Youssef Kashouh, a Lebanese Businessman of Monrovia, **St. Joseph Construction Company**, represented by its Authorized Representatives, **SHAM, Inc.**, represented by its Authorized Representatives and **Assam Shabity** of Monrovia, Liberia APPELLANTS VERSUS The **Heirs of the Late Mozart Bernard**, the **Late Emma G. Bernard**, the **Late Joseph Chesson** and the **Late Jeannette Gibson**, all of the City of Monrovia, Liberia APPELLEES

LRSC 8 (2011)

APPEAL FROM THE DEBT COURT, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA. JUDGMENT AFFIRMED WITH MODIFICATION.

Heard: November 3, 2010.A Decided: January 21, 2011.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

Montserrado County Debt Court Judge, His Honor, James E. Jones, on May 13, 2010, entered final judgment in a debt matter jointly instituted by the appellees. The appellees, plaintiffs in the court below, included the heirs of the Late Mozart Bernard, the Late Emma G. Bernard, the Late Joseph Chesson and the Late Jeannette Gibson.

By this final ruling, Montserrado County Debt Court held appellant/defendant, who is the authorized representative of SHAM, Inc., liable to appellees to the tone of UD612, 047.95, plus six percent legal interest as well as cost of court.

Appellees' claims arise from an agreement of lease executed on June 20, 1985 between St. Joseph Construction Company represented by a Lebanese Businessman, Youssef Kashouh (lessee) and appellees (lessor). The agreement provided for two periods, twenty (20) years certain and fifteen (15) years optional. Appellant became assignee when he purchased the lease hold interest of the lessee, St. Joseph Construction Company.

Appellant objected to Judge Jones' final ruling and thereupon addressed a nine count bill of exceptions to this Court for appellate scrutiny. The bill of exceptions seeks reversal of the final judgment on account of alleged major errors committed by the trial judge.

In consideration of a number of contentions raised and set forth in the bill of exceptions, this Court has deemed the following issues dispositive of this appeal:

ISSUES:

(1) Was appellant duly accorded his day in court consistent with the principle of due process of law?

(2) Does the filing of a petition for writ of prohibition legally halt proceedings before a respondent judge?

(3) Was the award of 612,047.95 (United States dollars) decreed in favor of appellees supported by the evidence adduced during trial?

(4) Is the rent due under the subject agreement of lease payable in United States dollars as a matter of law?

We will entertain these questions in the serial sequence they have been presented.

We must here bear in mind that the facts in the case at bar appear to show a relationship between the first two questions; firstly: *"whether appellant was accorded his day in court as contemplated under the principle of due process of law",* and secondly: (2) *"whether the filing of a*

petition for a remedial writ stays all further proceedings in an action."

As to the first issue on "day in court", appellant's contentions are set forth in the following counts 2, (two), 3 (three), 4 (four) and 5 (five) of the bill of exceptions as follows:

"2. That, this Cause of Action being one of Debt, where the testimony of Defendant, Azzam Shabity is so germane to the allegation contained in Plaintiffs' Complaint for the amount of US$612,047.95 sued for by plaintiffs, Your Honor erred in sharp contravention of Article 20, section (a) of the 1986 Constitution of Liberia relating to "due process" when Your Honor set the pace by continuously issuing out Notices of Assignments when Your Honor was duly notified that the defendant who is also the principal witness in these proceedings was without the bailiwick wherein legitimate reasons were given, yet Your Honor illegally granted Default against the Defendants and deprived Mr. Shabity the opportunity to appear and be heard as to whether or not he owes the Plaintiffs the amount alleged in their Complaint."

"(3)That, Your Honor contrary to the lines of opinions of the Honorable Supreme Court of the Republic of Liberia, wherein the Court has always held that Judges as disinterested party should always strive in their handling of cases which are brought before them, to maintain their positions as Judges and adhere to the principle of cool neutrality, Your Honor during the entire hearing of this case as indicated in count one (1) herein above acted prejudicial to the interest of Defendants; and also because Your Honor is aware that Mr. Shaibity is key not just a principal not just a principal witness in the case at bar, but that he is the Defendant according to Your Ruling his presence and defense for himself would have been very crucial for transparent justice, yet you ignored all of those factors and proceeded to grant a default judgment that is sharply prejudicial to Defendants interest."

"(4)That, Your Honor clearly demonstrated your abuse of the principle of the cool neutrality required of Judges in Your Honor's trial of these proceedings even though Your Honor was sent a valid excuse like other previous excuses on the 27th of April 2010 for continuance on April 28th 2010, due to the abrupt illness of Cllr. Lavela Koboi Johnson, who was without the bailiwick of Liberia and the prior engagement of Dlr. Samuel Nyanzeeguo who was scheduled to appear before Chambers Justice on the same self time that the hearing in the case at Bar was scheduled and that Attorney Joyce Reeves-Woods was also in Buchanan, Grand Bassa handling a case that had been scheduled long before the assignment in this matter was issued by Your Honor; [yet, Your Honor] erroneously ignored and rejected said valid excuse of April 27, 2010 and allowed Counsel for plaintiffs to make an application which set the pace by Your Honor's threatening a Default Judgment should the defendant not appear at a subsequent assignment when Your Honor knew that the Defendant would not be available on the time scheduled by Your Honor."

"(5)That, further to count four (4) herein above and consistent with Your Honor's threat to grant Default Judgment against Defendants, Your Honor again approved a Notice of Assignment to have the case heard just three days after the threat when Your Honor knew that it was impossible for the Defendant who is ill and in Lebanon to appear on said day and date; accordingly Your Honor's threat became ripened on April 30, 2010 and you erroneously granted Default Judgment against Defendant who had no opportunity to defend himself against a baseless claim by Plaintiffs; hence a reversible error was committed by Your Honor; and so prays."

In the aforementioned counts, appellant has primarily contended that he was robbed of the constitutional right to his day in court. According to appellant, co-appellee judge committed reversible error and directly contravened Article 20 (a) of the 1986 Liberian Constitution in relation to appellant's right under "due process of law". This is because, according to appellant, the judge continuously ordered issuance of notices of assignments when the court had been duly notified that appellant, as the principal witness in the debt action, was without the bailiwick of the Republic of Liberia. This notice to the court, appellant maintains, constituted legitimate and adequate reason for appellant's inability to be in the country in order to attend to the trial. Appellant through his counsel insists that notwithstanding this legitimate excuse, yet co-appellee judge proceeded illegally and granted default against appellant. Under the attendant circumstances, granting default judgment, according to appellant, effectively deprived

appellant the opportunity to appear, to be heard and to defend his interest especially in a debt matter where the amount being claimed by appellees as indicated in their complaint of March 4, 2009, is totally untenable.

Appellant has therefore accused the judge of acting prejudicial to appellant's interest. Appellant has submitted that Mr. Shaibity was not simply a material witness in the debt action but key principal defendant; his (appellant's) presence and defense of himself was fundamentally essential for the end of transparent justice. But in total disregard for the law of due process, maintained appellant, the judge proceeded in the manner he did quite to the detriment of appellant's interest.

Appellant has also contended that the Judge Jones flagrantly abused the venerated legal principle of cool neutrality required of every judge. He claimed the judge's lack of neutrality was evidenced by the manner in which he disallowed postponement of the trial even though he was sent valid excuses for continuance especially those of April 27, 2010 and April 28, 2010, similar to others previously submitted. Appellant insists that those excuses were prompted by the abrupt sickness of Counselor Lavela Koboi Johnson, necessitating his travel out of Liberia as well as the prior engagement of Counselor Samuel Nyanzeeguo. According to appellant, CIIr. Nyanzeeguo was scheduled to appear before the Justice in Chambers at the same time Judge Jones had scheduled hearing for the same self case. The Firm's third lawyer participating lawyer in the debt case, Attorney Joyce Reeves-Woods, according to counsel for appellant was also unavailable as she was in Buchanan, Grand Bassa on account of a previous schedule.

Further lamenting what he saw as prejudice, appellant complains that Judge Jones nevertheless ignored all these valid excuses, allowed appellees' counsel to make application thereby setting the foundation for said judge's threat to grant default judgment should appellant fail to appear upon next notice assignment. For appellant, the judge's conduct demonstrated glaring prejudice and exhibited, without rational argument to the contrary, said judge's utmost lack of neutrality. Infact three days after issuing the threat, co-appellee judge, according to appellant, approved a notice of assignment to hear the case when the judge knew of appellant's ill state of health in Lebanon and the practical impossibility of his appearance to attend to the hearing on the scheduled date. Appellant has therefore insisted that the granting of default judgment by co-appellee judge under these circumstances gave appellant no opportunity to defend himself against appellees' unfounded claim; hence a final ruling arising from these circumstances was reversible error.

But both in their brief and during argument before this Court, appellees' counsel quite to the contrary has contended that there is no basis in law or in fact to authorize reversal of Judge Jones' final judgment. Counsel for appellees further explained that appellant was duly summoned; that appellant infact appeared, filed an answer and duly participated in the disposition of law issues after which both parties proceeded to trial.

According to counsel, evidence of said participation is that appellant's lawyers cross examined appellees/plaintiffs' two witnesses, as shown in the certified records before this Court. Further thereto, according to appellees, appellant had his first witness duly qualified, taking the stand and regularly testifying. As indicated by certified records, said witness deposed on October 1, 2009, was cross examined by appellees/plaintiffs' counsel and discharged with the thanks of court.

But what truly transpired, appellees narrated was that prior to and thereafter, and at the instance of appellant, several continuances were granted by the Debt Court especially between February 23' 2010 and April 28, 2010. All these continuances, counsel for appellees contended, were mainly intended to secure the attendance of Mr. Asam Shabaity, appellant's so called principal witness. After all these postponements, the witness nonetheless failed and elected not to appear. Even in the face of these unfounded and baseless perennial requests, the judge reassigned the case from April

28, 2010 for Friday, April 30, 2010. But again at the call of the case on April 30, 2010, one of counsel for appellant, Samuel Nyanzeegbuo, appeared and this time informed the court that he had filed a petition for writ of prohibition at the Supreme Court and on this account requested the court to halt all further proceedings in the case. It was this latest application for postponement for reason that a petition for remedial writ was before the Justice in Chambers that counsel for appellees vigorously resisted.

Under the facts and circumstances obtaining, counsel for appellees maintains that the trial court could not but uphold appellees' resistance and order the trial proceeded with. According to appellees, appellant's lawyer however disobeyed the judge's order to proceed, refused and elected not to produce additional evidence or to participate in final argument in the case. Proceeding as the court did cannot therefore be regarded either as depriving appellant of his day in court or a justifiable legal basis to accuse the judge of partiality as it is certainly appellant who abandoned the opportunity afforded him by law to produce evidence in his own behalf.

This Court has accorded careful consideration to appellant's contentions as well as the counter arguments put forth by appellees' counsel. We must here indicate that if there is anything in the certified records to support appellant in his two principle contentions; that: he was *denied his day in court;* that the trial judge was *impartial,* such evidence has escaped our most careful scrutiny and diligent review. Appellants two contentions are wanting both as to the facts in the case at bar and the laws applicable thereto. They therefore cannot be sustained.

In an opinion of this Court by Mr. Justice Belleh in *Express Printing House, Inc. and Aziz Shabani v. Reeves and Bank of Credit commerce International, (BCCI),* "day in court" was defined as *"the right and opportunity afforded a person to litigate his claims, seek relief, or defend his rights in a competent judicial tribunal." According to this Court, "day in court" is also "Whe time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf."*

Further elucidating the meaning of "day in court", the Supreme Court said: *"This phrase, [day in court] as generally used, means not so much the time appointed for a hearing as the opportunity to present one's claims or rights in a proper forensic hearing before a competent tribunal."*

It was therefore held by the Supreme Court in said case that *Kra] litigant has his day in court when he has been duly cited to appear and has been afforded an opportunity to appear and heard."* 35 LLR 454, 464 (1988).

The same principle is discussed and applied under similar circumstances in the case: *Paterson, Zochonis and Company v. Flomo et. al,* 20 LLR 404, 412 (1971).

Also in: Dollar v. Cole, 25 LLR 67, 72, (1976), Mr. Justice Horace speaking for a unanimous Court said: *"...before a case is disposed of there must be a showing that an assignment was made, notice of assignment signed by the Counsel for the party or parties therefrom and returns to that effect made by the Ministerial Officer."*

Evidenced by the records, appellant has not disputed that he was duly summoned. Nor has appellant contended that he did not receive or acknowledge receiving all the assignments for hearing in the case. Also not in issue is appellant appearing in court and participating in the trial upon assignments issued for said purposes. What appellant contends essentially is that the judge's denial of his application for continuance on April 30, 2010, after the same judge had granted numerous continuances literally without number, all in favor of appellant, was reversible error.

We are in full agreement with the judge's denial of appellant's application of April 30, 2010. Later in this opinion, we will give some attention to the legal sufficiency of said application.

Regarding the issue of continuance, review of the case file reveals that an action of debt was filed against co-defendant/appellant on March 4, 2009. Disposition of law issues scheduled for May 20, 2009 was rescheduled to May 27, 2009 at the instance of appellant's counsel. Also, hearing on motion to modify ruling was postponed from June 26, 2009 to the 29th June on application made by one of appellant's lawyers, Counselor Lavela Koboi Johnson. When a notice of assignment to commence trial on August 11, 2009 was issued and served on the parties, CIIr. Johnson again requested additional continuance.

Applying for continuance in his August 5, 2009 communication to the Debt Court captioned *"Letter of Excuse and Request for Continuance",* CIIr. Lavela Koboi Johnson informed the court that his client and authorized representative of SHAM Inc., Mr. Asam Shabeity was *"currently out of the bailiwick of the Republic of Liberia attending to the illness of his sick father in Lebanon."* Cllr. Johnson further informed the Debt Court judge that his client has said that *"he needs to be present and in attendance at the trial of the aforementioned case."* In the referenced communication, we note also Cllr. Johnson's assurance to the court that his client was expected to return to the country *"in early September..."*

This Court wonders the legal grounds upon which appellant's application was founded. Counsel for appellant offered no legal reason to justify the necessity of his client's personal presence at the trial. As the records show, appellant having been duly summoned, had filed an answer followed by disposition of the law issues. For appellant to have sought continuance of proceedings in a civil case for reasons that appellant was caring for his sick father, as humane as that may be, is, *strictu sensu,* untenable.

Far back in 1906, the Supreme Court of Liberia held that continuance shall be granted for *"legal reasons"* holding as follows: "The law governing continuance has frequently been expounded by this Court and we have uniformly held that where it is made apparent that to proceed with the trial of a case substantial justice would not be meted out to all parties concerned, the application should not be refused, provided it is founded upon legal grounds. Among the grounds commonly admitted as good grounds for granting a continuance may be mentioned the following: (1) Absence of material witness. (2) Inability to obtain the evidence of a witness out of the State, in season for trial. (3) Illness of counsel, etc." *Dyson v. Republic,* 1 LLR, 481 (1906), text at page 482.

Under our laws, the absence of a material witness to attend at a trial is a legal ground upon which continuance may be properly granted. Under appropriate proper circumstances, legal authorities are generally agreed that refusal to grant continuance tends to rob the court of the ability to met out substantial justice to the parties. But where there is showing that the request for continuance is made for the purpose to *"baffle the suit or defeat justice",* it is no legal error on the part of the judge not to grant continuance. *Wright v Bacon et. al ,* 1 LLR 477, 478 (1906). Similarly, according to Law Writers, a tribunal of justice is justified where it refuses to allow postponement which is *"sought merely for the purpose of vexation and to delay the administration of justice."* Once the parties have been duly summoned and have appeared, as to the time of hearing of a case *"cannot be made to depend on the whim or convenience of a litigant".* 17(Corpus Jurist Secundum) C.J.S.

Appellant's application of August 5, 2009 for postponement, herein above mentioned, was vehemently resisted. In the resistance, appellees' counsel observed that when appellees/plaintiffs requested assignment for trial of the case, they duly informed the court that their first witness resided in the United States of America. The lawyer also explained that the court was further notified that the witness will be coming to Liberia for a period of one week for the singular purpose of testifying in the trial. It was also duly brought to the attention of the court that the witness will be in the country during the week of August 10, 2009 and scheduled to return to the United States on August 16, 2009.

In light of this information, appellees requested the court to deny the application for continuance as it was the appellees' witness who was expected to take the stand and testify.

By a ruling dated August 10, 2009, which ruling we here affirm as proper and legally correct, Judge Jones denied the application for reason that the grounds advanced by appellant's counsel did not legally justify continuance of the scheduled trial. Consequently on the following day, August 11, 2009, appellees' first witness deposed, was cross examined and subsequently discharged. This was followed by appellees' second witness.

Meanwhile, while appellees' first witness was testifying on August 11, 2009, appellant's counsel fled to the Justice in Chambers seeking a writ of prohibition to restrain co-respondent judge from proceeding with the trial.

The records before this Court are not reflective of the outcome of the conference convened by the Chambers Justice, Her Honor Gladys K. Johnson in consideration of appellant's petition. It is observed nevertheless that following said conference, no further hearing was had in the case until almost one month thereafter. The notice of assignment thereafter issued was on September 9, 2009 for continuation of the trial on September 14, 2009.

There again on the schedule date for resumption of the trial on September 14, 2009, appellant's counsel moved the court for continuance. On the minutes of court, appellant's counsel stated as follows: *"Defendant at this stage begs Your Honor and this Honorable Court for a continuance of trial on the 17 th day of September, A. D. 2009, to be able to produce their main and principle witness. And submit."* Said application was granted and the trial accordingly continued.

Appellant's first witness took the stand on September 17, 2009. The subsequent hearing scheduled for September 24, 2009 was again continued to October 1, 2009 at the instance of appellant's counsel. Reason provided by the lawyer for the request to continue the trial was that *"other lawyers of the firm are out of the bailiwick of Monrovia due to previous assignments."* Unlike other applications for continuance, this time appellant's excuse was supported by a medical certificate tending to certify that the lead lawyer, CIIr. Lavela Koboi Johnson suffered from Glaucoma.

Yet at the call of the case on October 1, 2009, counsel for appellant again moved the court for continuance of the proceedings. Amongst reasons submitted to justify the witness' absence was that the witness had to make an emergency travel to United Arab Emirates to attend a board meeting of his telecommunications business. On this note, the trial was indefinitely continued as appellant's counsel could not say when their client will return to Liberia. The records before us also reveal that from October 1, 2009 to February 2010, a period of at least five months, no hearing was had in the case.

When the next assignment was duly issued on February 19, 2010 for continuation of the trial on February 23, 2010, Century Law Offices once again wrote requesting continuance on the scheduled date for the hearing. The reason offered this time was that appellant's lead lawyer had travelled to Voinjama in preparation for the Liberian National Bar Convention. We however note that no mention was made by attending appellant lawyer why other lawyers of the Century Law Offices could not attend to the assignment.

But as lawyers are expected to be in attendance of the Annual Convention of our fraternal organization, again this request was granted.

The records further indicate that when the case was subsequently called for hearing, counsel for appellant again informed court that his client was ill.

In his letter filed March 25, with the Debt Court requesting for continuance, appellant's counsel wrote giving the following reasons for the request:

"1.That, our client who is the principle witness and to take the stand is yet outside the bailiwick of the Republic.

"2. That, our client's prolonged stay outside the bailiwick has been due to his ill health for which his doctor recommends that he completes full treatment before returning to Liberia. Attached herewith and marked exhibit "D/1" is a medical certificate from defendant's doctor in Lebanon to form cogent part of this request for continuance.

"3. That, counsel for defendant is making this request in extreme good faith and that immediately the defendant returns to Liberia, counsel says that they are prepare to continue these proceedings and that counsel also promises to duly inform Your Honor and this Honorable Court on any information regarding the return of the defendant."

Counsel for appellant also appeared in court and requested continuance for a period of one month. Supporting his application by two separate medical certificates, counsel submitted as follows:

"Counsel for defendant therefore pray Your Honor, that subsequent to one month as indicated by the two certificates, they are assured that defendant will be available within the bailiwick of the Republic of Liberia and that that trial shall continue. And respectfully submits."

Overruling appellees' objection to this latest application for continuance Judge Jones made the following ruling:

"Counsel for plaintiff has rightfully challenged the medical certificates which carried nothing on their faces to authenticate them in keeping with law. This court will nevertheless grant the request for continuance for one calendar month with the hope and expectation before the lapse of a month and in keeping with defendant's request the witness will be present in court to testify. Should the witness not be present within the time allowed them and in that case, this court will have no alternative but to proceed. The trial of the case is hereby postponed pending regular notice of assignment. AND IT IS SO ORDERED."

But again when the case was scheduled for hearing on April 28, 2010, Counselor Samuel Nyanzeegbuo of the Century Law Offices requested continuance. Reason supplied was that a citation had been served upon him for a conference with the justice in chambers on the same self matter and on the same day and hour. The case again was postponed and a notice of assignment issued for continuation of the trial on April 30, 2010.

At the call of the case for resumption of trial on April 30, 2010, the witness failed to appear. Instead, his counsel informed the court that a petition had been filed for a writ of prohibition to halt the trial due to the continuous illness of appellant. It must be noted here that no medical instrument was proffered in support of this latest request.

In view of the circumstances herein narrated, the judge granted appellees' application to enter default judgment against appellant. The judge then ordered the trial proceeded with holding that the deliberate failure by appellant to proceed to trial entitled appellees to default. Appellees' counsel then presented their side of the case and a default judgment was entered when appellant's counsel refused to proceed accordingly. On May 13, 2010, a final ruling was entered adjudging appellant liable in the debt action.

We are in full agreement with the far belated position taken by co-appellee judge. His ruling denying appellant's application is supported by law and therefore sustained by this Court.

Section 41.4 of I LCLR, title I (Civil Procedure Law) authorizes a judge upon application to enter default judgment against a defendant who fails to appear, plead, or proceed to trial. Rule 7 of the Revised Rules of Court further supports Judge Jones' ruling entering default judgment in favor of appellees under the facts of this case.

This Court cannot therefore accept that appellant was not duly accorded his day in court as contemplated by the laws of the land. For all intents and purposes, both the perennial absence of appellant as well as the refusal of appellant's lawyer to further participate in the trial cannot be deemed to be for good cause in the contemplation of law. Infact further review of the records of this case reveals that appellant simply desired to baffle the trial.

Let us consider the following facts as a basis for our conclusion in this respect.
(1) The records indicate that when the case was called for hearing on March 22, 2010, on March 26, 2010, counsel for appellant again informed court that his client was ill. He submitted:

"1. That our client who is the principle witness and to take the stand is yet outside the bailiwick of the Republic.

"2. That our client's prolonged stay outside the bailiwick has been due to his ill health for which his doctor recommends that he completes full treatment before returning to Liberia. Attached herewith and marked exhibit "D/1" is a medical certificate from defendant's doctor in Lebanon to form cogent part of this request for continuance...."

We must remark that the medical certificates attached to the application of March 25, 2010 for continuance, containing allegation of illness of appellant, were unverified. Apart from these certificates originating from a foreign jurisdiction, an affidavit is mandatory in our jurisdiction in a case where what is being alleged is not a fact of record before the trial court. *Ksshouh v. Manly-Cole* 15 LLR 554, 558 (1964). In submitting the "medical certificates" to the trial court, alleging that appellant could not attend the trial on account of sickness, counsel for said appellant failed to comply with this legal requirement. Under the circumstances, the judge was under no legal duty to give these so-called medical certificates any legal credence.

But there is a more fundamental issue which appears to show an attempt to mislead the court. Examination of the second medical certificate shows that said certificate was reportedly issued by a Nabil A. Salhab, M.D., General and Colorectal Surgery, Laparoscopic Surgery. Its contents are as follows:

"Mr. Sabeity has recurrent urine infections and renal stones needs proper antibiotics for around one month or six weeks."

The medical certificate aforementioned and purportedly signed by Dr. Salhab and addressed to Appellant Azzam Sabeity was transmitted from fax number +961 1454150 in Lebanon on March 25, 2010 at 04:16pm. On the face of the certificate however, we have observed it was purportedly signed by Dr. Salhab on April 7, 2010. This means that if this certificate were anything to go by, then clearly the medical instrument was transmitted to Liberia about thirteen (13) days prior to Dr. Salhab affixing his signature thereto on April 7, 2010.

We find such conduct by any party litigant as a great disservice to the administration of justice as well as offensive to the ethics of the legal profession. It materially violates the Oath of our profession never to seek to mislead the court.

Under the vexing circumstances herein narrated, this Court is at loss how a reasonable argument could be made that appellant was not accorded his day in court. As the laws controlling dictate, appellant was duly summoned; this fact is not in dispute. Appellant also filed an answer to the complaint and participated thereafter in the disposition of

the law issues. Appellant also participated in the trial by cross examining the two witnesses deposed by the appellees. None of these facts is being denied by the appellee. Further, appellant's first witness, at appellant's own instance, took the stand, testified, was directed, cross examined and subsequently discharged with the thanks of court.

Throughout the trial appellant succeeded in what appears to be an exercise of perennial postponement of the trial for a considerable period of time. Yet his material witness failed to show up one promise after another. This Court takes note of a particular instance during the course of the trial when the "material witness" was in the country but elected to leave to attend, according to counsel, a telecommunication board meeting in the United Arab Emirates. Yet after one month of continuance as requested by counsel for appellant, again the material witness could not show up.

When the trial judge finally refused to grant appellant's application for postponement on account of a petition being filed for remedial writ, appellant then accused the judge of denying him his day in court and also being prejudicial to appellant's interest. This Court therefore disagrees with appellant. Appellant's contention on this point is simply untenable.

Proceeding to the next point in support of our holding, we address the related question whether the filing of a petition for a remedial process legally halts proceedings before a respondent judge.

We recall that a petition seeking remedial writ was said to have been filed by appellants' lawyer, Counselor Nyanzeegbuo. At the call the case on April 30, 2010, Counsellor Nyanzeegbuo informed the judge that he had applied for a writ of prohibition and requested the court to halt the trial. He submitted as follows:

"At this stage, counsel submits and says that he begs to inform this court that a petition for a writ of prohibition has been duly filed with the Supreme Court justice in chambers to prohibit and halt Your Honor and this court from proceeding in the way and manner the case has been proceeded with in the wake of the requests made by petitioners counsel on ground of the continuous illness of the principal witness who is without the bailiwick of this Republic and has not returned into the country to take the stand and testify in these proceedings as justice of our country demands. And submits."

Count 8 of the bill of exceptions as stated below forcefully expresses appellant's contention:

(8) *That, Your Honor inadvertently erred when you proceeded to render a final judgment on May 13, 2010 in this case at bar when there is a prohibition pending before Chambers Justice Ja'neh undetermined for which Your Honor was duly notified and to do what Your Honor did is not only an error, but contemptuous and prejudice against the interest of defendants; hence, a reversible error."*

Principally, counsel for appellant seeks to give the impression that the mere filing of a petition for a remedial process legally stays all further proceedings in the lower court. Counsel for appellant however has failed to cite any law in support of this contention.

Countering, appellees' counsel submits that it is elementary and no judge will receive a citation or writ or stay order from Chambers Justice and yet proceed with trial. According to counsel, to proceed in the face of a stay order by a Justice in Chambers is utterly contemptuous. Counsel contends that no such stay order was ever issued and the judge therefore committed no error by continuation of the trial.

Chapter 16 of I LCLR, title I (Civil Procedure Law) (1972) generally governs remedial processes in our jurisdiction. Under this Chapter, the filing of a petition for a remedial writ, which commences a special proceeding before a Justice in Chambers, is simply an application somehow similar to addressing an application to a judge for relief. Until the tribunal acts thereupon, the relief sought could not be said to have been issued nor relied upon as a matter of law. Remedial writs sought from the Chambers Justice are in

this category.

Also, the filing of a petition for provisional process before the Justice in Chambers, as in the case at bar, imposes no duty on the Justice to order the issuance of a citation. Such an order to the Clerk of the Supreme Court to issue a citation directing the parties to appear for a conference, or the Justice declining to order the parties cited, is strictly done within the exercise of the Justice's judicial discretion. Cooper and Watamal v. Keita 41 LLR 36, 40 (2002).

Clearly, it can be concluded that even where a citation has been duly addressed to a trial judge but containing no stay order, the citation serves no legal ground to halt ongoing proceedings. A judge electing to suspend proceedings upon receiving citation to attend a conference with the Justice in Chambers does so discretionarily and often in due difference to the Honorable Supreme Court. But legally speaking, there is no duty on the part of said judge, in the absence of "stay order", not to conduct further proceedings in the premises.

We therefore fully concur with appellees' counsel that the Judge Jones committed no error when he proceeded with the trial while a petition for writ of prohibition was pending before the Chambers Justice.

The next issue for our consideration is whether the amount of 612,047.95 (United States Dollars) awarded to appellees is supported by the evidence adduced during trial.

In counts seven (7), eight (8) and nine (9) of the bill of exceptions, appellant submits as follows:

(7) That, Your Honor erred in your ruling to have ruled that the amount sued for by plaintiffs which is US$612,047.95 constituted US$34,664.22 as aggregate yearly six (6) percent statutory interest without first establishing as to when the plaintiffs right of action accrued and also that the plaintiff refused and neglected to show Your Honor any undertaken of a sum certain by the defendants for which an action of debt may lie as provided for by Law, yet you inadvertently got persuaded by plaintiffs' miraculous talent in mathematical calculation which has no basis in Law to have accepted the figure of US$612,047.95 being claimed by plaintiff; and ignoring totally, the Lease Agreement between the parties which is the basis of any debt action, without which, the plaintiff would have had not privy with the defendants, hence a reversible error has been so grossly committed by Your Honor; and so pray.

(8) Further, Your Honor made a reversible error to rule that "defendant SHAM, Inc. is herby ruled and adjudged liable to plaintiffs in the amount of US$612,047.95 plus six percent legal interest plus cost of court"; Your Honor not only made an error but that your ruling carries with its serious ambiguities in that: (1) Your Honor totally agreed with plaintiffs in the calculation of their six percent legal interest per annum which totaled US$34,664.22 and you are again assigning in your ruling against the same defendant, an amount of six percent legal interest and (2) Your Honor refused and neglected to show any law to buttress your ruling that infact the plaintiffs are entitled to the calculation of their purported six percent legal interest as calculated by the said plaintiffs without a convincing showing as to the time when the right of Action accrued to the self plaintiffs and the basis in Law; accordingly your said inadvertently ruling contains a reversible error; and so pray."

(9) Further, Your Honor made a reversible error to rule that "defendant SHAM, Inc. is herby ruled and adjudged liable to plaintiffs in the amount of US$612,047.95 plus six percent legal interest plus cost of court"; Your Honor not only made an error but that your ruling carries with its serious ambiguities in that: (1) Your Honor totally agreed with plaintiffs in the calculation of their six percent legal interest per annum which totaled US$34,664.22 and you are again assigning in your ruling against the same defendant, an amount of six percent legal interest and (2) Your Honor refused and

neglected to show any law to buttress your ruling that infact the plaintiffs are entitled to the calculation of their purported six percent legal interest as calculated by the said plaintiffs without a convincing showing as to the time when the right of Action accrued to the self plaintiffs and the basis in Law; accordingly your said inadvertently ruling contains a reversible error; and so pray."

In the counts recited above, counsel for appellant has contended that appellees failed to produce evidence sufficient to sustain the claim set forth in their complaint. Counsel has accused the judge of simply recounting and restating the figures submitted by appellees in their original complaint and affirming and awarding same to appellees, contrary to the laws controlling.

Further, counsel has also argued that the law governing compound interest was misapplied and abused by the judge in his final determination of the figures awarded to appellees. To support his contention, appellant has essentially relied on two cases; GoII v. Servicetecnic Corporation (SERVO) 32 LLR 140 (1984) and Dennis v. Refell et. al, reported in 9 LLR at page 310 and decided in 1947. According to counsel, Judge Jones committed reversible error when he failed to heed the principle enunciated in the Dennis case which, he argues, specifically disallows compound interest.

But countering, appellees have assumed the position that the failure to pay each installment of rent when it became due, statutorily attached 6% (percent) interest per annum. According to appellees, application of the statute justifies the judge's ruling concluding appellant indebtedness to the appellees in the aggregate amount of US$612,047.95.

Certified records before this court reveal that both in the complaint as well as the answer filed thereto, the parties appear to acknowledge, agree and accept the total principle amount payable to each of the appellees composing of eight (8) groups of heirs, to be US$43,750 (United States dollars forty-three thousand seven hundred fifty). It is therefore not difficult to see that when the accepted unit figure is accordingly multiplied, one arrives at a total figure of US$350,000.00 (United States dollars three hundred fifty thousand). This amount covers the period from June 20, 1985, the date of signing of the agreement of lease executed between the parties, to June 2009. Appellees also deposed two witnesses who testified and were cross examined in support of their complaint.

Appellees also attached a Statement of Account to their pleadings detailing their claims. In the statement, appellees mathematically calculated what they believe to be the full obligations including the legal interest. For the benefit of this opinion, we have reproduced herein said Statement of Account as submitted by appelles.

[Please see pdf file for details]

Total Amount overdue and unpaid (Principal + Interests) 612,047 95

It is appellant strenuous contention however that he has faithfully discharged almost all rental obligations for the same period up to and including 2009, save a small balance; that the only balance amount appellant owes is US$150,937.50 (United States dollars One Hundred Fifty Thousand Nine Hundred Thirty-Seven fifty cents). Appellant claims that even the said balance was not fully settled as a result of a disagreement between the parties on the currency of payment. Appellant however failed to introduce evidence to substantiate his assertion of full settlement. During the trial, appellant simply presented a total number of four (4) receipts totaling US$16,250.00 (United States dollars sixteen thousand two hundred fifty) in evidence of payments. So accepting these receipts are correct and subtracting same from the total of US$ 350,000.00 due as at June 2009, a balance obligation remains to the tone of US$333,750 (United States dollars three hundred thirty-three thousand seven hundred fifty) due to appellees, plus statutory interest.

But this Court desires to state that under the circumstance where appellant has claimed that full rental obligations have been discharged, it becomes the duty of appellant to produce evidence in support thereof. This is because the negative averment that no rents are owed lies peculiarly within the appellant knowledge; who else ought to have the pertinent records to prove that all the payments contended by appellant have duly been made?

Section 25.5 (1), I LCLR (Civil Procedure Law), Rev. Code 1, under the caption, *BURDEN OF PROOF,* provides:

"(1) Party having burden. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party."

Further analyzing appellant's reliance, we do not believe that the facts in the *Dennis* case are analogous to those in the case at Bar. A review of the *Dennis* case shows that during the process of enforcement of a decree rendered against Mortgager Dennis in a foreclosure of a mortgage, Dennis took exceptions to the enforcement of the decree. Thereupon he filed a petition for, and a writ of certiorari was granted.

Entertaining the petition, two essential issues were addressed by the Supreme Court. (1) the legal propriety of the judicial sale of two parcels of land when it was apparent on the face of the decree that the amount realized from the sale of one house was adequate to satisfy the legal demands against the Mortgager/Petitioner Dennis; and (2) the assessment and collection of compound interest on the mortgage sum.

Addressing these, the Supreme Court expressed doubt as to the legal propriety of subsequent sale of the other two lots of land. The Supreme Court held:

"Where land that is to be offered for sale on foreclosure of a mortgage consists of several distinct lots or tracts, the land should usually be offered for sale in parcels and not in enmasse, and it has been said that if the land consists of a single tract or body and is susceptible of division without injury, and the sale of the whole is not necessary to satisfy the debt, it should be divided, and only so much of it offered at one time may be necessary to satisfy the judgment, interest, and cost..."

Overturning the lower court's decision, the Supreme Court held:

"The law does not favour compound interest or interest on interest; and the general rule is that in the absence of contract therefore, express or implied, or of statute authorizing it, compound interest is not allowed to be computed on a debt."

The Court continuing said:

"It does not appear, from the mortgage deed and other instruments relating thereto, that there ever was an agreement for the assessment of compound interest on the mortgage sum, barring the instrument issued by petitioner, as Mortgager, to Helen Reffel, one of the respondents, as Mortgagee, subsequent to the execution of the mortgage contract wherein because of his desire at the time to obtain an extension of time for the discharge of the mortgage, he then added the then accrued interest to the principle sum of the mortgage and made another obligation for interest on the aggregate sum. This, of course, cannot be construed as an implied contract or agreement that compound interest be little computed."

The facts in the *Dennis* case are therefore distinguishable from the current case. In the case under review, a legally executed and binding contract exists, obligating appellant to pay rent on the first legal day of each year during the life of the agreement of lease. From the execution of this agreement on June 20, 1985 to June 2009, a period of twenty-four (24) years, appellant is said o be delinquent, and on several demands, woefully failed to settle rental obligations under a valid agreement to appellees. This failure, to our mind, created a debt which is factually and legally ascertainable.

As regard assessment of compound interest, the lease agreement, subject of the debt action provides the following:

(a) For the 1 st five years, an annual rental of US$6,500.00

(b) For the 2nd five years, an annual rental of US$7,500.00

(c) For the 3rd rental, an annual rental of US$10,500.00

(d) For the 4th year, an annual rental of US$17,500.00.

The agreement of lease further provided that *"the 1st 5 years rental shall be paid in advance, and after the expiration of the 1 st 5 years on every first legal day of each year during the life of this agreement..."*

As to this circumstance, section 45.61(2) of I LCLR, title I (Civil Procedure Law) relative to interest, reads thus: *"Date from computed. Interest shall be computed from the earliest ascertainable date the claim existed, except that interest upon damages incurred thereafter shall be computed from the date incurred."* While sections 45.62 and 45.63 under the same chapter respectively speak to: *"Interest upon money judgment."* provides that: *"Every money judgment shall bear interest from the date of its entry"* and; *"Interest shall be at the rate of six percent per annum, except where otherwise prescribed by statute or by agreement between the parties."*

To the mind of this Court, specifically under the laws controlling, assessment of interest from the earliest ascertainable date a claim exists, as when the rents became due in the case at bar, is legally correct. Strict application of the statutory provisions above quoted settles the question as to when rents were due; and failing at which time the statutory annual interest of six percent (6%) may be properly assessed and imposed.

We are therefore unable to neither accede nor sustain appellant's argument that the evidence does not support the conclusion reached by the trial judge. Said contention is, to say the least, flimsy and unmeritorious.

Be as it may, this Court has re-examined appellees claims both as to the laws and the facts of the case based on the records certified to us. Our review of the mathematics produces a figure slightly different from those final figures Judge Jones awarded. Accordingly, the judgment award is herby reduced to US$556,289.55 (United States five hundred fifty-six thousand two hundred eighty-nine dollars and fiftyfive).

The Statement of Account as modified by this Court is contained in this opinion as shown below:

Bernard Estate Statement For Property at Corner at Benson & Randall Streets As Per Lease Agreement

[Please see pdf file for details]

TOTAL AMOUNT OVERDUE AND UNPAID (PRINCIPAL + INTERESTS) US$556,289.55 (United States five hundred fifty-six thousand two hundred eighty-nine dollars and fifty-five cents)

We entertain the final question whether rent due under the agreement of lease executed between the parties at bar is payable in United States dollars as a matter of law. When the parties signed this agreement of lease in 1985, the annual rental payments were prefixed by a dollar sign ($). However, the agreement of lease does not specify in which of the two currencies rental payments should be made. It was therefore not surprising that the records before us reveal that appellant in fact does not deny discharging some rental obligations to appellees in United States currency.

We desire to remark here however that both Liberian and United States dollars appear to carry equal purchasing powers at the time. As a result, it is understandable that no material question was raised at said time as to what actual benefits will be enjoyed or obligations to be accrued in respect to currency. There are tons of similarly situated agreements and contracts in our jurisdiction.

We note as a general historical fact that the National Bank of Liberia — a predecessor institution to the Central Bank of Liberia — introduced the Liberian dollar coin as well as the Liberian dollar note in 1982 and 1989 respectively. The bank issued regulation at each introduction of the Liberian dollar to the effect that the local Liberian dollar continues to be legal tender on par with and interchangeable on its face with the United States dollar. The regulation as issued also makes it illegal for anyone to refuse Liberian dollar from a person desirous to discharge obligations therein, be it private or public. But in the case at bar, the issue as to which currency should apply against the back drop that the agreement of lease under review was unclear, has been raised. The records before us indicate that this issue was one main factor for breakdown in the parties' attempt at resolution short of litigation.

Howbeit, this Court, in the case Marie E. Leigh-Parker v. The International Bank (Liberia) Limited, decided during the March Term 2007 addressed the question as to which currency obligation arising from similar facts and circumstances may be properly settled.

In that opinion by Mr. Chief Justice Lewis, this Court held that a party similar situated as appellees in the case at bar may not demand payment in United States dollars for reason of *"the parity of the United States dollar to Liberian dollar" of one-toone, the payee may be paid in Liberian dollar, "but at the prevailing Central Bank buying/purchasing rate of the United States dollar to the Liberian dollar at the time of the judgment."*

Consistent with our holding in the Leigh-Parker case, it is our considered opinion that where the currency sign set forth in the agreement of lease is not expressly denominated in a specific dollar, Liberian or United States, as in the case at bar, payments shall be properly made in United States dollar with the obligor reserving the right of option to pay in Liberian dollar *but at the prevailing Central Bank rate of United States dollar to Liberian dollar.* This is the controlling law in this jurisdiction and it applies to this case for all intents and purposes.

WHEREFORE AND IN VIEW OF THE FOLLOWING, the final judgment entered by Judge James Jones on May 13, 2010, is hereby affirmed with the modification of the award as detailed in this opinion.

THE CLERK OF THIS COURT is hereby ordered to send a mandate to the Debt Court judge to the effect of this judgment. AND IT IS SO ORDERED.