HAFEZ M. JAWHARY, a Lebanese National, Petitioner/Appellant, *v.* **THE INTESTATE ESTATE and/or HEIRS OF THE ROSETTA WATTS JOHNSON**, **REBECCA WATTS PIERRE'S INTESTATE ESTATE**, thru **EUGENE COOPER and MABEL S. PIERRE**, 1st Respondents/Co-Appellees and THE J. N. LEWIS INTESTATE ESTATE, thru **JOSEPH N. LEWIS et al.**, 3rd Respondent/Co-Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 22, 2004. Decided: March 1, 2005.

1. An action has three (3) stages: the pre-trial, trial and post-trial; the pre-trial stage includes the commencement of the action and determination of pre-trial motions, which include summary judgment, motion to dismiss, motion to strike, disposition of law issues, etc.
2. A demand for jury trial is not a pre-trial motion and can be heard at any time before trial begins.
3. Trial has been defined by the Supreme Court as the presentation of oral or written evidence.
4. The disposition of law issues is part of the pre-trial stage of the proceedings and disposes of the legal issues raised and determines whether the factual issues should be tried.
5. When law issues are disposed of, the court determines the legal issues and may dismiss the action or rule it to trial of the facts either by the court or a jury.
6. A motion for jury trial should be heard and disposed of after the court rules on the legal issues and rules that the issues of fact are to be tried.
7. It is improper for the court in an action for declaratory judgment to hear a motion for jury trial prior to disposing of the law issues, for to do so would have presupposed that the judge would rule the case to trial when ruling on the disposition of the law issues.
8. The granting of a petition for declaratory judgment is purely discretionary, and the court may either dismiss a petition for declaratory judgment on the law issues or rule it to trial.
9. Ordinarily, law issues are to be disposed of first, to be followed by the facts, and thereafter, a court is authorized to enter final judgment. However, in the case of a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessity for trial of the fact does not exist, and the trial

court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts.

10. Where the judge in an action for declaratory judgment exercises his discretion granted him by Section 43.5 of the Civil Procedure Law and dismisses the petition for declaratory judgment, the motion for jury trial becomes moot and the court is not deemed in any way to have denied the petitioner of the right to a jury trial.
11. A judge is not in error in deferring the hearing of the motion for jury trial after the disposition of law issues, since under the Civil Procedure Law, the court is empowered to determine the sequence in which the issues in a case shall be tried.
12. Whenever a complaint is filed in which the plaintiff claims title to real property, a copy of the document upon which title is based should be filed with the complaint.
13. It is the rule of modem practice that when a pleading is founded on a written instrument, a copy thereof may be annexed and made a part of the pleading by reference as an exhibit.
14. Any claim or defense which a party relies upon to substantiate his cause of action or his defense is material and should be specifically pleaded so as to give the opposing party notice of what the adversary intends to prove.
15. Any matter not laid down in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decided questions of law when properly raised in the pleadings.
16. It is mandatory for the petitioner in a declaratory judgment action to annex to the petition for declaratory judgment the addendum to the lease agreement, which the petitioner had requested the court to declare valid and of full force and effect as a matter of law, in order to give the required notice to the adversary for review and challenge the document if he/she so desires.
17. The legal standard in a declaratory judgment should not be entered if it will not terminate the controversy in dispute, and the court may refuse to render or enter a declaratory judgment where such judgment would not terminate the uncertainty or controversy giving rise to the proceeding.

Petitioner/appellant filed a petition in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, seeking a declaratory judgment from the court that three lease agreements and addendums thereto which the petitioner had concluded with the first, second and third respondents for a parcel of land in Monrovia, upon which he had constructed the Holiday Inn Hotel, were valid. The second and third respondents were the same Estate, the J. N. Lewis Intestate Estate, but was named as separate respondents being represented by different persons claiming legitimacy to represent the Estate. The third respondent moved the trial court to drop the second

and third respondents as misjoined parties because firstly, the second respondent, being the J. N. Lewis Intestate Estate, the same Estate as the third respondent, was represented by persons whose letters of administration had been revoked and they had been accordingly removed as administrator and administratrix of the J. N. Lewis Intestate Estate by the Monthly and Probate Court for Montserrado County, a decision confirmed by the Supreme Court. Hence, the third respondent said, any agreement signed by the alleged representatives with the petitioner after the revocation of their letters of administration was null and void. Secondly, the motion to drop noted that the third respondent had conceded that it did not own and had no interest in the property in question, which the petitioner said he had leased from the Estate; hence, as the Estate had no dispute with the first respondents for the said parcel of land for which the petitioner was seeking a declaratory judgment, it could not be a party to the proceedings.

The first respondents, in their response, asserted that they had in a previous litigation obtained judgment that confirmed their ownership to the property in question, for which the petitioner was seeking declaratory judgment; that the petitioner was *estopped* from challenging the title of the first respondents, they being the lessors of the petitioner; that they denied the petitioner's claim that he had any addendum to the original lease which gave him a further sixty-three years rental to the property, and that they challenged him to produce the said instrument, failing which he would have violated a fundamental principle of pleading—the requirement of notice.

The trial court dropped the second respondent but retain the third respondent as a party to the declaratory judgment proceedings. Thereafter, in ruling on the law issues, the trial judge denied the petition.

On appeal by the petitioner to the Supreme Court, the Court affirmed the trial court's ruling dismissing the petition. The Supreme Court held that the trial judge had not erred in not disposing of the motion for jury trial before hearing and disposing of the law issues. The Court reasoned that as a motion for jury trial is not a pre-trial motion, whereas the disposition of law issues is a pre-trial matter, it is only after the disposition of the law issues that a determination can be made as to whether the case will be submitted for a jury trial. The Court further opined that since it is during the disposition of the law issues that the trial judge determine whether to dismiss the case on legal issues or rule it to trial of the facts, it would have been improper for the trial judge to rule on the motion for jury trial before disposing of the law issues.

On the issues of the trial court's denial of the petition for declaratory judgment while disposing of the law issues, the Court stated that although ordinarily laws issues are disposed of first and followed by trial of the facts, in the case of declaratory judgment the trial court is authorized to enter judgment when disposing of the law

issues without taking evidence regarding the facts if the facts are not disputed by the parties. The facts in the instant case were not disputed, the Court said. The petitioners had admitted that the property belonged to the first respondents, the second respondent had been dropped from the suit, and the third respondent had stated that it did not have interest in the property and therefore was not contesting the first respondents right to the property.

The Court also held that the petitioner had violated the fundamental principle of law on notice in not attaching to the petition the addendum to the lease agreement which he claimed to have entered into with the first respondents and which he wanted the trial court to enter a declaratory judgment on to the effect that the said addendum extending the lease for another sixty-three years was valid and of full force and effect. Accordingly, the Supreme Court agreed with the trial court that in order for the lower court to pass on the validity of the addendum to the lease agreement, it was mandatory that the petitioner attached the addendum to the petition and that a failure to do so deprived the lower court of the right to give legal consideration to the claim and which rendered the petition dismissible.

Lastly, the Court held that the judge correctly denied the petition, for to have granted it would have meant that the trail judge would have (a) recognized the validity of an addendum which had not been attached to the petition and which the court had not seen; (b) recognized the validity of a lease agreement with the second respondents, signed by persons whose authority had been revoked and which was therefore null and void; and © recognized a lease agreement of the third respondent when the said respondent had said it had no claim to or interest in the property covered under the lease. Judgment was therefore affirmed.

Joseph N. Blidi appeared for the petitioner/appellant. *Oswald Tweh* and *James E. Pierre* appeared for the respondents/co-appellees. *Roger K. Martin* appeared for the 3rd respondents/co-appellees.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This appeal is before us from the ruling of His Honour Wynston O. Henries, Resident Circuit Judge, Sixth Judicial Circuit Court, Montserrado County, dismissing petitioner/ appellant Hafez M. Jawhary's petition for declaratory judgment, filed in January 2003 against the respondents/co-appellees the Intestate Estate of Rosetta Watts Johnson and Rebecca Watts Pierre and the Intestate Estate of the late J. N. Lewis.

The petitioner, Hafez M. Jawhary, filed a nine-count petition for declaratory judgment against the Intestate Estate and/or heirs of the late Rosetta Watts Johnson

and the Intestate Estate of the late Rebecca Watts Pierre, represented by Eugene Cooper and Mabel S. Pierre, administrator and administratrix, as 1st respondents; the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix, Samuel A. W. Freeman and Wisseh Munah, as 2nd respondents; and the Intestate Estate of the late J. N. Lewis, represented by its administrators and administratrix Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, as 3rd respondents.

For the benefit of this opinion, we herewith quote verbertim courts 1, 2, 3, 6, 7 and the prayer of the petition.

"1. That petitioner entered into separate and distinct lease agreements all for the same half lot of land, Lot N0. 115, lying and situated on Carey Street, Monrovia, Liberia, as follows, to wit:

(a) That the first lease agreement for the said premises was entered into by and between the late Rosetta Watts Johnson and the petitioner for a period of thirty (30) years certain, commencing from the 29th day of March A. D. 1973 up to and including the 28th day of February, A. D. 2003.

The metes, bounds and description of said demised premises are specified in the lease agreement as follows:

COMMENCING AT THE N.W. ANGLE OF THE EASTERN HALF OF LOT NO. 115; THENCE NORTH 52 DEGREES WEST 62½ LINKS; THENCE SOUTH 38 DEGREES WEST 200 LINKS; THENCE SOUTH 52 DEGREES EAST 62½ LINKS; THENCE NORTH 38 DEGREES EAST 200 LINKS TO THE PLACE OF COMMENCEMENT AND CONTAINS ONE-EIGHTH (1/8) OF AN ACRE OF LAND AND NO MORE.

(b) That pursuant to Article IV of the said lease agreement, petitioner constructed on the leased premises the Holiday Inn Hotel, a five (5) story building, one of the best hotels on the West Coast of Africa and one of the leading land marks in the City of Monrovia, Liberia. Petitioner respectfully requests court to take judicial notice of copy of said lease agreement, marked as P/1, and attached to this petition to form a cogent part thereof. This Honourable Court is also requested to take judicial notice of the historical fact of the construction and existence of the Holiday Inn Hotel located on Carey Street, Monrovia, Liberia.

(c) That while the lease agreement between Rosetta Watts Johnson and petitioner was still in full force and effect, the parties hereto executed an addendum thereto amending Articles I and II, whereby an additional twenty (20) year period was added, commencing at the end of the first 30-year period in 2003. Petitioner hereby gives notice that he will produce said lease agreement and

any other documentary and oral evidence during trial at any other time appropriate.

"2. That while the aforesaid lease agreement and the addendum thereto were still in force and effect, the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix, Samuel A.W. Freeman and Wisseh Munah, respectively, started laying claim to the same property/parcel of land subject of the aforesaid agreement and addendum thereto. The said administrator and administratrix of the Intestate Estate of the late J. N. Lewis insisted that petitioner enters into lease agreement with the J. N. Lewis Estate or be ejected therefrom. In order to avoid unnecessary and expensive litigation, and because of the huge investment petitioner had made in the premises which he wanted to protect, as well as the fact that there was a serious crisis in the country, petitioner entered into a lease agreement with the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix Samuel A.W. Freeman and Wisseh Munah for a total period of sixty-three (63) years of twenty-one year intervals, effective March 1, 2003 up to and including February 28, 2066, A. D. The metes, bounds and description of the premises as set forth in certified copy of the warranty deed in favor of the late John N. Lewis executed by William Draper and his wife Margaret, and as set forth in the lease agreement are as follows:

...BOUNDED ON THE SOUTH BY A LINE OF SEVEN HUNDRED EIGHT LINKS DIVIDING FROM RANGE 111, ON THE WEST BY A LINE OF 63½ LINKS DIVIDING IT FROM LOT OF RANGE 11 AND ON THE EAST BY A LINE OF 63¼ LINKS DIVING IT FROM LOT 115 AS DESCRIBED IN THE AUTHENTIC RECORDS OF SAID SETTLEMENT CONTAINING FIVE (5) ACRES OF LAND AND NO MORE. CONNECTING AT THE N. W. ANGLE OF THE EASTERN HALF OF LOT 115. THENCE NORTH 52 DEGREES WEST 62½ LINKS; THENCE 38 DEGREES EAST 200 LINKS TO THE PLACE OF COMMENCEMENT AND CONTAINING ONE EIGHTH (1/8) OF AN ACRE OF LAND AND NO MORE.

Petitioner requests court to take judicial notice of the certified copy of the warranty deed in favor of the late John N. Lewis, copy of a letter dated September 23, 1988 and signed by Counsellor David D. Gbala on behalf of the J. N. Lewis Estate, claiming title to the demised premises and opting for a lease agreement to be entered into with the petitioner as well as the sixty-three (63) year lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis and the petitioner marked as Exhibits P/2, P/3 and P/4, respectively, to form cogent parts of this petition.

"3. That still while the aforesaid lease agreements and addendum were in full force and effect, the second group of administrators and administratrix of the Intestate Estate of the late J. N. Lewis, in persons of E. Kofa Benson, Joseph N. Lewis and Deborah Tequah, also began to lay claim to the aforesaid demised premises and also opted to enter into a lease agreement with the petitioner hereinabove stated. Petitioner entered into a lease agreement for a total period of sixty-three (63) years at 21-year intervals/options that are certain and precise commencing from the 1st day of March, A. D. 2003 up to and including the 28th day of February A. D. 2066. Petitioner requests court to take judicial notice of the said lease agreement, marked as Exhibit P/5, and attached to this petition to form an integral part thereof.

"6. That the petitioner herein found it strange, unbelievable and untrue that the two groups of administrators and administratrixes of the Intestate Estate of the late J. N. Lewis filed a one-count return to the petition of the Instate Estate of the late Rebecca Watts Pierre in which they conceded that the premises on Carey Street, on which the Holiday Inn Hotel is located, which the petitioner herein is leasing from the Estate, does not belong to them, but it rather belongs to the Intestate Estate of the late Rebecca Watts-Pierre. See copy of said return, marked as Exhibit P/7and attached to this petition to form an integral part thereof.

"7. That this Honourable Court on the 15th day of November 2000 A. D., rendered its final judgment, awarding title of the lease premises to the Intestate Estate of the late Rebecca Watts Pierre and declaring all claims made on the said premises by the Intestate Estate of the late J. N. Lewis null and void.

"WHEREFORE and in view of the foregoing, petitioner respectfully prays Your Honor and this Honorable Court to declare:

(a) That the lease agreement entered into by the late Rosetta Watts Johnson and the petitioner herein, as well as the addendum to said lease agreement, is still in full force and effect and binding on successors, heirs, administrators, beneficiaries and all others, including the Intestate Estate of the late Rebecca Watts Pierre, represented by its administrator and administratrix Eugene Cooper and Mabel S. Pierre, unless and until they expire in keeping with their terms and conditions.

(b) That the lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis for sixty-three (63) years from the 1st day of March, A. D. 2003 up to and including the 28th day of February, A. D. 2066, in which the J. N. Lewis Intestate Estate is represented by Samuel A. W. Freeman and Wisseh Munah, administrator and administratrix, respectively, of the said estate, is still in full force and will remain in full force and effect until February 28, A. D. 2066.

(c) That the lease agreement entered into for sixty-three (63) years by and between the Intestate Estate of the late J. N. Lewis, represented by its administrators, E. Kofa Benson and Joseph N. Lewis, and Deborah B. Tequah, administratrix, and the petitioner, is still in full force and effect up to and including February 28, 2066, A. D.

(d) That since E. Kofa Benson, one of the administrators of the Intestate Estate of the late John N. Lewis, was not made a party to the petition to remove cloud on title to real property and he knew nothing about said action and therefore did not have his day in court, the final judgment in said action did not affect his interest in the J. N. Lewis Estate. Hence, the lease agreement which E. Kofa Benson signed on behalf of said Estate between the petitioner herein and the estate is in full force and effect and will so remain until the 28th day of February, A. D. 2066.

(e) That since the returns to the petition to remove cloud on title to real property was not signed by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, administrators and administratrix of the Intestate Estate of the late John N. Lewis, contrary to what the court was made to rule against them in its November 15, 2000, A. D., final judgment, the said judgment is not binding on the Intestate Estate of the late John N. Lewis.

(f) That since the petitioner, lessee of the parcel of land on which the Holiday Inn Hotel is located, was not made a party to the petition to remove cloud on title to real property, the court's final judgment of 15th November, A. D. 2000, has no binding effect on him whatsoever and on his leasehold rights in said demised premises; and further prays that the petitioner be granted any and other relief deemed legal, just and equitable."

A writ of summons was issued and served on the 1st, 2nd, and 3rd respondents, who separately filed their returns.

The 1st respondents, heirs of the late Rosetta Watts Johnson and the late Rebecca Watts Pierre, filed a 40-count returns alleging in substance that the petition should be dismissed because any judgment rendered will obviously not terminate the alleged uncertainty or controversy which gave rise to this proceeding.

We herewith quote counts 1, 2, 3, 5, 6, 8, 9, 13, 32, and 33 of the returns filed by the 1st respondents.

"1. As to the entire petition, 1st respondents say that the petition should be dismissed because any judgment rendered will obviously not terminate the alleged uncertainty or controversy which apparently gave rise to the proceeding. 1st respondents submit, as a matter of law, that section 43.5 of the Civil Procedure Law requires the court to "refuse to render or enter a declaratory judgment, where such judgment, if rendered, would not terminate the uncertainty or controversy

which gave rise to the proceeding". It is clear that any judgment rendered will not meet the statutory requirement of bringing finality to the matter and therefore the petition should be dismissed. This is confirmed by the fact that a final judgment in these proceedings will not put 1st respondents in possession of the property and that 1st respondents will have to institute still another proceeding to regain possession of the property after the termination of the lease agreement on February 28, 2003.

"2. Further to the entire petition, 1st respondents say that it is a well settled principle of law that the possession of the demised premises by the tenant is for many purposes considered to be the possession of the landlord and serves as adequate notice of the landlord's rights in the land until the tenancy is expressly repudiated and notice thereof given to the landlord. 51 C. J. S., *Landlord and Tenant,* §254. Given that possession by a tenant is possession by his landlord for all intent and purposes, it is well settled that during the existence of the relationship of landlord and tenant, a tenant occupying a premises upon the strength of his landlord's title is *estopped* from challenging, questioning or disputing his landlord's title. Thus, a tenant is *estopped* to assert that a better title than the landlord's is outstanding in some third person. 49 AM JUR 2d., *Landlord and Tenant* §915. 1st respondents therefore pray that the petition be dismissed because of lack of capacity of the petitioner to maintain the action against his lessor.

"3. Further to count 2 above, 1st respondents say since the execution of the agreement of lease in 1973, and during the past almost 30 years of the lease, petitioner has enjoyed uninterrupted and continuous use and possession of the demised property. This is confirmed by the fact that the petitioner has not informed 1st respondents, his lessors, of any adverse claims being filed or of any interference with his use, enjoyment and possession of the demised premises by a third party. 1st respondents say had there been such adverse claim or interruption, petitioner would have immediately brought this to 1st respondents' attention, who would have been obligated under Article IV of the agreement to defend the lessee's (petitioner) peaceful use and occupancy of the demised premises during the entire life of the agreement against the claims of any third parties.

"5. 1st respondents submit, as a matter of law, that a lessee's right to the use, possession and enjoyment of demised premises are derived solely and exclusively from that of his lessor and a lessee is therefore without the authority or competence to institute or maintain proceedings against a lessor which questions or denies the lessor's title to the property subject matter of the lease agreement between the lessor and lessee.

Stated differently, a lessee cannot legally question or deny his lessor's title to the property since ultimately the lessee's rights to the use or occupancy of the demised property are derived from the lessor's title. A lessee is *estopped* as a matter of law from questioning the legitimacy of his lessor's title to property while at the same time enjoying the use of the property based on an agreement of lease concluded with the lessor. 1st respondents therefore pray that Your Honour will dismiss petitioner's petition because of the lack of capacity of a lessee to question the title of his lessor.

"6. Further to count 5 above, 1st respondents say same should also be dismissed because the legal pre-requisite to institute or maintain an action for declaratory judgment is that there must be an actual controversy existing between the parties. 1st respondents submit that there is no controversy between petitioner and 1st respondents as to their respective rights, status and legal relationship in respect of the one half lot of land in the City of Monrovia on which the Holiday Inn Hotel is erected. The undisputed and acknowledged fact is that the petitioner is 1st respondents' lessee and this relationship is clearly defined and established in the agreement of lease which was executed in 1973 between the petitioner as lessee and the late Rosetta Watts-Johnson as lessor. This fact is not in dispute and has been specifically acknowledged by the petitioner in counts 1(a) and (b) of the petition for declaratory judgment and the attached Exhibit P/1 - the probated and registered agreement of lease executed in 1973 between the petitioner, as lessee, and Mrs. Rosetta Watts-Johnson, 1st respondents' predecessor-in-title and interest as lessor.

"8. 1st respondents therefore specifically and expressly deny petitioner's allegation in count 1© of the petition that an addendum was executed by 1st respondents extending the period of the lease for an additional twenty (20) years as of February 28, 2003, the date of the expiration of the agreement. For the petitioner to even suggest that 1st respondents would think about extending the lease agreement with petitioner Jawhary is ridiculous and unthinkable. Given the well known disagreement and litigation involving 1st respondents and petitioner over the years about the lease agreement, no rational or reasonable person will believe petitioner's fairy tale that 1st respondents would extend the period of its lease with the petitioner. This alleged addendum is clearly a manufactured instrument.

"9. And 1st respondents say the petitioner's lease of the property was for a single certain period of thirty (30) years. Sufficient proof of this is that at no time in the past has petitioner alleged or referred to the fact that he had obtained an addendum from 1st respondents extending his lease for another twenty (20) years. 1st respondents submit that had petitioner obtained any extension of the lease, this fact would have been referred to in the numerous pleadings and

communications which have been exchanged between the parties. 1st respondents say that quite on the contrary, petitioner has consistently confirmed and acknowledged that his leasehold rights in the property was for the agreed single certain thirty (30) year period. Proof of this can be seen from the following official documents attached in bulk as Exhibit R/1.

13. Further to count 12 above, 1st respondents say that in any event, the question of title to and ownership of the property has already been settled by this very court based on a petition to remove cloud on title which was instituted by 1st respondents against the J. N. Lewis Estate in 1998. 1st respondents say that after pleadings were exchanged and a regular trial held on November 15, 2000, Judge Varnie Cooper entered final judgment in favor of 1st respondents and against the J. N. Lewis Estate. The final judgment confirmed and affirmed that 1st respondents have valid title to the property, the subject matter of the present action for declaratory judgment. 1st respondents say that Judge Cooper's final judgment put judicial finality to the question of the ownership of the property; the matter is now *res judicata* and it would be improper and irregular for this court to attempt to re-litigate the same question. Copy of the final judgment is attached hereto as 1st respondents' Exhibit R/4.

    1st respondents submit that it is a basic and elementary principle of law that a judgment rendered by a court of competent jurisdiction on the merits is a bar to any future proceedings involving the same parties or their privies, on the same cause of action in the same or other court as long as the judgment has not been reversed, vacated or annulled. 50 C. J. S. *Judgment* § 598. Hence, the principle of *res judicata* bars petitioner from re-litigating the same issue of title which had previously been passed upon and adjudicated on its merits by this court in the action to remove cloud over title to real property.

32. 1st respondents say neither of the returns filed by the two sets of administrators of the J. N. Lewis Estate to the petition to remove cloud on title contested nor questioned Rebecca Watts-Pierre Estate's title to the property. After a regular trial on November 15, 2000, a final judgment was rendered confirming title to the property in favour of the Rebecca Watts-Pierre Estate. See Exhibit R/3-copy of the final judgment in count 13 of these returns above. 1st respondents hereby reconfirm and incorporate counts 13, 14, 15, 16 & 17 of these returns that the matter having been adjudicated on the merits and a final judgment handed down, the principle of *res judicata* bars any further review, modification or reversal of same.

33. As to count 5 of the petition, 1st respondents say that the ruling by Judge Varnie D. Cooper to drop Samuel A. W. Freeman and Wisseh Munah as authorized representatives of the J. N. Lewis Estate was legal, proper and in keeping with the

Supreme Court's opinion of July 21, 2000, which affirmed the final judgment of the Monthly & Probate Court for Montserrado County revoking Samuel A. W. Freeman and Wisseh Munah letters of administration. 1st respondents request Your Honour to take judicial notice of the aforesaid Supreme Court's opinion of July 21, 2000, attached in count 2 of 3rd respondent's motion to drop, as Exhibit M/4; count 13 of 3rd respondent's returns and count 3 of the 3rd respondent's motion to drop. 1st respondents say under the principle of law that judges of concurrent jurisdiction cannot review, modify, alter or reverse a colleague's prior ruling, Your Honour is therefore obligated by law to adhere to, confirm and fully implement Judge Cooper's ruling dropping Samuel A. W. Freeman and Munah Wisseh as administrator and administratrix of the J. N. Lewis Estate."

The 2nd respondent, the Intestate Estate of the late J. N. Lewis, represented by Samuel A. W. Freeman and Wisseh Munah, filed a seven-count returns in which they denied having knowledge of any motion to drop, but admitting that their letters of administration was revoked by the Supreme Court of Liberia, and claiming that this revocation does not affect the title of the J. N. Lewis Estate, who has a superior title.

The 3rd respondent, the Intestate Estate of the late J. N. Lewis, represented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, filed a sixteen-count returns and a motion to drop the 2nd and 3rd respondent as misjoined party. For the benefit of this opinion we herewith quote counts 1, 3, 4, 5, 6, 10, and 13 of 3rd respondent's returns.

"1. 3rd respondent says it is simultaneously filing a motion requesting that the J. N. Lewis Estate be dropped as a respondent in these proceedings and also for Samuel A. W. Freeman and Munah Wisseh to be dropped because the latter do not represent the J. N. Lewis Estate. 3rd respondent hereby expressly adopts and incorporates the said motion to drop misjoined party as an inherent and integral part of these returns.

"3. As to count 2 of the petition, 3rd respondent says that the alleged agreement (Exhibit P/4 of the petition) was executed on December 5, 1996 by Samuel A. W. Freeman and Wisseh Munah. Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tecquah say that at the date the document was signed, the aforesaid Samuel A. W. Freeman and Wisseh Munah were without the legal authority to act for or represent the estate because they had previously been suspended by the Monthly & Probate Court for Montserrado County on December 2, 1996. The suspension was subsequently confirmed by a formal court order which was affirmed by the Supreme Court of Liberia on July 21, 2000. Your Honour is requested to take judicial notice of Exhibits M/1, M/3 and M/4 attached to 3rd respondents' motion to drop.

"4. Further to count 3 above, 3rd respondent says Exhibit P/4 - document purporting to be a valid lease agreement-- was actually signed on December 5, 1996 by Samuel A. W. Freeman and Wisseh Munah on behalf of the J. N. Lewis Estate, as lessor, and Hafez Jawhary, as lessee, for the lease of one-half lot of land on Carey Street in the City of Monrovia, on which the Holiday Inn Hotel is erected, for the period March 1, 2003 - February 28, 2066. 3rd respondent says that although Samuel A. W. Freeman and Wisseh Munah claimed to be executing the document in their capacity as administrator and administratrix of the J. N. Lewis Estate, their actions were clearly illegal and null and void *ab initio* since they had previously been suspended by the Montserrado County Probate Court on December 2, 1996 - three (3) days prior to the execution of the document. The purported agreement therefore cannot and does not bind the Estate of the late J. N. Lewis or confer any rights on Hafez M. Jawhary.

"5. Still further to count 4 above, 3rd respondent says that when the purported lease agreement was presented to the Probate Court for Montserrado County for probation, 3rd respondent filed a caveat with the court, objecting to the probation of the agreement because of the lack of capacity of Samuel A. W. Freeman and Wisseh Munah to act on behalf of the estate. 3rd respondent says the agreement was not probated or registered and therefore confers no rights or benefits on the purported lessee. This is confirmed by the certificate from the clerk of the probate court, previously attached as Exhibit P/1.

"6. And further to count 5 above, 3rd respondent says that the agreement is therefore invalid, null and void *ab initio* and does not obligate the estate or confer any rights or benefits on the petitioner, Hafez M. Jawhary, since Samuel A. W. Freeman and Wisseh Munah had been suspended and were therefore not competent, qualified or authorized to act for, bind or represent the J. N. Lewis Estate.

"10. And 3rd respondent says that on September 29, 1995 when the document (Exhibit P/5 of the petition) was signed, Deborah Tequah and Joseph N. Lewis were not administrators of the J. N. Lewis Estate. 3rd respondent says it is a basic and elementary principle of law that only the act of an administrator who has been qualified is competent to bind an estate or can legally act for and represent said estate. 3rd respondent says that Deborah Tequah and Joseph Lewis, along with Patrick Lewis were first issued temporary letters of administration by the monthly and probate court only on December 17, 1996 as is confirmed by Exhibit M/2, attached to the motion to drop, which is hereby incorporated. And as previously stated, Koffa Benson has never been an administrator of the J. N. Lewis Estate. Therefore, the document attached to the petition for declaratory judgment as Exhibit P/5 is null and void and invalid.

"13. As to count 5 of the petition, 3rd respondent says that the ruling by Judge Varnie D. Cooper to drop Samuel A. W. Freeman and Wisseh Munah as authorized representatives of the J. N. Lewis Estate was legal, proper and in keeping with the Supreme Court's opinion of July 21, 2000, which affirmed the Monthly & Probate Court for Montserrado County ruling revoking Samuel A. W. Freeman's and Wisseh Munah's letters of administration. 3rd respondent incorporates count 3 of the motion to drop and the attached Exhibit M/6--- Judge Varnie D. Cooper's ruling of August 31, 2000. And 3rd respondent says under the principle of law that judges of concurrent jurisdiction cannot review, modify, alter or reverse a colleague's prior ruling, Your Honour is therefore obligated by law to adhere to, confirm and fully implement Judge Cooper's ruling dropping Samuel A. W. Freeman and Wisseh Munah as administrator and administratrix of the J. N. Lewis Estate. This means that Samuel A. W. Freeman and Wisseh Munah should not be permitted to be parties to the declaratory judgment proceedings and represent the J. N. Lewis Estate."

A reply was filed and withdrawn by the petitioner, and an amended reply filed on February 21, 2003, containing 37 counts traversing the 1st respondents' returns, denying the allegations of the 1st respondents' returns, and praying the court to grant petitioner's petition; to dismiss the 1st respondents' returns with cost against 1st respondents and to grant unto the petitioner any and all further relief deemed legal, equitable and just.

The motion to drop 2nd and 3rd respondents as misjoined parties, filed by the 3rd respondent, represented by Deborah B. Tequah, Joseph N. Lewis and Patrick C. Lewis on January 3, 2003, contained a request to the court to drop as misjoined parties Samuel A. W. Freeman and Wisseh Munah, named as administrator and administratrix of the Intestate Estate of the late J. N. Lewis, on the theory that they cannot represent the J. N. Lewis Estate as administrator and administratrix of the said Estate, because they were suspended by the monthly and probate court in May 1996 from being administrator and administratrix. The motion also requested the court to drop the J. N. Lewis Estate as 3rd respondent in the petition for declaratory judgment on the theory that the 3rd respondent should not be a party to the declaratory judgment proceedings because the estate recognized and agreed a long time ago that whatever claims it may have had to the property had long since been time barred.

The 3rd respondent, in the motion to drop misjoined parties, further stated that the J. N. Lewis Estate had no right or interest in the said property as neither Rosetta Watts-Johnson's nor Rebecca Watts-Pierre's title to the property had been called into question by the J. N. Lewis Estate, and that no claim or proceeding had ever been

filed by the J. N. Lewis Estate against the Rosetta Watts-Johnson's or Rebecca Watts-Pierre's Estate for the said property.

In ruling on the motion to drop misjoined parties on March 31, 2003, the court ordered that Samuel A.W. Freeman and Wisseh Munah, named as administrator and administratrix of the Intestate Estate of J. N. Lewis, be dropped, but that the J. N. Lewis Estate, represented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, 3rd respondent, shall remain as party respondent in the declaratory judgment proceedings.

Both the movant and the petitioner excepted to the judge's ruling on the motion to drop misjoined parties, and reserved the right to take advantage of the statute.

The petitioner/appellant filed two (2) separate motions for jury trial on January 27, 2003, and February 13, 2003, respectively, stating *inter alia*, that there were issues of facts and allegations of fraud involved, which required the impartial determination of the case by a jury, and demanded a jury trial.

After pleadings rested, notice of assignment was issued on April 1, 2004, for the disposition of the law issues. When the parties appeared pursuant to the notice of assignment for the hearing of the disposition of the law issues, the petitioner made a submission to the court to dispose of the motion for jury trial before disposition of the law issues on the ground that under the law, practice and procedure, where a motion is pending, said motion should firstly be disposed of before the law issues are heard and determined.

The 1st and 3rd respondents, in resisting that request, stated that a motion for trial by a jury is a special motion that can only be entertained after the court has passed on the law issues and ruled the matter to trial. They requested the court to deny the submission of the petitioner and proceed with the arguments on the law issues as per the notice of assignment.

In its ruling on the submission of the petitioner and the resistance to the request to defer the hearing on the disposition of the law issues until the hearing and determination of the motion for jury trial, the court acknowledged the constitutional right of a party to have a jury trial, but concluded that the law issues must first be disposed of, and, if the court determines that there are issues of facts to be tried, then the motion for jury trial can be heard. To this ruling, the petitioner/movant excepted.

The law issues were argued and the court reserved ruling. On April 8, 2004, His Honour Winston O. Henries rendered his ruling on the law issues, in which he denied the petition for declaratory judgment. Relevant portions of the judge's ruling are herewith quoted:

> "We again reiterate that we therefore cannot grant that aspect of petitioner's petition for declaratory judgment and declare the two leases executed by the petitioner and the J. N. Lewis Estate to be valid and in full force and effect,

because we will then in effect be setting aside and reversing the ruling of our colleague, Judge Varnie Cooper, who had previously determined that the title to the property was vested solely in the Rebecca Watts Pierre Estate. In the mind of the court, Judge Cooper's final judgment settled and brought finality to the question of title to and ownership of the property.

Another reason why we cannot declare petitioner's two lease agreements which the J. N. Lewis estate signed as lessor as valid and binding is because it is an elementary principle of property law that a lessor's right to execute a binding and enforceable lease agreement with a lessee is based on a lessor's legitimate and *bona fide* legal title to the demised premises. By the J. N. Lewis Estate's own admission and also by the November final judgment, a determination had been made that the J. N. Lewis Estate did not have legal title to the property. The lease agreement which they signed with the petitioners was obviously null and void *ab initio*, and could not and therefore did not confer any rights, privileges or benefits on the petitioner/lessee.

Finally, the court feels compelled to remark that during the oral arguments on the law issues, counsel for petitioner Hafez Jawhary called the court's attention to count 4 of petitioner's amended reply and argued that petitioner Jawhary had never "challenged, questioned or disputed" 1st respondents' title to the property. The obvious follow up question must be why then did the petitioner institute these proceedings against the 1st respondents? (Emphasis added)

After having reviewed the pleadings and having listened carefully to the oral arguments at the hearing disposing of the law issues, we do not believe the petitioner has presented sufficient and adequate factual and legal grounds to justify us exercising the discretion granted us by statute and granting the petitioner's petition for declaratory judgment.

WHEREFORE, and in view of the foregoing, and for the reasons stated herein, the petitioner's petition for declaratory judgment is hereby denied. Costs of these proceedings are ruled against the petitioner. AND IT IS HEREBY SO ORDERED."

The petitioner excepted to the judge's ruling on the law issues and announced an appeal to the Honourable Supreme Court. The J. N. Lewis Estate, as the 3rd respondent, represented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, did not appeal. The Intestate Estate of the late J. N. Lewis, as 2nd respondents, represented by Samuel A. W. Freeman and Wesseh Munah, but who were dropped as representatives of the said estate, having been dropped as 2nd respondent, also did not appeal.

In its bill of exceptions, the petitioner/appellant alleged that the judge made several errors in his ruling on law issues. For the benefit of this opinion we herewith quote counts 1, 3, and 5 of the bill of exceptions.

"1. When on the 8th day of April, A. D. 2004, Your Honour denied petitioner's motion made on the record to hear petitioner's earlier motion for jury trial before hearing the law issues thereby in effect denying petitioner his right to jury trial which is inviolate under our constitution and statute."

"3. When Your Honour held that it was mandatory that the addendum to the lease agreement of 1973 should have been attached to appellant/petitioner's petition or reply despite the fact that the appellant gave notice as required by law he would produce same during trial."

"5. That Your Honour exceeded the limit of the discretion granted under chapter 43 of 1 LCLR in that you disallowed the appellant from presenting the addendum during trial, denied petitioner's right to jury trial, etc."

Although there were many issues raised by the parties, we consider that the relevant issues for determination of this appeal are:

1. Whether or not the trial judge erred in not disposing of the motion for jury trial before hearing and disposing of the law issues?
2. Whether or not it was mandatory for the petitioner to have attached to the pleadings the addendum of lease for which the petitioner had requested the court to declare valid?
3. Whether or not the judge abused his discretion when he dismissed the petition for declaratory judgment in his ruling on the law issues based on the pleadings filed?

We will dispose of the issues in the order stated above.

Regarding the first issue, i.e., whether or not the trial judge erred in not disposing of the motion for jury trial before hearing and disposing of the law issues, the records before us reveal that the petitioner filed two (2) separate motions for jury trial on January 27, 2003 and February 13, 2003, stating that there were issues of facts and allegations of fraud involved for the impartial determination of the case, and therefore demanded trial of the case by jury.

Notice of assignment was issued for disposition of law issues on April 1, 2004. When the parties appeared for the disposition of laws issues, the petitioner requested the court to dispose of the motion for jury trial before the disposition of law issues because, according to the petitioner, under the law, practice and procedure, where a motion is pending, said motion should be disposed of before the law issues are heard and determined.

The 1st and 3rd respondents, in resisting the said submission, stated that a motion for trial by a jury is a special motion that should be heard and disposed of after the court has passed on the law issues and ruled the matter to trial.

The court, in its ruling on the request of the petitioner, acknowledged the constitutional right of a party to have a jury trial but concluded that the law issues must first be disposed of and, if the court determines that there are issues of facts to be tried, then the motion for jury trial can be heard.

Did the judge err in refusing to hear and determine the motion for jury trial before the disposition of the law issues?

In its brief and argument before this Court in support of its contention that a motion for jury trial must first be heard and disposed of before the court can proceed to hear and dispose of the law issues in the main suit, the appellant relied on the case *Insurance Company of Africa v. Gipli*, 33 LLR 330, 334 (1985). The Court notes that there is no such case reported in 33 LLR 330, 334. In fact, the *Insurance Company of Africa v. Gipli* case is nowhere reported in 33 LLR, but rather in 32 LLR, and the relevant holding in that case is that: "A motion, being an application for an order granting relief incidental to the main relief sought in an action, must be entertained before the basic suit or issues raised in the action."

In its brief and argument before us on this point of law, the 1st respondents stated that the trial judge did not err and his ruling was proper, logical, and consistent with the practice and procedure in this jurisdiction that the court must first make a legal determination as to whether or not the matter should be ruled to trial, and if the court so determines, then it can hear the motion for a jury trial.

This Court says that the law relied on by appellant in the *Insurance Company of Africa* case is the law on motion in general and is not applicable to motion for jury trial. This Court determined in the case *Tradevco v. Cavalla Rubber Corporation*, 39 LLR 578, 583 (1999) "that an action has three (3) stages, the pre-trial, trial and post-trial. The pre-trial stage includes the commencement of the action and determination of pre-trial motions, which include summary judgment, motion to dismiss, motion to strike, disposition of law issues, etc."

We are of the view that a demand for jury trial is not a pre-trial motion and can be heard at any time before trial begins. Trial has been defined by this Court as the "presentation of oral or written evidence." *Id.,* at 583. The disposition of law issues is also part of the pre-trial stage of the proceedings and disposes of the legal issues raised and determines whether the factual issues should be tried.

When law issues are disposed off, the court determines the legal issues and may dismiss the action or rule it to trial of the facts either by the court or a jury. It is therefore logical that a motion for jury trial should be heard and disposed of after the court rules on the legal issues and rules that the issues of fact are to be tried. We are

in agreement with the position of the 1st respondents that it would have been improper for the court to have heard the motion for jury trial prior to disposing of law issues, for to do so would have presupposed that the judge would rule the case to trial when ruling on the disposition of law issues. The granting of a petition for declaratory judgment is purely discretionary and the court may either dismiss a petition for declaratory judgment on law issues or rule it to trial. This Court held in the case *Liberia Trading & Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency*, 39 LLR 272 (1999), syl.1, that: "Ordinarily, law issues are to be disposed of first, to be followed by the facts, and thereafter, a court is authorized to enter final judgment. However, in the case of a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessity for trial of the fact does not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts."

The judge, having exercised his discretion in dismissing the petition for declaratory judgment, as granted to him by Section 43.5 of the Civil Procedure Law, 1 LCLR 219, and the *Tradevco v. Brasilia Travel Agency* case, quoted above, the motion for jury trial became moot and the court did not in any way deny the petitioner of his right to a jury trial. Accordingly, this Court holds that the judge did not err in deferring the hearing of the motion for a jury trial after the disposition of law issues, since under the Civil Procedure Law the court is empowered to determine the sequence in which the issues in a case shall be tried.

The second issue for our consideration is whether or not it was mandatory for the petitioner to attach to the pleadings the addendum to the 1973 lease agreement which the petitioner requested the court to declare valid?

In count 1© of the petition for declaratory judgment filed by the petitioner, he alleged that while the lease agreement between Rosetta Watts Johnson and the petitioner was still in full force and effect, the parties executed an addendum thereto for an additional twenty-year term to commence at the end of the first thirty-year term, which was in 2003. The petitioner gave notice that he would produce the addendum during the trial.

The 1st respondents/co-appellees Rosetta Watts Johnson Intestate Estate and Rebecca Watts-Pierre Intestate Estate, in their returns at count 8, specifically denied the existence of any such addendum and challenged the appellant to produce said addendum. From January 3, 2003, when the petition was filed, up to April 8, 2004, when the law issues were disposed of, the petitioner still had not produced the addendum which he had requested the court, as a matter of law, to declare valid and of full force and effect.

The 1st respondents also alleged that in a petition for certiorari, dated April 24, 2001, which was submitted to the Supreme Court and argued by the petitioner's

counsel during the March, A. D. 2001 Term of Court, the petitioner con-firmed that the petitioner leased the subject premises for thirty (30) years. Count 9(d) of the 1st respondents' returns also referred to count 2 of a second petition for certiorari, dated January 2, 2002, filed by the petitioner's counsel on behalf of the petitioner, growing out of a proceedings in the debt court for Montserrado County and instituted by the 1st respondents against the petitioner, wherein the petitioner confirmed that the totality of the period of the lease was for thirty (30) years, commencing in 1973 and expiring on February 28, 2003, without mentioning any addendum.

The petitioner, in his amended reply, denied, amongst other things, that he ever acknowledged in any pleading that his leasehold right was limited only to the thirty-year period as alleged by the 1st respondents.

The 1st respondents, in their brief and argument before this Court, contended that the petitioner/appellant was required, as a matter of law and practice, to annex the said addendum which he requested the court to declare, as a matter of law, valid, legal, binding and in full force and effect, in order to comply with the "notice requirement" to afford the respondents the opportunity to review and attack the document.

The appellant/petitioner, in his brief and argument before this Court, stated that giving notice to produce the document at the trial was sufficient and therefore it was not mandatory to annex the document (i.e., the addendum to the 1973 lease agreement) to the pleadings.

In disposing of this issue, the trial court held that in order for the court to be able to pass on the validity of the addendum to the lease agreement, the addendum should have been annexed to the pleadings as all documents necessary to the proper determination of the case are to be attached with the pleadings. The trial court relied on this Court's holding in *Walker v. Morris*, 15 LLR 422, 430 (1963). The trial court also relied on the holding in the case *Cess- Pelham v. Pelham,* 4 LLR 54, 55 (1954), to the effect "that whenever a complaint is filed in which the plaintiff claims title to real property, a copy of the document upon which title is based should be filed therewith."

Other relevant portions of the trial court's ruling which we concur with and incorporate as part of this opinion are, as follows:

> "The court notes that the petitioner is vague about the specifics of this addendum. For example, he does not specify in what year the addendum was signed, only that it was signed sometime within the 30-year period (1973- 2003) of the original lease; he does not say whether the lessor, Rosetta Watts-Johnson, prior to her death in 1979 or her grantee, Rebecca Watts Pierre, prior to her death in 1990, executed the addendum, or whether the addendum was subsequently executed by the administrators of the Rebecca Watts-Pierre Estate;

nor does he specify the amount of the annual rental to be paid over the 20-year period of the addendum.

It is important to emphasize that in their returns, the 1st respondents emphatically and categorically denied the existence of any addendum and challenged the petitioner to produce it. Given the 1st respondents' specific denial, and the lack of specificity of the details of the addendum, the court is of the strong opinion that the document should have been attached as an exhibit to the pleadings. This would have made all these questions moot.

And the court notes that the petitioner had ample opportunity to have annexed the addendum, either by withdrawing and filing an amended petition and attaching the document as an exhibit, or alternatively, attaching it as an exhibit to his reply. Although the petitioner withdrew its reply and filed an amended reply to the 1st respondents' returns, the alleged addendum was still not attached.

We are of the opinion that the petitioner should have annexed the addendum to his pleading, thereby providing the 1st respondents with the required legal notice and an opportunity of attacking the document if it so desired. In the case *Garnett Heirs et al. v. Allison*, 37 LLR 611 (1992), syl. 8, the Supreme Court held as follows: "It is the rule of modem practice that when a pleading is founded on a written instrument, a copy thereof may be annexed and made a part of the pleading by reference as an exhibit." The requirement that notice be given an adversary is one of the most basic and an elementary principle of law in this jurisdiction and our Supreme Court has enunciated this principle in numerous opinions.

In *Karout v. Peal*, 28 LLR 254, 259 (l979), the Supreme Court held that: "The fundamental principles upon which all complaints, answers or replies, shall be construed, shall be that of giving notice to the other of all facts which it is intended to prove...."

Any claim or defense which a party relies upon to substantiate his cause of action or his defense is material, and should be specifically pleaded so as to give the opposing party notice of what the adversary intends to prove. *Intrusco v. Tulay and Dennis,* 32 LLR 36 (1984), syl. 3.

This Court is at a loss to see how we can be expected to make a definitive declaration of law that the addendum is valid and binding on the 1st respondents when we have not seen or reviewed this document. In *Nyumah v. Kemokai*, 34 LLR 230, 231 (1986), our Supreme Court ruled that: "Any matter not laid down in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decide questions of law when properly raised in the answer and pleadings."

In view of the above, we uphold the trial court's ruling that it was mandatory for the petitioner to annex to the petition for declaratory judgment the addendum to the 1973 lease agreement, which the petitioner had requested the court to declare valid and of full force and effect as a matter of law, in order to give the required notice to the adversaries, the respondents, for them to review and challenge the document if they so desired. Over the years, this fundamental principle of notice has been relied upon by the courts of this country and continues to be so under existing law. And we so hold.

The third and final issue that this Court will review and pass on is whether or not the trial judge erred or abused his discretion when he dismissed the petition for declaratory judgment in his ruling on the law issues, based on the pleadings filed?

The petitioner in these declaratory judgment proceedings requested the court to declare several agreements to be in full force and effect. Those documents were:

(a) The lease agreement and an alleged addendum to the lease agreement between Rosetta Watts Johnson and petitioner (we note that the said addendum was never attached to any of the pleadings filed by the petitioner);

(b) The lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis for sixty-three (63) years from 2003 to 2066, signed by Samuel A. W. Freeman and Wisseh Munah, administrator and administratrix;

(c) The lease agreement entered into for sixty-three (63) years entered into by and between the Intestate Estate of the late J. N. Lewis, represented by its administrators, E. Koffa Benson, Joseph N. Lewis and Deborah Tequah, and the petitioner.

It is very important to state here that the three (3) lease agreements that petitioner requested the lower court to declare valid and in full force and effect cover the same 1/8 acre of land that the petitioner is occupying. Two of the named parties/lessors represent the Intestate Estate of J. N. Lewis, and the third party/lessor is the Rosetta Watts-Johnson Estate, from whom the petitioner originally took possession of the premises. We also note that petitioner has paid rent to the third party/lessor for the last thirty (30) years, that is, from 1973 when he entered into a lease agreement with the late Rosetta Watts-Johnson to the present.

This Court held in the case *Liberia Trading and Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency*, 39 LLR 272, 282 (1999), relying on the provisions of Section 43.5 of the Civil Procedure Law: "That the legal standard in a declaratory judgment should not be entered if, it will not terminate the controversy in dispute." Also, Section 43.5, of the Civil Procedure Law, Rev. Code 1, I LCLR, 219 states clearly that: "The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding."

If the trial court had declared the rights requested by the petitioner, one wonders whether any declaration of validity by the court that three lease agreements running for concurrent tenancy covering the same property, and from three different lessors, would have terminated the dispute, especially where one of the agreements that petitioner requested the court to declare valid was never produced.

The other two agreements are agreements signed by the petitioner and two (2) sets of administrators for the J. N. Lewis Estate. One set of the administrators for the J. N. Lewis Estate had been dropped from the declaratory judgment proceedings because the court had determined that they had no legal authority to represent the estate.

The 3rd respondent, the J. N. Lewis Estate, represented by its legally recognized representatives, in its brief and argument before this Court, stated that the Estate had made representation in the lower court that the lease agreement which Deborah Tequah, Joseph N. Lewis and Koffa Benson signed with the appellant on September 29, 1995 to take effect in 2003 for 63 years, was null and void *ab initio* and of no effect because at the time of the signing of the agreement, none of them were qualified or competent to act for or represent the J. N. Lewis Estate. This decision was confirmed by this Court in an opinion delivered on July 22, 1997.

The 3rd respondent, in its brief and argument before us, informed this Court that when its legal representatives filed a motion to drop the J. N. Lewis Estate from the petition for declaratory judgment in the lower court, the J. N. Lewis Estate informed the lower court and also re-confirmed its contention before this Court, that the J. N. Lewis Estate had no claim or interest to the subject property for which the petitioner was requesting the court to declare said agreement illegally entered into valid.

Mr. Justice Morris speaking for the Court in the *Tradevco v. Mathies and Brasilia Travel Agency* case, quoted *supra,* stated "ordinarily law issues are to be disposed of first, to be followed by trial of the facts and thereafter a court is legally authorized to enter final judgment. However, in the instant case, the situation is different because this is a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessities for trial of the facts do not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts."

We are of the view that there was no material or genuine factual issue in dispute warranting the production of evidence in determining the issue of title to the demised premises, and in declaring the rights of the petitioner in the three separate agreements. Had the judge granted the petition for declaratory judgment as requested, he would have had to declare the three (3) separate lease agreements signed by three (3) parties for the same property valid and in full force and effect, which would have meant the following:

(a) Acknowledging that each of the three (3) parties had title to the same property;

(b) Acknowledging two (2) sets of administrators for the one J. N. Lewis Estate;

(c) Declaring an unavailable addendum to a lease agreement valid;

(d) Reversing the decision of the Supreme Court confirming the final judgment of the probate court revoking the letters of administration previously issued to the 2nd respondents to serve as administrators of the J. N. Lewis Estate;

(e) Ignoring the admission made on the records by the J. N. Lewis Estate, represented by the legitimate administrators (3rd respondents) that they have no interest in the demised premises and acknowledging that the 1st respondents, the Intestate Estates of Rosetta Watts-Johnson and Rebecca Watts-Pierre, were the legitimate and bona-fide owners of the property, the subject of these proceedings.

The trial judge, in his sound discretion, denied the petition for declaratory judgment, for to do otherwise clearly would not have terminated the controversy which is the objective of declaratory judgment. Rather, such decision would have made three separate parties legitimate owners of a single property, and thereby fail to terminate the controversy in dispute.

This opinion does not cover the issue of the validity or non validity of the addendum to the lease agreements allegedly existing between the parties, but merely affirms and confirms the judgment of the trial court, which denied the petition for declaratory judgment.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the trial court be affirmed and confirmed with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering the judge presiding therein to resume jurisdiction over this matter and enforce its judgment. And it is hereby so ordered.

Judgment affirmed.