attested to by the Minister of Justice as evidence by copy of the Lease Agreement; and that Appellant occupied the premises on the strength of the Lease Agreement from 1994 until 1998, when the police acting on the orders of Senator Kerkura B. Kpoto illegally evicted Appellant and but Tropical Investment Corporation in possession of the premises.

2. That Tropical Investment Corporation illegally occupied the premises until the demise of Kerkura B. Kpoto, and when it became clear to Tropical that the government of Charles Taylor was about to fall, Tropical entered a lease on May 1, 2003, with the Ministry of Agriculture, while the Lease Agreement of January 20, 1994, was still in force. That the said Agreement was executed by the Ministry of Agriculture only, and not signed by the Finance Minister, nor attested to by the Ministry of Justice.

3. Appellant further submits that under the laws extant in this Jurisdiction, this Court has the

jurisdiction to rendered and declare the rights of the Party Litigants under both contracts and to obtain a declaration of their respective rights under the aforesaid Contracts. That the subject premises is the same under both Contracts, except that the Leases are separate and distinct entities.

4. That any Judgment rendered in these proceedings will terminate the uncertainty or controversy which has arisen in these proceedings.

1st Respondent, Topical Investment Corporation in its Returns stated:

"a. Petitioner's Petition has informed this Court that 1st Respondent, Tropical Investment Corporation, represented by Kekura B. Kpoto, Jr. entered into a Lease Agreement with the Government of Liberia on May 1, 2003, which Corporation was incorporated on January 9, 2003, by the Minister of Foreign Affairs, Hon. Monie R. Captan, therefore it is impossible for 1st Respondent to have occupied the premises of the Monrovia Slaughter House in 1998.

"b. That under the laws of Liberia, 1st Respondent is separate and distinct from the Liberia Investment Corporation represented by Kekura B. Kpoto, Sr. who died August 20, 2002 and which Liberia Investment Corporation entered into a Lease Agreement for the said premises with the Government of Liberia on January 4, 1982 for a period of twenty (20) years.

"c. That instead of seeking remedy under the laws of this Republic if Petitioner feels they suffered any wrong or abuse of their rights, Petitioner illegally, forcibly and under the cover of darkness entered upon the premises of the Monrovia Slaughter House and dispossessed 1st Respondent in January, 2004, which acts were declared unlawful by the Honourable Supreme Court of Liberia as per the decision rendered on August 16, 2004

"d. That as per a mandate of the Honourable Supreme Court, the Marshall was ordered to re-possess 1st Respondent and which orders were executed on August 20, 2004."

"e. That the illegal and unlawful use of raw brute force to dispossess 1st Respondent for a period of eight (8) months means that Petitioner lacks clean hands and is therefore estopped from coming to this Honourable Court to seek any rights."

Counts 2 and 3 of the Return of the Government of Liberia state:

2. "Also because as to Count (3) of the petition, Second Respondent says concedes the authority of this Honourable Court to declare the rights of a Party -where there appears to be uncertainty. See chapter (43) of the Civil Procedure Law, 1 LLR, 217 Section 43.1"

3. *"And also because as to Count (4) of the petition, Second Respondent says that it is important that Your Honour removes the uncertainty of the property of Second Respondent so that it can benefit consistent with law"*

The Judge deposing of the Law issues denied and dismissed the Petition Appellant/Petitioner, ruling as follows:

"To begin with, the Office of a Petition for Declaratory Judgment is to determine status,' rights, and privileges of parties to an instrument and to also declare the binding effect of such instruments on the parties.

In the instant case, both parties derived their rights and privileges from separate and distinct instruments. These instruments being unrelated, the court found it difficult if not impossible to see how the interest of the parties could be determined in a short instance. Had there been an instrument touching on the rights of the parties, then and in that case the court would be properly situated to make a determination with regards to the rights of the parties. The court further said that it observed that the Lease Agreement under which the Petitioner/ Appellant is claiming has expired by its terms and therefore the rights and privileges of the Petitioner extinguished with the expiration of the time contained in the Agreement. Assuming that the Lease Agreement had not expired, the Court said, a Petition for Declaratory Judgment is not the proper cause of Action to confer upon the Petitioner the: remedy prayed for. To recover real property in this jurisdiction, the law provides the proper remedy for unlawful trespass, and that the Petitioner/ Appellant has ample remedies at law and declaratory judgment cannot replace the office to cancel an unlawful and or illegal Lease Agreement.

Secondly, the Court observed the contention of the Petitioner that the Lease Agreement in favor "Tropical Investment Corporation" is void ab initio since the same was not signed by the Finance Minister and attested to by the Minister of Justice, but said that there is no denial that the Minister of Agriculture is one of qualified signatories to such Lease Agreement.

With the Minister affixing his signature on the instrument, that instrument cannot be considered as void but rather the same is voidable and the proper parties to have the same annulled is the Government of the Republic of Liberia, the owner of the premises the subject of the petition for declaratory Judgment. The court thereby denied and dismissed the Petition for Declaratory Judgment."

The Appellant excepted to this ruling of the Judge below, and filed a four-count Bill of Exceptions stating:

1. *Petitioner says Your Honour erred and committed reversible error when Your Honour ruled that this Court was without jurisdiction to declare the rights of the parties under the two (2) Agreements because the two Agreements were unrelated when in fact both Agreements has the same Lessor and covered the same property, i. e, the Slaughter House.*

Petitioner submits that declaration of rights of the parties with respect to the subject premises under both Agreements would have removed the uncertainty which looms over the property especially so where the Government of Liberia had earlier instituted a cancellation proceedings against the Liberia Investment Corporation (LIBNCO) and entered into valid agreement with Petitioner and while the agreement was still in full force and effect, another agreement was executed between the Minister of Agriculture and the 1st Respondent, an agreement which was never attested to by the Ministry of Justice."

2. *Your Honour further committed reversible error when Your Honour in your ruling of February 21, 2005 ruled that a Petition for Declaratory Judgment is not the proper course of action to conform to the remedy pray for by Petitioner for illegal and unlawful possession of the premises of the promises by the First Respondent.*

Petitioner maintains that this Court has the right to terminate the uncertainty or controversy which has arisen as a result of two (2) Respondents executed between the Minister of Agriculture and the First Respondent on one hand and the Minister of Agriculture and the Petitioner with the attestation by the Minister of Justice on the other hand through a Declaratory Judgment Proceedings.

Petitioner submits that out law provides that "The existence of another adequate remedy does not preclude a judgment declaratory relief in cases where it is appropriate". See Sec. 43LLR.

3. *That Your Honour erred and committed reversible error when Your Honour ruled that Petitioner Agreement expired December 31, 2004, not taking into account the extension of the Lease Agreement by another three (3) years by the Ministry of Agriculture in a letter dated June 02, 1997.*

4. *That Your Honour's Ruling of February 21, 2005, is extraneous to the contention raised by First Respondent in their returns; hence, Your Honour committed reversible error.*

Arguing before this Court, the Counsel for Petitioner stated that it was not Petitioner's desire to be put in possession of the property by this action of Declaratory Judgment. It only wished declaration of its rights arising under the contract of lease executed between Appellant and the Government of Liberia, vis-à-vis the agreement of lease between the Appellee and the Government of

Liberia, since indeed both agreements covered the same premises, the Slaughter House. However, the second issue of Appellant argued before this Court and salient to this decision is:

"Whether or not the Lease Agreement executed between the Appellant (C.Y.K., INC.) and the 2nd Respondent (Republic of Liberia) in January, 1994, which was not cancellation, can prevail against the May 1, 2003 Lease Agreement executed by the 1st Appellee (Tropical Investment Corporation) and the Liberian Government? "

This Court says the Appellant has not being forthright in the relief sought in its action for Declaratory Judgment. The argument, whether Appellant's Agreement can prevail against the Appellee's is not a subject for this Declaratory Judgment as the Appellee's Lease Agreement expired on December 31, 2004, and this case was filed on November 30, 2004, a month before the expiration of Appellant's Lease. Hearing this case in February, 2005, the Court had no enforceable agreement before it except the Appellee's Agreement.

This issue, whether C.Y.K Enterprise's Lease with the Republic of Liberia, which was not cancelled, but expired December 2004, could prevail against the Tropical Investment Corporation Lease which expires in 2013, was rightly ruled by the court below when it said it could not declare such rights of the Petitioners as any rights under the Agreement extinguished with the expiration of the time contained in the Agreement.

We agree with Appellant that the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate and where it would secure relief from uncertainty and insecurity with respect to rights, status and other legal relations.

This Court holds that Appellant had a valid lease up to December 31, 2004, which was still in force when the Republic entered into another Agreement with the Appellee. Appellant therefore had legal rights and superior title to the said leased premises as compared to the Appellee when the Appellee entered a Lease Agreement for the same premises. Appellee's lease could have therefore become only enforceable with the Government after December 2004, when the Appellant's lease expired.

This Court holds that when the police, upon instructions from Senator Kerkura Bayoh Kpoto, forcibly moved on the leased premise and without the order of court had the Appellant removed in 1998, it violated its Agreement with the Appellant. By

putting LIBINCO in possession of the Slaughter House after LIBINCO's Agreement had been cancelled by the court and an agreement entered into by the Government and the Appellant, the Government became liable to the Appellant for the remaining six (6) years under the Lease Agreement with the Appellant. And as if to add insult to injury, it furthered entered a Lease Agreement with the Tropical Investment Corporation, represented by Senator Kerkura Bayoh, Jr., Incorporator, son and "successor" of the late Senator Kerkura Bayoh Kpoto while the Appellant Agreement was still in force and effect for a year.

The law relating to Leases states that it is a contract for exclusive possession of lands and tenements for a determinate period. Black Law Dictionary 5 th edition, page 500. The period of the lease agreement had not expired and therefore Appellant's dispossession of the premises by the police was illegal.

Touching on the issue of the Topical Investment Lease being signed by the Minister of Agriculture only, not signed by the Minister of Finance or attested to by the Ministry of Justice as required by our law, we agree with the Judge that the Lease by this became voidable and not void. "A voidable contract is valid and binding until it is avoided by the party entitled to avoid it." 12 Am Jur, Contract, Sec. 10. In this case, it is the Government who can avoid or ratify Topical Investment's Lease Agreement.

Appellant brought to the attention of this Court exchanges of communication imbedded in its Brief, claiming that the Ministry of Agriculture had extended Appellant's Lease for three (3) years based on Article IV of its agreement with the Government. However, the Appellee's Counsel contended that these communication were never presented to the court below whether as an exhibit to the Petition or presented in its argument to the court below.

This Court also notice that this letter which would have really been essential in determining the Appellant's lease rights as against the Appellee's was not mentioned in or attached to Appellant's Petition. This Court of last resort can only review records and issues brought before and decided upon by subordinate courts of records. 3OLLR3 Tolbert vs. RL, text at page 17, (1982); 38 LLR327 First United Bank vs. Saksouk Textile, text at page 333-334 (1997). This issue of the extension of Appellant's lease, having been raised for the first time when it appeared before this Court, shall not be considered in this opinion.

Appellant's Lease Agreement having expired, it has no rights that could be declared against the Appellee whose lease is in force. However, the dispossession of the

Appellant by the government Six (6) years before the Government's lease with the Appellant expired was illegal.

In view of the foregoing, it is the ruling of this Court that the Judgment of the lower court be and the same is affirmed, with the modification made herein.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and execute this mandate. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

Judgment affirmed with modification.

COUNSELLORS BEYAN D. HOWARD & SNONSOE. NIGBA OF THE LEGAL SERVICES, INC., AND THE LEGAL CONSULTANTS, INC. APPEARED FOR THE APPELLANT.

WHILE COUNSELLOR TIAWAN S. GONGLOE, SOLICITOR GENERAL OF THE REPUBLIC OF LIBERIA APPEARED FOR THE RESPONDENTS.