Jerry Kollie of the City of Monrovia, Republic of Liberia PETITIONER VERSUS His Honour **Judge Yussif D. Kaba**, Asigned Circuit Judge 6th Judicial Circuit, sitting in its December A.D. 2007 Term and Evelyn S. Barclay of the United States of America represented by and thru her Attorney-In-Fact Koiwu Scott, All of the city of Monrovia, aforesaid Republic RESPONDENT.

PETITION FOR A WRIT OF PROHIBITION

LRSC 12

HEARD: November 23, 2009 DECIDED: January 22, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

Apellee/Respondent filed a petition for Summary Proceeding to Recover Real Property before the 6th Judicial Circuit during its June Term 2006, to oust Jerry Kollie, appellant/petitioner from her property located at the Red Light, Paynesville. Pleadings were filed and exchanged and hearing was had, and on September 5, 2008, the trial court made a final judgment ruling against the appellant/petitioner. The appellant/petitioner excepted to the ruling and announced an appeal. Despite the announcement of the appeal, on September 8, 2005, the court relying on Chapter 62.24 under Subchapter 'B' *"SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF REAL PROPERTY",* issued a writ of possession issued against the appellant/petitioner to oust him from the property.

In a petition for a writ of prohibition filed before the Justice in Chambers, appellant/petitioner Jerry Kollie's counsel alleges a need for the Supreme Court to address itself to the interpretation of Section 62.24 of our Civil Procedure Law. Chapter 62.24, Subchapter 13' "SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF REAL PROPERTY", STATES:

"If an appeal is taken from a judgment of a court not of record in favor of a plaintiff in a proceeding under this subchapter, the issuance and execution of a writ of possession shall be stayed pending rendition of final judgment; but the taking of an appeal from the judgment of a Circuit Court in favor of a plaintiff shall in no case arising under this subchapter operates as a stay of enforcement proceedings. A plaintiff in whose favor judgment is rendered in a proceeding under this subchapter may secure the issuance and execution of a writ of possession immediately if no appeal is taken" (emphasis ours).

The last sentence in this section of the civil procedure law quoted above has been

largely debated in the legal circle; many argue that the reading of the last sentence outrightly negates the clause immediately preceding the clause, "but, the taking of an appeal from the judgment of a Circuit Court in favor of a plaintiff shall in no case arising under this subchapter operate as a stay of enforcement proceedings."

The respondent stated in his returns to the petition that, " it is an elementary provision of the statute extant that when actions of summary proceedings to recover possession of real property are commenced in the circuit court, appeals from the judgments rendered by the said court do not operate as a stay of enforcement of said judgment..." He stated that petitioner's counsel, when serving as an Associate Justice of the Supreme Court, recognized this practice when he delivered this opinion on July 1, 1999, in the case, Teah vs. Judge Andrews, Magistrate Zogan and San A. Netty; 39LLR493.

The petitioner's counsel however responded that the opinion delivered by him as an Associate Justice and referred to was not to consider the issue of whether or not an appeal from the decision of the circuit court in a summary proceeding to recover possession of real property would stay execution, or to discuss the ambiguity or unconstitutionality of the statue; rather, the issue in the Teah vs. Netty case delved into an appeal to the circuit court from the arbitrary judgment of a magistrate and an appeal from the subsequent judgment of the judge of the circuit court; his mention of a stay of execution was merely recognition of opinions made by this Court that an appeal in summary proceeding from a circuit court does not stay execution. However, there has not been this issue raising the ambiguity of this statute in face of the last sentence, which this Court has squarely passed on. The petitioner asked that this statute be interpreted so as to comply with the organic law of our country which states, "The right of appeal from a judgment, decree, decision, or ruling of any court or administrative board or agency, except the Supreme Court shall be held inviolable." Constitution of Liberia, Article 20(b); (1986).

As previously mentioned, this statute has been a topic of debate in the legal circle. Having researched cases decided by this Court of its decision of execution of judgment in summary ejectment, we agree with the petitioner that there is no recorded case where the ambiguity of this statute or reference to its constitutionality has been specifically dealt with by this Court. The

only case in which reference is made to the peculiar nature of the statute of a Summary Proceeding to Recover Real Property where a judgment thereof does not act as a stay, is the case, Solomon William vs. D. R. Horton, 13 LLR, 444 (1960) { at the time summary proceeding to recover real property was only in the Justice of the peace or

magisterial court}. In this case, reference is made to the 1956 Statute governing summary ejectment which reads:

"Summary proceedings to obtain right of possession and damages. When a person who is entitled to the possession of real property is unable to obtain same by peaceful means, he may obtain possession thereof by a summary proceeding before a justice of the peace or magistrate. The jurisdiction of such justice or magistrate shall be limited to the adjudication of the right of possession, never of title, and to the award of damages not exceeding three hundred dollars for the wrongful withholding of possession by the defendant. The justice or magistrate may also award costs in the proceeding and make the necessary order to put the rightful party in possession of the real property." Liberian Code of Laws, tit. 6, chpt. 23, § 1123 (1956)."

"When Circuit Courts shall try ejectment action. When the title to real property is at issue or when the damages claimed exceed three hundred dollars, the action shall be tried by the Circuit Court of the county in which the real property is located. Liberian Code of Laws, tit. 6, chpt. 23, § 1124 (1956)."

"Appeal from decision of justice's or magistrate's court. Any dissatisfied party shall have the right to appeal from the decision of a justice or magistrate given under the provisions of section 1123 above. Pending the hearing of the appeal the property shall be in the possession of the party in whose favor the decision was rendered; in case the decision in his favor is reversed, he shall be liable for any damages resulting from his possession of the property after taking or remaining in possession thereof in accordance with the decision of the lower court." Liberian Code of Laws, tit. 6, chpt. 23, § 1127 (1956)."

Though ruling primarily on the significance of notice to a tenant in a summary ejectment action, Chief Justice Pierre, speaking for the Court, spoke in passing on the peculiarity of this 1956 statute as follows:

"According to the summary ejectment statute, a defendant may have redress by an action against the Plaintiff after having been illegally evicted upon a judgment from which appeal was taken. It seems strange, indeed, that a plaintiff in such a circumstance would be asked to satisfy any damages the defendant might have suffered as a result of the erroneous ruling of a magistrate when, indeed and in truth, his only act to warrant such treatment was an exercise of his legal right to bring an action for recovery or repossession of his own property. There is another peculiarity about this summary ejectment statute. Appeal in normal cases acts as a stay of execution of judgment until the appellate court reviews. In summary ejectment, however, the defendant's right to enjoy the benefit of appeal is

subordinated to the whims and notions - no matter how illegal - of the Magistrate from whose judgment appeal is taken. The peculiarities of this statute would therefore seem to pose a few legal complications. However, since these peculiarities have not been raised in such a manner to give us the right to effectively pass upon them, we will refrain from any further comment upon them in this opinion.

Justice Wolokolie who presided in Chambers when the petition for prohibition was filed, called a conference of the parties, and because of the emphasis made by the appellant's counsel of the ambiguity and the unconstitutional nature of the statute, she made a decision to issue the writ for consideration of dealing with this issue forthrightly. She instructed the Clerk to have the matter sent to the full Bench because of the constitutional argument. Justice Korkpor, who subsequently came in Chambers, however, inadvertently called the case and made a ruling in Chambers denying the petition. The appellant appeal this ruling to the Full Bench which has given this bench en banc the opportunity to settle the often debated issue surrounding this revised statute of 1977, stated above.

A decision was made to consolidate our review of the Chambers ruling along with the appeal from the trial court's final matter on appeal.

Considering the phrase "if no appeal is taken" which phrase has said to have created an ambiguity in the this 1977 statute, how does this court interpret the statute so as to give it the legislative meaning and intent, since this Court has said that Judicial construction of Liberian statutes is constitutionally restricted to determination of legislative intent. Koffah vs. R. L, 13 LLR, 232, 246 (1958); Bowier et al. vs. William et al, 40 LLR, 84, 94 (2000).

Legal interpretation of a statute of doubtful meaning must be considered in terms of its purpose, objective or motive. It must be interpreted in harmony and conformity with the purpose of the statute and a court should avoid giving a construction to a statute which would impair, thwart or defeat the purpose of the statute. In determining such purpose must look to its historical and legislative history. 73 Am Jur. 2d. § 72 Purpose of or Reason for Statute.

Ruling on the issue of the ambiguity of the statute based on the phrase, "if no appeal is taken", Justice Korkpor stated in his ruling:

`Appeals in cases of summary proceedings to recover possession of real property do not serve as a stay to the enforcement of judgments in the circuit courts; however appeals to the circuits in cases of summary proceedings against the arbitrary or illegal conducts of magistrates serve as a stay to the enforcement

of an adverse judgment."

In the case: Woewiyu and Harvey V. the International Trust Company of Liberia, 38 LLR, 568 (1998) this Court said:

`An appeal from a subordinate court serves as a supersedeas and shall be held inviolable, where such appeal is not from a judgment in an action of summary ejectment or summary proceedings to recover possession of real property"

Generally our jurisprudence accepts that the taking of appeals from judgments from the subordinate courts to superior courts serves as a stay to the enforcement of the judgments until the matters are decided by the superior courts. But our law provides exception in a few cases.

The rationale for these exceptions was eloquently stated in the case: Farhat et al. v. Gemayat Reeves et at, 34 LLR24, (1986) wherein this Court held:

"The constitution and the statutory laws are made to serve the need of the people and the benefit of society. As times progress, they are refined and made consistent. Thus, the Constitution and statutory laws are usually amended for improvement in the lives and for the better regulations of the affairs of the people for whom they are made. As the need arises, and as a result of experience, laws are adjusted to answer the needs of the people."

The Supreme Court further held in the same case:

"When rigidity of the law and legal technicalities prevents social justice, the Legislature will enact amendments so as to make way for equitable adjustment. Thus in 1935 the Legislature saw the need to amend the maintenance and support statute to provide for the enforcement of a judgment hereunder while an appeal was pending so that the abandoned mother with a child could receive support and have their basic needs met until the appeal was determined"

Before the amendment of the maintenance statute, the practice was for irresponsible and "deadbeat" fathers to abandon their wives with children and when they are sued for maintenance and support and judgments are rendered against them, they sought protection in appeals while their wives and children suffered. The amendment curbed this unwholesome practice.

On October 24, 1985, the Interim National Assembly (INA) amended Section 4.2 of the New Judiciary Law and promulgated INA Decree #12 which provided that the taking of an appeal in a debt action no longer served as a stay to the enforcement of a judgment except where the other party was denied his day in court, or where the amount of indebtedness was in dispute. The intent of INA

Decree #12 was "to arrest the situation of incessant non-payment of debt which had become prevalent at the time in our society with serious effect on our economy.

No doubt the Legislature saw the need to curb the abuse of the right of appeal by tenants-at-will against bonafide real property owners when Section 6224 of the Civil Procedure Law under review was enacted.

The Supreme Court has given several interpretations to the above quoted provision of our statute. And in all the interpretations, the position of the Supreme Court has been and still remains that when actions of summary proceedings to recover possession of real property are commenced in the circuit courts, appeals taken from judgments rendered by the circuits do not serve as a stay to enforcement of the judgments. It is only when summary proceedings are commenced in the courts not of record that the taking of appeals serves as stay to the enforcement of judgments. Thus the contentious prepositional phrase "if no appeal is taken" in the last sentence of the above quoted statute is hereby interpreted to mean if no appeal is taken from the judgment rendered in the courts not of records. The phrase does not refer to the taking of an appeal from the circuit court."

We agree with Justice Korkpor that in the interpretation of statutes, it is a primary rule that the courts will ascertain and declare the intention of the legislature. It is also said, construction given a statute for a long period of time has been considered strong evidence of the meaning of the law. 73 Am. Jur. 2d. §77, Weight of Contemporaneous Construction.

In the 1956 code revised, title 6, Summary Proceedings to Recover Possession of Real Property was only venue before the courts of non record. Appeal taken from these courts did not operate as a stay of execution of judgment for the plaintiff in whose favor the judgment was rendered. Apparently, considering the problem associated with obtaining the intent and objective of the legislature by operation of this statute in these courts, the legislature amended the 1956 code in 1977, to allow for summary proceeding to be venue both before courts of non record and the circuit courts. Now, judgment in such proceedings from courts of non record, when appealed, stay execution pending final judgment in the circuit court. However, to curb the evil or mischief at which this legislation aims, or the remedy intended to be afforded, an appeal does not stay execution in the Circuit Court. One who is entitled to possession of his property must not be deprived of possession where there is no dispute as to his title.

Reasons for the amendment by the legislature of this 1956 statute we believe was for reasons as expressed by Justice Pierre in the case Williams vs. Horton and Bull , supra, in which he seemed frustrated when he wrote:

"Because of what we have said about the peculiarities of the summary ejectment statute, we feel that Magistrates and Justices of the Peace, in their handling of such cases, should strictly observe and enforce the laws and procedures governing such hearings before them, so as to leave the parties, and especially the defendants, no ground to question the fairness and legality of the courts' acts. For, no matter how well intentioned the Magistrate's rulings in such cases might be, if they are contrary to law, or if they violate trial procedure, appeal could not effect the same cure in summary ejectment as it would in cases where it serves as a mandatory stay of execution of judgment. These peculiarities would therefore require that Justices of the Peace and Magistrates lend themselves more studiously to applying the provisions of this statute with a view to the protection of the parties which is so necessary to secure for all concerned the full extend of their legal rights".

A manifest intention to alter the effect of a statute is more readily followed by the courts, especially where the change is apparently in pursuance of suggestion by the court in the decision of a case involving the application of the former statute. The intent of the legislation in amending this provision of the law was therefore to stay execution of an appeal from judgment in courts of non record as Justices of the peace and Magistrate are most often less learned in the law and less likely to secure for all parties their legal rights. Whereas, circuit judges are expected to be more aucourant with the procedure and practices of the law, and would lend themselves more studiously to applying provisions of the law.

It is said in the construction of statutes, where there is ambiguity in the language of the statute, the understanding and application of the statute when it first comes into operation, sanctioned by long acquiescence on the part of the legislature and judicial tribunals are the strongest evidence that it has been rightly explained in practice. We agree with Justice Korkpor that there is a long line of cases which this Court has ruled in upholding the interpretation of Section 62.24 as no stay of enforcement of judgment when matter is appealed from a circuit court in summary ejectment action. See Kanneh vs. Manley et al, 41 LLR, 25, 31, (2002); Teah vs. Andrews et al, 39 LLR, 493, 500, (1999); Woewiyu and Harvey vs. International Trust Company of Liberia, 38 LLR, 568 (1998) supra.

Chapter 1, Article 2 of our Constitution states:

"This Constitution is the supreme and fundamental law of the Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic.

Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

Now, a look at our Constitution, Article 20(b), (1986), reads, *"The right of appeal from a judgment, decree, decision, or ruling of any court or administrative board or agency, except the Supreme Court shall be held inviolable."*

With the exception of few of our statutes, this Court has overwhelmingly constructed an interpreted of Article 20(b) of our Constitution as, "On announcement of an appeal, no execution shall issue on a judgment, nor shall any proceeding be taken for its enforcement until final judgment is rendered." Forkpah et al vs. Hall et al, 38LLR, 396, 402) (1997); Sadatonou et al vs. Bank of Liberia, Inc. 20 LLR, 512, 517 (1971);

In view of our general construction of this provision of the Constitution, however, this Court recognizes that the right to appeal is not prohibited or violated by the enforcement of a judgment. A stay does not mean setting aside or annulling the trial court's judgment, it merely suspends. Where social and economic justice will be impeded by the taken of an appeal, the legislature can enact such statutes as are necessary to promote social and economic justice without resulting to affect an appeal which may affirm, modify or reverse a judgment. In most developed jurisdictions where appeal serves as a stay, the right to a stay or supersedeas of a judgment may be granted by statute or by leave of court. Stay is considered in the interpretation of a statute where the object of the appeal will be defeated if the stay is denied; whether the appellant will suffer irreparable or serious injury if the stay is denied.

The right to possessing and protecting property is a fundamental right guaranteed by our constitution and one who is entitled to property must not be deprive of possession. Art. 11, Chapter III, Constitution of Liberia, Fundamental Rights, states:

All persons are equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining the security of the person and acquiring, possessing and protecting property (emphasis ours), subject to such qualifications as provided for in this Constitution."

The constitution and laws seek to protect its entire citizenry alike. The Revised Statute of 1977 sought to correct probable ills of an unfair or illegal judgment in a court of non record by providing stay of execution from an appeal in these courts, but upholds

enforcement of judgment from an appeal in the circuit court to ensure justice and fair-play as previously mentioned. Unlike an ejectment action where title is involved, in a summary proceeding to recover real property action, title is not in issue and an appeal should not suspend the taking of possession of property where the constitutional requirement of due process has been met; to do so will violate one's constitutional right to possession of property.

Therefore, laws made by the legislature to prevent social injustice and promote social and economic growth, and which are not repugnant to public policy is not violative of the Constitution since the Constitution provides for the social and economic well-being of all citizens and the legislature are required to enact laws in furtherance to the promotion of the Constitution .

In line of what has been said, we support the Justice in Chambers ruling and hold that Section 62.24 of our 1 LCL (1977) relating to enforcement of judgment pending an appeal in the circuit court is not violative of our Constitution provision of appeal where the appellant, who does not have title to property, will not suffer irreparable or serious injury if the stay is denied.

Reviewing the issues of the appellant's appeal from the judge's ruling, we note that the appellant has filed an eleven count Bill of Exception, basically stating that the Judge ruled wrongly when he held that summary proceeding to recover possession of real property would lie even though appellant had admitted into evidence a 15 year lease agreement which is in full force, and that the Judge's ruling was against the weight of the evidence adduced by the appellant at trial.

The facts curbed from both the record on appeal and the arguments before us are that the appellee lives in the USA. Being away, she appointed one James Flomo to look after her property in the Red-light area. Mr. Flomo gave the appellee the impression that the property was uninhabited but surprisingly when she visited here, she saw that he had reached an understanding with various persons to occupy the property and pay rent to him. Flomo, without the authority of the appellee, had reached an understanding with the appellant to occupy portion of the appellee's property for five years, January 2001 — December 2005. The appellee decided to revoke her understanding with Mr. Flomo and appointed Mr. D. Koiwu Scott as her Attorney in Fact. She therefore wrote as follows:

December 30, 2002
To Whom It May Concern:

As of the date written above in this letter, James F. Flomo does not hold limited power of attorney of Evelyn S. Barclay to oversee her property in Paynesville, Liberia. He is no longer authorized to handle business related to the Paynesville property owned by Evelyn S. Barclay.

Signed,
Evelyn S. Barclay

Thereafter, appellee sent a Limited Power of Attorney to D. Koiwu Scott authorizing him to oversee her property in Paynesville Red-light. With such authorization, Mr. Scott met with everyone property, informing them that he was the newly appointed Attorney-in-Fact for the appellee. He informed the occupants that his principal, the appellee, would be returning shortly and wanted to develop her property. The appellant has insisted on staying on the property beyond the 5 year understanding he had with the appellee's previous caretaker, Mr. Flomo. He presented a Lease Agreement for a term of 15 years which he claims was signed in 2000 by him and Mr. Flomo. Mr. admitted to the five (5) year understanding but denied ever entering into a fifteen (15) year lease agreement with the appellant.

Upset by the appellant's insistence to continue occupying her property, the appellee wrote this letter to her attorney in fact:

July 24, 2006
Affidavit of Confirmation
Mr. Koiwu D. Scott Business Center
Red-Light, Paynesville,
Liberia
Phone Number: 06528552

Dear Mr. Scott:
This is to inform you about my land located at Red-light, Paynesville. I did not give authorization to James Flomo to lease, sell or rent any part of my land at Red-light, Paynesville. James Flomo was designated as only the caretaker of my land. Secondly, James Flomo had no authority to lease, sell or rent to any individual or group any part of my land. Therefore, any actions that were taken by James Flomo to lease, sell or rent my land located at Red-light, Paynesville does not meet my approval.

Therefore, this letter is informing you, Mr. Scott, my designated power of attorney to take necessary action in repossessing my land located at Red-light, Paynesville.

Respectfully yours,
Evelyn S. Barclay
209 Brookgreen Drive Columbia,
South Carolina USA 29210-4609
Phone Number 803-772-7545

Based on these instructions from his principal, Mr. Scott filed this Summary Proceeding Action, producing two witnesses along with him to testify on behalf of the appellee.

Mr. Koiwu Scott, the appellee's first witness testified essentially that after he got the Power of Attorney from appellee, he requested James Flomo to invite all the tenants occupying the property to meet with him. The tenants, including the appellant, met with Mr. Scott and he testified that the appellant seemed receptive of him and explained that he had reached an understanding with James Flomo to occupy the premises for five years and had made several payments with only US$200 being outstanding for the period. He told Mr. Scott that he wanted to open a new page with him, and wanted them to enter a legitimate understanding, that is, a written agreement. The appellant then presented several receipts of payments made to Mr. Flomo. Mr. Scott testified that he told the appellant to hold on until he met his legal counsel, Counsellor James E. Jones.

Following their meeting, Counsellor Jones invited the appellant for a conference his office on Crown Hill during which Mr. Kollie, again, reiterated his unrecorded five year rental understanding with Mr. Flomo and appealed to Counselor Jones to prevail on his client to enter a written agreement with him. Mr. Scott told the appellant he had contacted his sister and she said, she was tired of being in the United States and was expected to come home soon; she would accept the appellant remaining on the property for the five years as per his understanding with James Flomo but after that understanding expires by December 31, 2005, he would have to leave. Mr. Scott said the appellant often met him and persisted in trying to get him to enter a written agreement, but every time the subject was broached, he told him that the Oldma will soon be coming home. To buttress his statement, Mr. Scott said, he had Counselor Jones write Mr. Kollie, in 2004, emphasizing that the five-year rental understanding with Mr. James Flomo would ended December 31, 2005, and the appellant was expected to leave then, as the appellee wanted to develop her property.

It was around the Christmas Season, 2005, Mr. Scott said, that he met the appellant

who broached the subject again and when he told him it was not possible for him to remain, that the last payment of US$200 had finalized the agreement between them, that the appellant showed him a court document threatening court action with claims that the document authorized his stay on the property beyond 2005.

This, Mr. Scott said, prompted him to contacted Counsellor Fomba 0. Sheriff to file a Summary Proceeding to Recover Possession of Real Property. Surprisingly, the appellee said, though the appellant Answer to the petition that he had a lease agreement for 15 years, yet, he did not attach the lease agreement to his answer to the petition.

The other witnesses, Mr. James Flomo himself, testified for the appellee as follows:

"When I took over Ma Evelyn Barclay's land as a care-taker, I met many persons on the land. I met Solo Baryou, Jusfu Fofana, and many others. I made all of them to understand that when the woman is ready to develop her land, everyone should be ready to leave. Then, in the same year 2000, Ma Evelyn Barclay sent a Power of Attorney to D. Koiwu Scott to take over the property, and I cooperated with him by carrying him to all those that were on the land, and I made them to understand that from today's date, you can directly deal with Mr. Koiwu, and I am leaving to go up-country to make my farm. Then, I left for home, up-country. This is all I know about this case".

Previously, Mr. James Flomo had signed an Affidavit of Confirmation which was attached to the appellee's petition for summary ejectment. The affidavit reads:

"REPUBLIC OF LIBERIA, MONTSERRADO COUNTY
IN THE OFFICE OF THE JUSTICE OF THE PEACE FOR AND IN MONTSERRADO COUNT REPUBLIC OF LIBERIA

AFFIDAVIT OF CONFIRMATION

PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for and in Montserrado County, Republic of Liberia, at my office in the City of Monrovia, Liberia, and made oath according to law that all and singular that at no time and nowhere that he James Flomo ever entered into a lease agreement with Mr. Jerry Kollie for a lease of premises for which he, James Flomo was serving as Attorney-In-Fact in the City of Paynesville, Montserrado County, Liberia, but that Jerry Kollie was only renting from him on a yearly payment basis which relationship lasted for five (5) years only. Rent payment receipts were always issued Jerry Kollie upon payment of the rent. No lease agreement was ever issued and signed by him James Flomo to said Jerry Kollie as he is falsely alleging among the tenants occupying the Barclay's property in the City of Paynesvile, Montserrado County, Republic of Liberia, and other matters of information as they relate to this Affidavit of Confirmation

are true and correct to the best of his knowledge and belief, and all other information he verily believes them to be true and correct.

SWORN AND SUBSCRIBED TO BEFORE ME IN MY OFFICE IN THE CITY OF MONROVIA, LIBERIA THIS 28th DAY OF MARCH, A. D. 2006

JUSTICE OF THE PEACE, MONT. CO., R. L.
James Flomo DEPONENT/AFFIANT

Appellee's third witness, Counselor James E. Jones, also appeared and testified as follows:

"Mrs. Evelyn S. Barclay owns a piece of land at the Paynesville, Red-light area over which she placed a care-taker since she herself is in the United States of America. Sometime in 2002, or thereabouts, she had the need to replace this care-taker with an Attorney-In-Fact, Mrs. Koiwu Scott., as lawyer then for Mrs. Barclay, Mr. Scoot came to the firm and had us cite those persons who were on Mrs. Barclay's premises at Red-light so as to ascertain firstly who were there, and secondly, the condition upon which they were there. Mr. Jerry Kollie whom I heard then referred to, as V. I. P was one of such persons cited to the law firm for a conference. I can remember that the said Jerry brought a receipt that showed payment for an extended period of time, which I believe was about five years. Mr. Scott was not happy with this five (5) years receipt. He felt that this care-taker should not have permitted the property Mr. Kollie to have occupied for such extended period. Being the lawyer, and since Mr. Kollie had this receipt, I advised him to allow Mr. Kollie to stay on the property for the period which he had paid, and this was accepted. I can also remember sending Mr. Kollie a letter to vacate when this period was nearing its completion. I rest".

A synopsis of the appellant's testimony is that when he initially expressed interest in occupying the appellee's property, he was introduced in 1997 to one Col. Wilson who allowed him to occupy the property with the understanding that he could only rent the property to him as he was merely a caretaker for the appellee. Later, in 2000, he said Col. Wilson told him that Mr. Flomo was now the new caretaker. He met Mr. James Flomo who showed him a Power of Attorney but when he requested a copy, Mr. Flomo said he could not make a hundreds of copy for all those on the property. He then told Mr. Flomo that he wanted to construct a dirt brick shop on the property, and Mr. Flomo agreed. One day, appellant said, he met Counsellor Emmanuel Berry, Counsel for the appellee, who asked whether appellant owns the property or whether he was leasing it? Appellant said, "no", CIIr. Berry advised that it was necessary that appellant enter into a Lease Agreement with the property owner, because when the appellant completed his structure, the property's owner would take it. The appellant said that was

when he got the idea to lease, and so he called on Mr. Flomo and told him it would be better to get into a Lease Agreement. He said Flomo said consented, and asked him to pay LD$15,000.00 and US$1,000.00 every five years for the four shops he intended building on the land. The appellant said Flomo asked him for the length of his stay on the property, and he told him thirty (30) years but Flomo said, "No", he could give appellant the place for fifteen (15) years, beginning August 1, 2000 to August 1, 2015. At the time, appellant said he was using the name Jusufus K. Fofana. Flomo himself, then went and typed the lease agreement and carried it to appellant's brother, David Kollie, to keep it. That night when he gave the lease agreement to appellant's brother, Flomo received US$300.00 as part payment of the agreed sum.

Continuing his testimony, the appellant said he dealt with Mr. Flomo until Mr. Scott came around one day and introduced himself to the occupants on the property as the new Attorney-in-Fact for the appellee and requested information concerning their status on the property. The appellant said he inquired about Mr. Scott and was told that Mr. Scott now had a Power of Attorney from Mrs. Evelyn S. Barclay because Mr. Flomo was not reporting any rent to her.

Based upon this confirmation, the appellee said he went back to Mr. Scott to inquire the way forward. He said he told Mr. Scott that he owed US$200 as a balance rent for the first five years of the understanding that he had with Mr. Flomo. He made several calls to Mr. Scott thereafter to come and collect the balance US$200.00, but he did not come until one day the appellant got a letter from Jones Law Firm inviting him for a conference. Mr. Kollie said he attended the conference and was asked whether or not he had a Lease Agreement with Mr. Flomo and he told the Counsellor. "Yes". The Counselor did not ask him for the Lease Agreement; all he asked was that the appellant do business with Mr. Scott since they could not find James Flomo. He was asked to give photocopies of his receipts and he gave some receipts.

Further testifying, the appellant stated: *"and he asked me instead of having a Lease Agreement with Mr. Flomo, he wants the Lease Agreement to be between him and me. I asked him to draft a Lease Agreement so I can look at it; he did and brought to me a Lease Agreement in which he was saying to me that after five years, those structures that I had built on the land, I should turn them over to him, and then we can discuss a new agreement. (apparently referring to Mr. Scott).*

Later, the appellant said he saw a notice from Counsellor Jones' Law Firm giving him one day to turn the property over to them. He said he lent the document no attention, because according to him, and he said, even if the case was that one was renting a house, he could not be given such abrupt notice. So he took the copy and put it down.

The appellant referred to one Col. Kandakai at the Justice Ministry, one James S. David and his brother David Kollie as those who witnessed the 15 year lease agreement.

The appellant brought a second witness, Col. Kandakai who testified that on the 1st of August, 2000, the appellant, James Davies and James Flomo went to his office at the Ministry of Justice with an unsigned lease agreement. The appellant went to him to find out whether he should do business with Mr. Flomo. He read the unsigned lease agreement and asked Mr. Flomo whether he had any authority to lease the parcel of land. Mr. Flomo replied, "Yes". Mr. Kandakai said, he then asked where is your authority? Flomo came out and showed him a Power of Attorney which he read. He then advised the appellant to transact business with Mr. Flomo as he had a Power of Attorney. The appellant and Flomo then signed the lease agreement and Mr. Kandakai attested to it. On January 7, 2005, he sent for the appellant and James Flomo and the balance of the money for the lease agreement money was paid in his office by the appellant to James Flomo who issued a receipt. (See Minutes, Tuesday, February 7, 2006, Sheet 14)

The appellant testified and presented into evidence an unsigned lease agreement dated 2005 to 2015.

Reviews of the testimonies show that the appellee had three witnesses to testify to the appellant's illegal occupancy of her property. Each one of them denied that there was any lease agreement signed between the appellee's former attorney-in-fact and the appellant. No where did Mr. Scott admit to a lease agreement in the records before us as the appellant alleges in count 3 of his Bill of Exception. Mr. Scott testified to having agree to uphold the understanding reached between Mr. Flomo and the appellant for the appellant to stay in possession for five years, that is from December 200o to December 31, 2005. It was based on his acceptance of understanding that he accepted the US$200 due as balance rent for the five year period.

The appellee's first witness, Mr. Scott, while on the cross in answer to the question about the lease said:

Ques: In your statement, you also said that Defendant, Jerry Kollie had no legal agreement to be on the subject property, but a document said to be a receipt you issued to the defendant talks about a Lease Agreement. Do you remember that?

Ans: I remember serving him a receipt, first of all, I am not a lawyer but the receipt issued to him had a base upon taking over these two gentlemen told me that they were

on the subject property for five (5) years, and there were receipts to show that they were on the subject property five (5) years on the land. So, the receipt issued for the payment of the US$200.00 was strictly defined to five years, from January 2001 to December 31, 2005, that was the time he was there on the property and this is the time he paid for. The receipt I issued had been supported for the five (5) years on the land and /or no more.

Interestingly, during the cross examination of James Flomo, the appellees previous Attorney-In-Fact, whom the appellants alleged he had entered a fifteen (15) year Lease Agreement with, was never cross examined by the appellees' counsel on the alleged Lease Agreement, rather the appellant in his cross examination of Mr. Flomo only emphasized the payment of the balance US$ 200.00, which Mr. Flomo agreed was paid to Mr. Scott and a receipt issued as final payment for the five year period.

The appellees' third witness, CIIr. James E. Jones was cross examined as follows:

Ques: Mr. Witness, if you can remember, please say how many times did you meet or interact with defendant Jerry Kollie?

Ans: About two times.

Ques: And on those two occasions, did defendant Jerry Kollie ever inform you that he had a Lease Agreement as his strength upon which he was on the property?

Ans: Mr. Jerry Kollie never mentioned that he has any Lease Agreement for that property.

Ques: Mr. Witness, then, please say if you know without a Lease Agreement and you being the lawyer for the property, what was the basis for the defendant stay on the property for five (5) years?

Ans: I only became a lawyer for Mrs. Barclay when Mr. Koiwu Scott became the Attorney-in-Fact for her. Mr. Jerry Kollie, in response to the citation from the Law Firm, brought in his receipt which indicated that he had paid to be on the premises for five (5) years ending in December, 2005. Since I was not lawyer for Mrs. Barclay before then, I do not know and why the care-taker did such a thing that is to say, why he received money as it is alleged and gave a receipt for five (5) years. In my mind, the care-taker should be in the best position to say why that was done and not me, because I have nothing to do with Mrs. Barclay's property prior to the coming in of Mr. D.

Koiwu Scott, Attorney-In-Fact.

The appellee having established through her witnesses that there was no 15 year lease entered into with the appellant, did the appellant substantiate any proof that he and James Flomo, the overseer of appellee property, did enter a lease agreement for fifteen (15 year) years?

The appellant and his witness, Col. Arthur Kandakai emphasized the payment of Balance US$200 as balance payment for the five-year rent but there is no dispute as to payment of this rent based on the an understanding of the appellant and Flomo for the appellant's occupancy for five years. The appellant admitted into evidence the receipt signed by Kowiu which reads

January 7, 2005
"I, the undersigned in person of Mr. D. Koiwu Scott, Administrator of Mrs. Evelyn S. Barclary's property, situated at the Red-light, Paynesville, received an amount of US$200.00 (Two Hundred United States Dollars) as balance payment towards a lease agreement commenced January, 2001 to December 31, 2005.

Amount: US$200.00
Balance: //////////

Signed: D. Koiwu M. Scott
Witness: James D. Flomo"

In the absence of the appellant substantiating his allegation, how can this Court be convinced that indeed he and Flomo did enter a 15 year lease agreement, and Flomo's authority to enter said lease.

The appellant witness, Col. Arthur Kandakai, said in his testimony in chief that that on August 1, 2000, the appellant along with James Davies and James Flomo came to his Office with an unsigned 15 year lease agreement. The lease agreement was signed in his office and he attested to the document. Later on February 7, 2005, he sent for the appellant and Mr. Flomo and the balance US$200 was paid to Mr. Flomo in his office. Mr. Flomo signed a receipt. (See minutes of Thursday, February 7, 2008, sheets 13-14). Later, when Kandakai was cross examined, he said Koiwu Scott accompanied James Flomo and the appellant to his office with the unsigned lease agreement which Flomo and the appellant signed in his office. (See minutes of Thursday, February 14, sheet 9)

The appellant on the contrary said because of Scott Koiwu's behavior, he invited him to Col. Kandakai's office to sign for his balance money and Scott signed for the balance S$200 in Col. Kandakai office in the presence of James Flomo who he insisted come along with Scott. (See minutes of December 3, 2007 Sheet 15).

In order to disproving the testimonies of the appellant and his witness, Col. Kandakai, the appellee produced two rebuttal witnesses, James Flomo and James Davies. James reiterated that he had no knowledge of an agreement with Mr. Jerry Kollie and that no Power of Attorney was given him by the appellee. He was only asked to be her caretaker, to look after her property.

Appellee's second rebuttal witness, James Davies, answered to the following questions put to him:

Ques: Mr. Witness, on the cross examination of defendant's Jerry Kollie, the following question was put to him, is it not a fact that the purported lease agreement was not probated and registered because the probation date would have shown that the document is one that was prepared by you to support your answer giving in Court, and a date of probation on the said document would have shown irregular and illegal the alleged transaction regarding Mrs. Barclay's property and in answering, Jerry Kollie said, and I quote, "I did not prepare any lease agreement, the lease agreement was prepared by James S. Flomo" to which answer, plaintiff gave notice that he would rebut the answer. Having taken the stand as a rebuttal witness, could you please say whether the answer quoted above, which was giving by Jerry Kollie is true and correct?

Ans: On January 5, 2005, I saw a lease agreement with Col. Jerry K. Kollie, Director Executive Nicare Security Guard Services at his Red-light office, at the hour of 9:00 A.M. He later told me the lease agreement had been and entered by and between him and James Flomo for a parcel of land located by Malage Hage's Store for the period of fifteen years. At this point, being his deputy, he ordered me to witness said document on his behalf. At this point, I asked him, if I witness this document on our behalf, if anything backfire from said document, I will not be held responsible, and he said, "Yes", you will not be responsible. I, Col. Jerry Kollie will be held responsible. What unit does or fails to do is the responsibility of the commander; and I signed and witnessed it. The witnesses on the document, James Flomo and other signatories mentioned on the paper were not present and it was done in his presence at his Red-light office. This document was never carried by him, Jerry K. Kollie, James Flomo and I to Col. Kandakai, Ministry of Justice for him and James Flomo to sign and to witness. Neither was James Flomo present when I witness this document or I was present when James

Flomo signed.

This Court has said the Burden of proof rest on the party who alleges the fact. The party who alleges a fact must prove it at trial by the preponderance of evidence especially where the fact is denied by the other party. The preponderance of evidence required to establish proof does not depend on the number of witnesses produced but evidence which is more convincing to the mind. See American Life Insurance Company vs. Sandy, 32 LLR, 338,, 350, ((1984).

This Court has not been convinced by the evidence and testimonies of the appellant that there is a 15 year lease agreement entered into by James Flomo, the previous caretaker of the appellant and the appellant. The overwhelming evidence substantiate a five (5) year understanding between the appellant and James Flomo for appellant's occupancy of appellee's property, which the appellee though not pleased with, upon the advice of the counsel for her Attorney-in-Fact, accepted and received the US$200, balance payment for the period. This Court is convinced that the alleged photocopy of the un-probated and unregistered lease agreement proffered is not authentic. Mr. Flomo who is said by the appellant to have entered the agreement with him denied entering such an agreement; Mr. James Davies whom the appellant said witnessed the agreement in Col. Kandakai office when appellant and Flomo signed the agreement denied ever witnessing the document or being present with Flomo in Mr. Kandakai's office. He said instead, that he was induced by the appellant to sign this document on June 5, 2005 at the appellant's Red-light office, when the appellee refused to extend appellant's occupancy after December 2005. With all these inconsistencies in the various testimony produced by the appellant, this Court must uphold the lower court's ruling.

The appellant has raised the issue whether the or not a lone testimony is sufficient to defeat a written documentary evidence. This court has said preponderance goes to the quality and not the quantum of evidence especially where the testimony has not been rebutted. Oil Refinery vs Mahmoud, 21 LLR, 201, 212 — 213 (1972). Besides, the appellee's rebuttal witness Davies' testimony confirmed the appellee's overwhelming testimony denying the allegedl5 year lease.

The next question is, could a caretaker enter an agreement with another to lease his principal's property for fifteen years without a valid an expressed authority or Power-of-Attorney?

This Court has said that where appellee has challenged the issuance or genuineness of

a Power of Attorney, in the circumstances, the challenge having been raised, its sufficiency cannot be presumed. Baky vs. George et al., 22 LLR, 80, 83, (1973); Swiss Air vs. Kalaban, 35 LLR, 49, 55, (1988);

The records show that James Flomo was designated by the appellee to be a mere a caretaker.

Webster Dictionary defines caretaker as, one who takes care of the house or land of an owner who may be absent. In order to alienate the appellee from her property for a period, Flomo had to get the expressed consent of the appellee. This consent through a Power of Attorney would have created the relationship of principal and agent. Presenting a Power of Attorney would have shown whether the power of appointment was general where no restrictions are imposed, or limited, where the Attorney-in-Fact's right to alienate the donor's property is only done as the donor sees it fit and with the Attorney-in-Fact acting only as a conduit.

The appellant said that Flomo showed him a copy of a Power of Attorney sent him to manage the appellee's property but he failed to show a copy based upon which he entered the alleged 15 year agreement with Flomo. Flomo himself denied having a Power of Attorney from the appellee. He was only asked to be a caretaker. In his testimony in chief, Flomo stated: "when I took over Ma Evelyn Barclay's land as caretaker, I met many persons on the land... I made them all to understand that when the woman is ready to develop her land, everyone should be ready to leave".

We must agree with the final judgment of the court below, since Mr. Flomo did not have any expressed power of attorney to lease out the appellee's property. This Court has said, *"Before any person can hold himself out as agent or attorney of another, he should have received a power of attorney, and same should have been probated and registered"* National Panasonic Showroom vs. Moham, 31 LLR, 582, 585, (1983); Bryant vs. African Produce Company, 6 LLR, 27, 30, (1937)

Because of the preponderance of evidence presented by the appellee and the insistencies in the testimonies presented by the appellant couple with the fact that the appellee gave no one the authority to lease her property for 15 years, this Court finds no reason to reverse the ruling of the judge below.

Therefore, because of the facts and laws stated, the ruling of the Justice in Chambers is affirmed, and the ruling of the trial Judge also affirmed with modification that the appellant pay to the appellee Two Hundred Thousand Liberian dollar (L$200,000.00)

as general and punitive damages prayed for by the appellee in her petition. This is to deter others from willfully withholding property and depriving the owner of possession thereof. AND IT IS HEREBY SO ORDERED.

Appellant is represented by The Wright, Jangaba and Associates Law Firm and present in Court is Counsellor David B. Gibson, Jr. and the Appellee is represented by Counsellor J. Emmanuel R. Berry of the Berry Law Firm.