

Minita K. Moniba, by the thru her Attorney-in-fact, J. Johnny Momoh of the city of Monrovia, Liberia Informant VERSUS His Honor **Yussif D. Kaba**, Assigned Circuit Judge, Sixth Judicial Circuit, December 2007, Term, **Mohammed K. Kafel, V. R. Hardwares**, represented by its Manager, Raju; **Wehbitex**, represented by its Manager, Mr. Hassan; **PhotoLand**, represented by its Manager, Mr. Youssef; **Meena Enterprise**, represented by its Manager, Mr. Meena, et. al. all of Paynesville, Red Light, Montserrado County, Liberia Respondents

APPEAL AND BILL OF INFORMATION

Argued. April 6, 2009 Decided: July 24, 2009.

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

During the March Term, 2007, of this Court, the Supreme Court rendered a decision, through an opinion decided August 9, 2007, in the case *Kafel v. Moniba*. The subject of the decision was a petition for a declaratory judgment.

The Supreme Court, in an opinion by Mr. Chief Justice Lewis, decided:

"In view of the foregoing, we declare that the addendum allegedly executed by the late Dr. Harry F. Moniba solely is not binding on the appellee, [Minita K. Moniba]. The judgment of the trial court dated November 16, 2006 finding that the addendum of March 31, 2004 is not binding on the appellee is hereby affirmed, with the modification, however, that a petition for a declaratory judgment is not a possessory action, and that the portion of the trial court's final judgment terminating the agreement of lease dated August 1, 1997 and ordering the Clerk of Court to issue a writ of possession in favor of the appellee, ousting, ejecting and evicting the appellant from the premises, is reversed. The appellee, in view of this declaratory judgment, may avail herself of whatever legal remedy there is, subject to the obligation of the lessor contained in paragraph 10 of the agreement of lease that ' . . . [i]n case lessee makes any improvement before the termination, lessors shall reimburse all reasonable expenses incurred by lessee, such reimbursement shall be based on appropriate documentation or receipts.'

"The Clerk of this Court is ordered to send a mandate to the Civil Law Court commanding the judge presiding therein to resume jurisdiction over this case and to give effect to this decision. Costs are ruled against the appellant. It is so ordered."

On October 22, 2007, respondent/appellant, by letter addressed to Mohamed K. Kafel, 1st movant/appellee, requested and demanded that 1st movant/appellee submit the appropriate documentation and receipts for improvements he made on the premises of the respondent/appellant, and demanded that 1st movant/appellee vacate and surrender the respondent/appellants' premises on or before, but not later than November 15, 2007.

The 1st movant/appellee failed, refused and neglected to honor respondent/appellant's letter. As a result of this failure, refusal and neglect, respondent/appellant, on December 17, 2007 filed an action of summary proceedings to recover possession of real property, against the 1st movants/appellee and all his tenants, 2nd movants/appellees. On December 22, 2007 movants/appellees filed returns to the petition for summary proceedings to recover possession of real property. On January 3, 2008, respondent/appellant filed a reply to the returns.

On December 26, 2007, movants/appellees filed a motion to dismiss the petition for summary proceedings to recover possession of real property. On January 3, 2008, respondent/appellant a resistance to the motion to dismiss.

The movants/appellees, in their motion to dismiss, contended that title was in issue, because there existed an agreement of lease between 1st movant/appellee, Mohammed Kafel, and respondent/appellant, Minita K. Moniba, and that said agreement of lease had not been terminated, and accordingly summary proceeding to recover possession of real property would not lie. Movants/appellees also contended "that the agreement of lease of August 1, 1997 between 1st movant/appellee, Mohammed Kafel, and respondent, Minita K. Moniba declared valid by this Honorable Court when it opined in *Kafel v. Moniba*, March Term, 2007 "that portion of the trial court's final judgment terminating the agreement of lease dated August 1, 2007 and ordering the Clerk to issue a writ of possession in favor of appellee, ousting, ejecting and evicting appellant from the demised premises is hereby reversed." Accordingly, the August 1, 1997 agreement of lease remained valid and its termination can be done consistent with paragraph 10 thereof.

We hold that following this Court's decision in *Kafel v. Moniba*, decided during the March Term, 2007 of this Court, the only obligation of Minita K. Moniba was for her "to avail herself of whatever legal remedy there [was], subject to the obligation of the lessor contained in paragraph 10 of the agreement of lease that ' . . . [i]n case lessee makes any improvement before the termination, lessors shall reimburse all

reasonable expenses incurred by lessee, such reimbursement shall be based on appropriate documentation b or receipts'."

The obligation of Minita K. Moniba was, consistent with paragraph 10 of the agreement of lease, was to give the lessee one year's notice. We hold that the lessee has been given that notice, but the lessee has failed and refused to provide the lessor the information under paragraph 10 of the agreement of lease.

During argument before this Court, counsel for Mohamed K. Kafel submitted that he be granted six months to negotiate a new agreement of lease with the informant. Counsel for the Informant interposed no objections to the submission.

We confirm the submission of counsel for Mohamed K. Kafel, and hold that should negotiations between the lessor and the lessee fail, the lessee shall surrender possession of the premises, subject of the agreement of lease, to the lessor. Should the lessee fail to surrender the premises, following a breakdown of negotiations, upon information to the Civil Law Court for Montserrado County, the lessee, and all his tenants, shall be evicted and ousted from the premises.

The Clerk of this Court is ordered to send a mandate to the Civil Law Court for Montserrado County to give effect to this ruling. It is so ordered.

Information granted.

J. Johnny Momob and Othello S. Payman, I of Sherman & Sherman, Inc. for the informant. Frederick D. Cherue of Dugbor Law Firm for the respondents.