Youssef Kashouh , a Lebanese Businessman of Monrovia, Liberia; **St. Joseph Construction Company**, represented by its Authorized Officer of Monrovia, Liberia; **SHAM Inc.**, represented by Its Officials of Monrovia; and **Asam Sharity**, a Lebanese Businessman of Monrovia, Liberia APPELLANTS VERSUS The **Heirs of the Late Mozart J. Bernard**, **Emma G. Bernard**, **Joseph Chesson** and **Jeannetta Gibson,** of the City of Monrovia, Liberia APPELLEES

APPEAL

HEARD: APRIL 23, 2008 DECIDED: JUNE 27, 2008

MADAM JUSTICE WOLOKOLIE DELIEVERED THE OPINION OF THE COURT

Petitioners and the 1st Respondent, Mr. Youssef Kashouh, a Lebanese National residing and doing business in the City of Monrovia, Republic of Liberia, entered a lease agreement for 1/8 of an acre or half lot of land, lying and located at the corner of Randall and Benson Streets in the city of Monrovia. For the purpose of our decision, we would like to quote the Lease Agreement, appellees/plaintiffs' Exhibit P/1, the basis of this action:

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE made and entered into this 20th cloy of June, A.D. 1985 by and between the Heirs of the late Mozart Bernard represented by the executor and executrix of the Intestate Estate of the said late Mozart J. Bernard, D. Arey H.Bernard and Leommette N. Bernard, both of the city of Monrovia, Montserrado County and surviving heirs of Emma M.E. Bernard represented by Robert P. Massey and Rhodel L. Williams, surviving heirs of the late Joseph J. F. Chesson, represented by Nathaniel Gibson, II, party of the first part, hereinafter known and referred to as the Lessors, and Mr. Youssef Kashouh, a Lebanese national, residing and doing business in the City of Monrovia,

Republic of Liberia, party of the second part hereinafter known and referred to as Lessee, hereby;

FOR AND IN CONSIDERATION of the rents, covenants, stipulations and agreement hereinafter reserved to be paid, kept and performed by the lessee, the lessors do hereby demise, lease and farmlet unto the lessee, 1/8 of an acre of land lying and located at the corner of Randall and Benson Streets in the City of Monrovia, Republic of Liberia, with the structures and building thereon situated, bounded and described as follows:

"Commencing at the South angle of Obbutting North Eastern half said lot owned by Lydia Sanks and running North 52' West, 1 chain and 25 links thence South 38 'West, I chain thence South 52' East, 1 chain and 25 links thence North 38' East, 1 chain and to the place of commencement and contains 1/8 of an ache of land and no more."

TO HAVE AND TO HOLD the above described and bounded premises with all and singular and the rights, privileges, easements and appurtenances there unto belonging unto the lessee for a .full period of twenty (20) calendar years certain commencing from the 20th day of June, A.D. 1985, up to and including the 19th day of June, A.D. 2005 yielding and paying therefore unto the lessors rental as follows:

For the first live years, an annual rental of 6,500.00
For the second five years an annual rental of 17,500.00
For the third five Years annual rental of 10,500.00
For the fourth years, an annual rental of 17,500.00

IT IS AGREED AND UNDERSTOOD THAT the 1st five years rental shall be paid in advance, and at the expiration of the .first five years on every first legal day of each year during the life time of this agreement. it is hereby further agreed and understood that lessee shall have all rights and privileges to sub-lease, assigns or

transfer any portion .or the whole of said demised premises for any period during the existence of this Lease Agreement with the written consent of the lessors, which consent will not be unduly withheld.

IT IS AGREED AND UNDERSTOOD that the lessee shall have option of fifteen (15) calendar years commencing immediately after the expiration of the period certain or herein stipulated, yielding and paying unto lessors rental as follows:

For the first 7 years of the optional period, 35,000.00 per annum
For the last 8 years of the optional period, 45,000.00 per annum

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto, that the lessee shall, at his own cost and expense, erect and construct an office building consisting of not less then three stories in keeping with the drawings and specifications to be attached to form part of this agreement, which office building shall be constructed within five veers as of the date of the signing of this Agreement. Lessee may however, erect additional stories to the existing office building as the economic needs may determine.

THE PARTIES hereto agreed that should the Lessee exceed five (5) stories, same shall require renegotiation of the rental which may become due and payable the optional period herein stipulated.

IT IS FURTHER AGREED AND UNDERSTOOD that the Lessee shall be responsible for the payment of the rental and all other taxes that may be assessed levied against said demised premises during the existence of this agreement of lease , while lessors shall be responsible for the payment of the 10% lease guard tax. All utility bills assessed and levied against aforesaid demised premises during the life time of this agreement shall be the responsibility of the lessee.

IT IS AGREED AND UNDERSTOOD that the lessee shall be very prompt and timely in the payment of the annual rental herein stipulated when same becomes due. It is further agreed and understood that lessee shall ensure that the building constructed on the demised premises is insured.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that should in case the lessee for any reasons or unavoidable circumstances desires to yield, surrender and vacate the aforesaid demised premises before the expiration of the period herein stipulated, he shall give the lessors 90 days written notice. Otherwise, this agreement shall remain in full force and effect. Lessors hereby agreed and covenant to warrant and defend the Lessee in quiet and peaceful possession, occupancy, and use of the said demised premises for and during the period herein stipulated against any claims and demands of all persons whosoever, and the Lessee on his part agrees to upon the expiration of the period herein stipulated to quietly and peaceably Yield surrender and turnover said demised premises to the Lessors in a good and tenable condition as reasonable wear and tear thereof may remit, damages caused by elements of God excepted.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that the covenants, agreement, rights, benefits, privileges, conditions, provisions and rent contained in this agreement of lease shall be construed as covenants running with the entire demised premises described herein and that these covenants, terms, conditions, privileges, rights, rents and provisions shall extend to and include and shall be binding upon the heirs , executors, administrators, assigns and personal representatives of the respective parties hereto, as if they were in every case named and expressed and specifically named herein.

IN WITNESS WHEREOF we the parties hereunto set our hands and signatures on the date, day and year first above written.

The heirs of the late Mozart J. Bernard represented by:
D. Arey Bernard , Leammette N. Bernard

Heirs of the Late Emma M. G. Bernard represented by:
Robert P. Massey Rhodel L. Williams

Heirs of the Late Joseph Chesson represented by:
Yelte N. Chesson

Heirs of the Late Leannette Gibson represented by:
Nathaniel Gibson, II LESSORS
Youssef Kashouh LESSEE

It is this agreement, which appellees, on July 9, 2002, during the September 2002 Term of the Sixth Judicial Circuit Court sought to cancel alleging four (4) breaches outlined as follows:

1."That contrary to the Agreement that the construction would have been completed within live (5) years as of the signing of the Lease Agreement, that is not later than June 1990. Respondent, however, .failed, refused and neglected to construct the building as required; consequently, in 1990, when the crisis in Liberia began, only basic foundation and pillars had been placed on the premises and for which breach the Petitioners say cancellation would lie."

2. "That, since the first five(5) years payment of rent (June 1985 — June 1990), Appellants have not paid any rent for twelve years, that is 1990- 2002, aggregate rent thereby totaling US$125,000.00 (One Hundred Twenty Thousand United States Dollars), and for which breach cancellation would lie."

3. "That, the Lease Agreement provided that no transfer, assignment or sub-lease of the demised premises shall be made without the written consent of petitioners, but contrary to this understanding in the agreement. the pillars placed on the leased premise were developed into a building by one SHAM Inc. and its major shareholder, Azzam Sbaity, who claim that the lease was assigned to them by the

Lessee for repayment of certain financial obligation owe to them. No request to assign had been requested by the lessee or given by lessors, and for which cancellation of the lease would lie."

"That, the monstrosity built on the leased premises is totally and completely different from the architectural drawings and specifications which were agreed to, attached, and made part of the Lease Agreement, and for which cancellation would lie. "

The appellees, petitioners below prayed for judgment of the cancellation of the Lease, with the right of re-delivery of the demised premises to the Petitioners and the right of re-entry into the premises by the Petitioners, Judgment of damages in the amount of US$125,000.00 (One Hundred Twenty Thousand United States Dollars) covering overdue and unpaid rent, and judgment of cost of court and other relief as the court would deem equitable.

Appellants in their returns to appellees' petition for cancellation of the lease filed a three (3) count reply as follows:

1."Respondents say that as to the entire Petition, same should be denied and dismissed for being pregnant with falsehood and misrepresentation."

2. That as to Count One (1) thru Eleven (11) they should be denied and dismissed for reason that they are full of lies, propaganda and misrepresentation intended to confuse this Honourable Court in that the Respondents have fully performed all of the terms and conditions of the said Agreement made and entered into by and between the Parties. Hence, the said Counts should be denied and dismissed in their entirety."

3."Respondents deny all and singularly allegations of both law and facts as are contained in the Petitioners' Petition not specially traversed in this Returns.

The appellees/petitioners further wrote a four count reply denying that their petition was pregnant with falsehood and misrepresentation and reiterated the averments of the counts in their petition and prayed that the court deny and dismiss respondents' returns, rule respondents to a bare denial of the facts and law as contained in petitioners' petition.

During their argument of the law issues, the appellees/petitioners prayed the court below to rule the respondents/appellants to a bare denial of the facts and to a concession of the legal issues raised in their petition and reply as the respondents had failed to deny any of the facts with particularity and specificity, as required by law, and were alleged in the petition for cancellation. They therefore prayed the court to disallow the respondents from introducing affirmative matters or evidence at trial (emphasis ours).

On the other hand, appellants/respondents prayed the court to take into consideration respondents' returns and rule the case to trial on its merit, taking into account respondents' plead of satisfaction and compliance conspicuously laid out in Count 2 of their returns.

Ruling on the disposition of law issues, the Civil Law Court during the hearing of this case, ruled, and we quote relevant portions thereof :

In reviewing the Petitioners' Returns and Reply filed by the Parties, there is no legal issue raised in the Returns as the Respondent in his three count Returns only generally denied the allegation in the Petition".

The Respondents having failed to specifically and particularly deny the allegation of facts in the Petition, Respondents are Ruled to bare denial of those facts not specifically and particularly denied and accordingly prohibited from introducing affirmative matter not particularly and specifically denied in the Returns."

On several legal applications made and ruled on below, and a remedial process to this Court where a mandate was sent to the court below instructing it to proceed to hear the case in keeping with law, the appellee took the stand to testify and present evidence to prove that respondents were in material breach of the June 20, 1985 Agreement, appellees/petitioners' first witness, Mr. Jefferson Musa Bernard, basically testified to the allegations set forth in the petition.

A proposed plan and the Lease Agreement of 1985 were then introduced into evidence by the appellees. On the cross examination, counsel for the appellant asked Mr. Bernard if he could attest that some of the heirs were paid rent and those not paid were those who had refused to accept their share of the rent. The witness answered that to the best of his knowledge the rent for the lease had not been paid and he had no idea that other heirs had received rent.

The appellees/petitioners' next witness, Mr. Aaron Milton essentially testified that the building constructed by the appellees was contrary to the plan and design drawn up by his Firm, and that which was constructed would cost about 55% to 60% of the original cost of the building that should have been built. The expert witness however said the design was finalized in 1988, three years after the signing of the agreement. In other words, the expert witness was saying that the plan was not available at the signing of the agreement in order for the construction to begin in time and in accordance with said plan.

After the petitioners rested evidence, the respondents/appellants produced a witness, Azzam Sbaity, who testified that the petitioners were to the contrary, aware of the subletting of the property as they were represented by Mrs. Leamette Bernard, Mrs. Chesson, and Mr. Robert F. Massey, all of whom are signatories to the contract. He also testified that four out of the six heirs and signatories to the agreement signed a new Memorandum of Understanding to the original contract and respondents have all of the documents to prove.

According to Mr. Azzam, when they sub-leased the property, the original lease reflected the current currency, Liberian dollar, but SHAM Inc. sent a new proposal to the lessors regarding United States Dollar payment and the Four (4) heirs signed the MOU and received money up to 2006. He testified further that when they sub-leased the property, two story buildings were already built by the St. Joseph Construction Company, and SHAM Inc. added two additional stories. All technical works, he said, were done by the St. Joseph Construction Company and were observed by the Milton and Richards Construction.

He also testified that they had receipts for payment of rent in Liberian dollars up to year 2000, and after they completed the building and sent the lessors the new Memorandum of Understanding, they were granted Ten (10) additional years. However other heirs never came for their money as they were out of the country, and their money was put in ECOBANK. He testified that appellants invested $800,000.00 for the construction of the building.

The appellees/petitioners requested the court to strike this testimony of appellants' witness as the testimony dwelt on affirmative matters when in fact the respondents had been ruled to bare denial as to the facts contained in the petitioners' petition; that under the law and circumstances, appellant/respondents could not introduce affirmative matters into evidence.

The court granted the appellees/petitioners' request and ordered that the witness testimony in connection with the receipts, Legal Memorandum of Understanding, and Lease Agreement be striken from the records as if they have not been mentioned before.

Thereafter, respondents rested with its testimonies stating that in view of the fact that the respondents were not allowed to produce evidence, they rested with the production of any further evidence.

Final argument was had and the court ruled in favor of the appellees/petitioners granting the order for cancellation of the lease. The Judge ordered the clerk to issue a writ of possession ousting, evicting and ejecting appellants/respondents from the subject premises and have the appellees/petitioners placed in possession of the aforesaid property, and furthered ordered the appellant to pay appellees two hundred forty seven thousand, five hundred United States Dollars (US$247,500.00) representing rents due and payable from 1990 up to and including 2007.

It was to this Final Judgment respondents excepted and announced an appeal to this Court of last resort.

Along with this appeal, a Motion to Dismiss was also filed before this Court by the Appellees. The motion alleges that the appellants in satisfying the requirements for an appeal, superintended the issuance by the clerk of the Civil Law Court a Notice of Completion of Appeal and had same served on counsel for appellee by the Sheriff of the court. However, attached to the Notice of Completion was a single sheet Appeal Bond with no Affidavit of Surety in violation of Section 63.2 (3). The Civil Procedure Law 63.2(3) requires that an Appeal Bond must be accompanied by an Affidavit of Sureties and the duplicate original filed in the office where the bond is recorded. Appellees say where the appellants had obtained the Notice of Completion of Appeal and service was made on the appellees, as in this case at bar, the trial court lost jurisdiction. The appeal bond being incurably defective, the appellee contend that the trial court having lost jurisdiction, the appellants could not withdraw and amend their appeal bond and again serve a notice of completion of appeal before the trial court; therefore, the appeal be denied and dismissed.

The appellants resisting the motion to dismiss stated that the appellants had filed their appeal bond with the clerk of court on April 19, 2007, that subsequent thereto, on April 27, 2007, realizing the wrong and in an attempt to meet the requirement of the law, they filed a Notice of Withdrawal with the right and

reservation to re-file a substitute Bond since in fact and in law the appellants/respondents were working within 60 days time frame which would have expired April 28, 2007 appellants say they did file a substitute bond approved by the Judge on April 27, 2008, but when appellant personally tried to serve the appellees, the appellees counsel refused to receive and sign for same.

According to the appellants, the clerk acted contrary to their instructions and did give to appellants the Notice of Completion of Appeal to be served on the appellees, and had instead, gone ahead and issued it to the ministerial officer for service; service by the Sheriff of the court being in violation of the law and same having been corrected by the appellants within sixty (60) days, by appellants counsel personally serving the Notice of Appeal as required by Law, this Court should deny the motion to dismiss the appeal and instead hear the appeal on its merits consistent with law and transparent justice.

Having consolidated the hearing of the motion to dismiss and the appeal, this Court has decided this case on the following issues:

1. Whether service by the Sheriff of the "Notice of Completion of Appeal" was consistent with the statute?

2. Whether the court having placed the appellants on general denial committed a reversible error when it disallowed appellants evidence in toto?

3. Whether the non compliance of covenants in the lease, as alleged by the appellees, constitutes sufficient legal basis for cancellation of the agreement of lease?

Cases decided by this Court on the issue of a "notice of completion of appeal' have been decided on the interpretation of three statutes dealing with appeals and involving the issue of service of notice of completion of appeal.

In the cases, **Tuan vs. RL, 13 LLR 3 (1957) and Nor Where vs. Korkor, 13 LLR 8 (1957),** the civil procedure law of 1956 required that the sheriff serve the notice of completion of appeal and make returns as to the service thereof.

The Civil procedure Law, L. 1962-64, ch. IIII, Sec. 1109 states: "After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 5107 and 5108, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal, a copy of which shall be served by the appellant on the Appellee.

Our present statute of 1973, 1 LCLR 51.9 differs from the statute above quoted only in that the last sentence requires the appellant to file the original of such notice in the office of the clerk of the trial court, and we quote:

"After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the Appellant shall issue a notice of the completion of the appeal a copy of which shall be served by the Appellant on the Appellee, the original of such notice shall be filed in the office of the clerk of the trial court -[emphasis ours].

Regarding the first issue, of who is clothe with the authority under our statute to serve a "notice of completion of appeal", we shall review three cases of this Court where the statute places the onus on the appellant to serve the appellee notice of completion of appeal. **Standard Motor Corp., vs. Pratt, 21 LLR 381 (1972), Stubblefield et al. vs. Nasseh, 25 LLR 443 (1977), and Pentee vs. Tulay, 40 LLR 207 (2000).**

In the case, **Standard Motor Corp. vs. Pratt, 21 LLR 381 (1972),** despite the statute that the notice of the completion of the appeal should be served by the appellant on the appellee, the appellant conforming to the old statute and practice of service by the sheriff and returns made thereof had the sheriff serve the notice of completion of appeal. Thereafter, appellant sought to cure his defective bond

by having another bond approved by the judge. After the approval of the subsequent bond, the appellant again filed a notice of completion of appeal. Emphasizing the service of the first notice of completion of appeal, Mr. Chief Justice Pierre upheld the point made by the appellee's counsel that the first filing and service of the notice of completion of appeal by the sheriff removed the matter from the jurisdiction of the trial court and therefore the appellee could not subsequently file another appeal bond to cure defects in the previous bond; and it was improper for the appellant to have the sheriff serve and file another notice of completion of appeal.

In this case, there was no dispute by the parties as to the service of the notice of completion of appeal or that the service of the first notice of completion of appeal was not done by appellant's instruction or acquiescence. The Court said, there being no dispute as to the first service, this left the Court with no alternative but to conclude that the allegation made by the appellee was true and therefore the Court dismissed the appeal. In the case, **Stubblefield et al. vs. Nasseh,** 5 LLR 443 (1977), appellee contended that the notice of completion of appeal was not legally served because service was made by the sheriff of the trial court and not by the appellants. Justice Henries delivering the opinion of the court stated that the main object of the statute under consideration is that the appellee must have notice that the appellant has completed his appeal. Accordingly, the statute must be construed in accordance with the intent of the legislature, and in doing so the spirit of reason of the law will prevail over its letter. The appellant did not deny giving orders to the sheriff to serve the notice of the completion of appeal, and Justice Henries stated that the service by the sheriff instead of the appellant had no way prejudiced the right of the appellee and therefore the contention of the appellant was untenable. Moreover, he stated that service and returns by sheriff or ministerial officer of the court constitute the surest way of knowing whether the parties have received notice. In the case, **Pentee vs. Tulay, 4OLLR** 207(2000), the appellee moved for dismissal of the appeal because appellee contended that the notice of the completion of appeal was served on him by an employee of the appellee counsel instead of the sheriff of the trial court. Justice Wright delivering

the opinion of the court considered whether or not the statute requires that the sheriff of the trial court must, as a matter of necessity, (emphasis ours) serve the notice of the completion of appeal on the appellee. He wrote:

"It should be noted that in the past, when the previous Civil Procedure Law was in effect, the Sheriff was required to serve and make returns to the notice of the completion of the appeal, and therefore there was no specific duty imposed on the appellant to have the said notice served and returns served. Yet, the Supreme Court held at the time that it was the responsibility of the appellant to superintend the service of and the making of the returns to notice, and the failure or reluctance of the appellant to compel or ensure the service of and filing returns to the notice by the Sheriff warranted the dismissal of the appellant's appeal.

The Legislature in their wisdom decided to remove the "middle-man bureaucracy" and place the responsibility directly on the appellant to locate the appellee and to ensure that the actual performance of the service of the notice on the appellee was done by the appellant, so that if there was any neglect or failure, the appellant would have no one to blame but himself Under the old law, wherein the Sheriff was the one to effect that service, the appellant usually argued that he could not be held responsible for a ministerial function not imposed on him, but this was rejected by the Supreme Court which thought and held otherwise.

That is why, because the duty to effect service of the notice of completion of the appeal is now imposed on the appellant, the returns of the Sheriff as to the service has now been replaced by the signature of the appellee on the face of the notice of completion of the appeal. The signature of the appellee confirms appellee's knowledge of the completion of the appeal. "{Emphasis ours).

This Court says it agrees with the ruling in the **Pentee vs. Tulay's** case that what the 1973 statute seeks is that the onus of service of notice of completion of appeal rest squarely on the appellant. The wording of this statute is clear. When enacted, it sought to remove the confusion that existed between the appellant and the

court as to who should be held responsible for the lack of service of a "notice of completion of an appeal".

In order to firmly settle this dispute between the appellant and the court for lack of service by the sheriff, our present 1973 Statute has clearly removed the service of the notice of completion of appeal from the sheriff and placed such responsibility squarely on the shoulders of the appellant, eliminating returns being made by the Sheriff and substituting same by the filing of the original copy of the notice on which the appellee has signed.

This Court then says that since our statute requires a "notice of completion" to be served by the appellant on the appellee, then only the appellant or his agent shall serve the "notice of completion of appeal" and not the sheriff. To have the sheriff serve the notice would defeat the intent of the statute and continue to raise the issue of who is to blame for lack of service. Service by the sheriff of the court is not in conformity with our present statute and therefore we agreed with the ruling in the case Pentee vs. Tulay and emphasize that under our present statute the Sheriff of the Court is not clothe with the authority to serve Notice of Completion of Appeal, only the appellant who will file the original with the appellee's signature thereon with the court.

Our Court has stated in a line of cases that an appellant can make an insufficient bond sufficient or a defective bond good anytime during the period before the trial court loses jurisdiction, and there being no evidence that the service of the Notice of the Completion of Appeal was ere being no evidence that the service of the Notice of the Completion of Appeal was authorized by the appellants, and the appellants having taken steps to serve the Notice as required by the statute, we cannot uphold the appellees' Motion to Dismiss the Appeal. Same is therefore denied.

This Court in dealing with the second issue will now consider count one (1) of the appellants'

Bill of Exception, which we quote:

"In the beginning the Respondents vehemently argued that once the Respondents' Returns to the Petitioners' Petition, challenged the Petitioner's Petition against an argument of complete performance, Her Honour Felicia Coleman's Ruling, ruling the Respondents Returns to a bare denial, constituted an inadvertent reversible errors. Count two of the Respondents' Returns which was used as a basis for placing the Respondents on a bare denial plea states:

"That as to Counts One (1) thru Eleven (11), they should be denied and dismissed for reason that they are full with lies, propaganda and misrepresentation intended to confuse this Honourable Court in that the Respondents have fully performed fully all of the terms and conditions of the said Agreement made and entered into by and between the Parties. Hence, the said Counts should be denied and dismissed in their entirety."

Respondents argued that such Returns under law and the facts qualify Respondents for an opportunity for the Respondents to produce evidence to establish satisfactory completion of the 1985 contract, which is now being sought to be cancelled due to the fact the Respondents have not performed.

Accordingly, ruling the Respondents to a bare denial and blocking them and not granting them the opportunity under the laws and constitution of the Republic of Liberia and with specificity to Count 2 of the Returns of the Respondents in this action backed by the contract in question, just ruling them to a bare denial constituted a reversible error as the court would be then, taking away from the Respondents their Constitutional Right to protect their property."

The appellants' lone witness testified as to the denial of the claims in the petitioners' petition and attempted to establish facts to substantiate respondents' claim that they had performed fully all of the terms and conditions of the agreement made and entered into by the parties. The witness testified that some

of the lessors agreed to the construction of the building which cost US800, 000.00 and the assignment of the lease by continuing to receive rental payment up until 2005, according to a Memorandum of Understanding signed, and under which appellant was granted ten (10) additional years. He stated that it was few of the lessors who were out of the country and so their rent was put in the ECOBANK.

After the testimony of the witness, the appellee made this application to the court:

At this stage, counsel for the petitioner request Your Honour to strike the testimony of the witness from the records of this court in this case, as said dwell on the affirmative matters contained in the petition. Counsel says that the respondents are ruled to bare denial of a facts as contained in the petitioners' petition and under the law, cannot produce affirmative matters. Accordingly, counsel for the petitioners prays Your Honour to have the testimony of the witness striken from the records of this case. For reliance counsel cites Your Honour, to 37 LLR, 906, the case: Massa vs. His Honour Varney D. Cooper, et. and 17 LLR, 339, text at page 347-349, in the case: Ellen G. Cooper et al vs. Selena Maiana Jackson Parker, counsel also request Your Honour to take judicial notice of the records in these proceedings including opinion and judgment of the Honourable Supreme Court. And respectfully submit."

The counsel for respondents in resisting the submission as spread on the records by the petitioners' lawyer, spread the following on the record:

" the evidence as spread on the records by the witness is strictly in denial of the fact that there was any US dollars in rental as the agreement called for Liberian dollars.

The witness testimony is also to the fact that he took the structure after the structure commenced construction by the original lessee and raised the structure without any subtraction to its present level.

The witness has also testified in denial of the petition that four of the six signatories constituting the petitioners/ heirs consented to the sub-lease agreement, and have all received their rental in full except for one and two who have refused to accept their rental."

" Accordingly, as there are always mixed legal and factual issues and no strictly legal issues or factual issues so is the legal situation in the determination of whether the testimony is an affirmative or just a denial. In other word, affirmative and strictly factual denial are interchangeable and accordingly interpreted jointly and not individually as affirmative matter or as a denial. The submission should be denied and the case be proceeded with in accordance to law. And submit."

THE COURT:"A party placed on the bare denial for its failure to have either rebut or buttress the complaint of the complainant by filing of its answer, and also, such a party cannot introduce into evidence any affirmative matter by way contradicting those supported documents attached to plaintiff's complaint. The witness on the stand having been placed on the bare denial, have attempted to deny the complaint of plaintiff for the first time (emphasis ours) upon taking the witness stand. Under such a circumstance this court cannot entertain such a testimony more so when such testimony has the tendency to contradict documentary evidence which the respondent failed to have done for which he is placed on a bare denial.

WHEREFORE AND IN VIEW OF THE FOREGOING, the witness testimony in connection with the receipt, legal memorandum of understanding and lease agreement are herby striken from the records as if they have not be mentioned before; and this matter is hereby ordered proceeded with...",

We disagree with this ruling of the judge. According to **Blacks Law dictionary, 6th Edition,** page 60 (1995), "An affirmative matter in pleading is a response to a plaintiff's claim which attacks the plaintiff's legal right to bring an action as opposed to attacking the truth of the claim." While the 8th Edition page 451

(2007) also defines an affirmative matter as "A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. Also termed plead avoidance." Our court has also held that, "A defendant on general denial or on bare denial loses his right to introduce affirmative matter during trial but he is not deprived of the right to cross examine as to proof nor is he deprived of the right to produce evidence in support of his denial". **Musa vs. Cooper and McCauley, 37LLR, 906, 909 (1994).**

In this case before us, the court realizes that the returns filed by the respondents could have been better pleaded. Nonetheless the respondents did deny the claims in the petition and stated that they had fully performed in accordance with all the terms and conditions of the said agreement. It was only fair and just that the judge allowed the appellants to produce evidence in support of their denial of the claim in the complaint.

Cancellation of a lease agreement for property is in equity, a proceeding which seeks to reach and do complete justice, where proceedings in law through the inflexibility of rules are incompetent to do so. This brings us to the issue of the treatment by our courts of testimonies and evidence striken when a party litigant has been placed on bare or general denial. What are those matters that can be considered affirmative matter?

"A general denial constitutes an averment that a party is not liable. Therefore, when ruled on a general denial, a party is legally entitled to introduce any and all evidence at the trial to the extent in support of his denial. He cannot, however, introduce by general testimony or any affirmative defense, evidence in any support of any claim of right. **Freeman v. Fuller, 29 LLR432, 436 (1982).**

It is important to note that the trial judge having placed the appellant/respondents on bare denial and prohibited them from introducing affirmative matter not particularly and specifically pleaded, the judge committed a reversible error when

he ordered striken every testimony and even receipts being introduced in support of the appellants' denial that rent was paid. To the mind of this Court, striking testimonies relating to the denial of the alleged breach for which cancellation of lease was sought is a reversible error.

Having totally overruled the appellants' testimony in support of their denial, this court says same was erroneous and constituted an unfair an impartial trial.

In dealing with the third issue, we look at the complaint for cancellation of the lease filed by the appellees/plaintiffs below. Appellee alleges breach of covenants in the lease for which they want court to decree forfeiture of said lease but we see no proviso for instituting said cancellation. It is a general principle of law that in the absence of an express stipulation or proviso for forfeiture of a leasehold, a lessee does not forfeit his term by the nonpayment of rent or taxes which he has covenant to pay; nor will forfeiture be decreed because of a violation of a covenant not to sublet or assign. The lessors remedy is by way of a claim for damages. And where a proviso for termination of the estate for some act or omission of one of the parties is regarded as a provision for termination or forfeiture, such provisions must be strictly construed. 49Am Jur 2d, Forfeiture of Lease , Section 1020; 52 C.J.S. Breach of Covenants or Conditions, Section 718.

Adopting this principle in our jurisdiction, this Courts has ruled that, "In the absence of a contrary provision in the lease, the lessee has, within certain exceptions, the sole and exclusive right to the occupation and control of the premises during the term, and the landlord has no authority during the term to enter or otherwise disturb the tenant in his occupancy or enjoyment or in any manner interfere with his rights to the management and control of the premises." **Daniels vs. Societa Laviori Porto Della Torre and Vianini Construction, 37LLR60, 63 (1980); Meridien BIO Bank Liberia Limited vs. Joseph Andrews, NBL; and the Episcopal Church of Liberia, 40 LLR 111, 124-125(2000).** This court has also said in numerous cases that cancellation of a lease agreement is not the proper remedy for default on the payment of rents

under a lease agreement unless it is specifically provided for under the lease; otherwise, the proper cause of action open to the lessors is an action of debt or an action of damages for breach of contract; cancellation can only obtain in cases of proven fraud or misrepresentation; **Doe vs. Mitchell and Badio 37LLR647, 649-650 (1988).**

It is expected that trial judges will take cognizance of laws, rules, practices and procedures which must obtain at all times. The court below should have taken due notice of the agreement before it and noted that no stipulation was made for cancellation where there was breach of any terms of the agreement. In an equitable proceeding of this nature, noting the error in the application for relief the court should have made the proper order required for the proper prosecution of this matter.

As this Court will upon review of the record on appeal affirm, reverse or render such judgment as will, in its opinion best effectuate the administration of justice, and this Court having taken cognizance of the agreement before it and the universal principle of conditions for cancellation of lease Which this country has adopted, it is our ruling that the judgment of the lower court be and same is hereby reversed.

The Clerk of this Court is ordered to send a Mandate to the Court below ordering the judge presiding therein to resume jurisdiction and give effect to this judgment. Cost disallowed. IT IS HEREBY SO ORDERED.