

**Minta K. Moniba** of the City of Monrovia, Liberia Appellee versus **Mohammed K Kafel**, also of the City of Monrovia, Liberia Appellant

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

Heard: April 10, 2007 Decided: August 9, 2007

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

On 1 August 1997, the appellee and her late husband, Dr. Harrff. Moniba, entered into an agreement of lease with the appellant for 3.90 lots, located in Paynesville Red Light, Montserrado County, "for the duration of the full term of twentyfive (25) years certain, commencing from the 1s t day of August, 1997 to and including July 31, 2022, with an optional period of ten years, the terms and conditions thereof to be discussed and negotiated." Both the appellee and her late husband, Dr. Moniba, signed the agreement of lease as lessors. Mohammed K. Kafel, the appellant, signed the agreement of lease as lessee. The agreement of lease was subsequently probated and registered.

Paragraph ten (10) of the agreement of lease provides:

"Both parties agree that the agreement may be terminated for or without cause by any party provided such party give a twelve-month notice to the other. In 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."

In exercise of the right reserved under paragraph ten (10) of the agreement of lease, the appellee and her late husband, as co-lessors, jointly addressed and signed the following letter, dated 10 October 2003, to the appellant:

"We wish to refer you to paragraph 10 (ten) of the Lease Agreement executed on August 1, 1997 by and between you, as Lessee, and ourselves, as Lessors, for and in respect of a parcel of land containing 3.90 lots, located in Paynesville Red Light, Monrovia, Montserrado County, Republic of Liberia which provides thus:

"Both parties agree that the agreement may be terminated for or without cause by any party provided such party give a twelve-month notice to the other. In 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.'

"By this *letter, we wish* to notify you that we are availing ourselves of said paragraph 10 (ten) and do hereby terminate the referenced Agreement of Lease effective as of the 1st. day of November, 2004.

"Accordingly, you are requested to submit to us the cost of the improvement made by you on the said premises, with supporting documentation for reimbursement, net of appropriate adjustments, consistent with paragraph 10 (ten) of the agreement."

On 24 November 2004, Dr. Harry F. Moniba died in a motor accident in the United States of America. On 15 January 2005, following his burial in Liberia, the appellee wrote the appellant apprising him that since the receipt, by him, of the notice of termination of the agreement of lease of 1997, he had not reverted to her. The appellee requested a meeting with the appellant, which was held on 19 January 2005. During the meeting, the appellant informed the appellee that the agreement of lease of 1 August 1997 was amended by her late husband, co-lessor Dr. Harry F. Moniba, and that the appellant had paid rent to co-lessor Dr. Harry F. Moniba up to 2016. The appellant maintained, therefore, that there was no need to discuss the 10 October 2003 letter. The appellee requested copies of the addendum to the agreement of lease which had allegedly been executed by co-lessor Dr. Harry F. Moniba solely. The appellant obliged and provided copy of the requested document to the appellee.

We gather that the appellee rejected the addendum, since it had allegedly been executed by co-lessor Dr. Harry F. Moniba solely, who had no power of attorney to act on her behalf or to affix her signature to the document.

The one issue determinative of this case is whether the addendum executed by the late Dr. Harry F. Moniba is binding on the appellee? We hold that the addendum is not binding on the appellee, as appellant has neither averred nor shown that the late Dr. Moniba had authority, i.e. power of attorney, from the appellee, duly probated and registered, to act as her agent involving the real estate, subject of the petition for a declaratory judgment.

In *Bryant v. The African Produce Company*, 6 LLR 27, 31-32 (1937), this Court held:

". . . According to the law and practice in this jurisdiction, before an agent or attorney can hold himself out to be the lawful agent of his principal, he must have previously been vested with that authority, and said authority ought to be probated and registered."

There is also the following authority:

"Agency is ordinarily a relationship created by agreement of the parties, and as between principal and agent, an agency is created and authority is actually conferred very much as a contract is made, to the extent that the creation results from the agreement between the principal and agent that such a relationship shall exist. As between the parties to the relationship, there must be a meeting of the minds in establishing the agency, and the consent of both the principal and the agent is necessary to create the agency, although such consent may be implied rather than expressed. The principal must intend that the agent shall act for him, the agent must intend to accept the authority and act on it, and the intention of the parties must find expression either in words or conduct between them. . . ." Am Jur 2d, *Agency*, § 17.

Private Wrongs Law, 5 Liberian Codes Revised, tit. 28, § 10.2 (1977) provides the following short form of Power of Attorney involving real estate transactions:

"In a statutory short form power of attorney, the language conferring general authority with respect to 'real estate transactions,' must be construed to mean that the principal authorizes the agent:

"(a) To accept as a gift, or as security for a loan, to reject, to demand, to buy, *to lease*, to receive, or otherwise to acquire either ownership or possession of any estate or interest in land;

"(b) To *sell*, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to encumber, to partition or to consent to the partitioning, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;

"(c) To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, encumbrance, lien or other claim to land which exists, or is claimed to exist, in favor of the principal;

"(d) To do any act of management or of conservation with respect to any estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect such estate or interest by action, proceeding or otherwise, to pay, to compromise, or to contest taxes or assessments, to apply for refunds in connection therewith, to purchase supplies, to hire assistance or labor and to make repairs or alterations in the structures or lands;

"(e) To utilize in any way, to develop, to modify, to alter, to replace, to remove, to erect or to install structures or other improvements upon any land in which the principal has, or claims to have, any estate or interest;

"(f) *To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this section,* to conserve, to invest, to disburse or to utilize anything so received for purpose enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

"(g) To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with such plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power of sell or otherwise to dispose of such shares, or any of them, to exercise or to sell any option, conversion or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy;

"(h) To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purpose enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

" (i) To execute, to acknowledge and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purpose enumerated in this section;

" (j) To prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating thereto;

"(k) To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

"(l) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts which the principal can do through an agent, with respect to any estate or interest in land.

"All powers described in this section shall be exercisable equally with respect to any estate or interest in land owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the Republic of Liberia or elsewhere" (emphasis supplied).

We take note that the agreement of lease dated 1 August 1997 was executed by and between the appellee and her late husband, Dr. Harry F. Moniba, jointly, as lessors, and Mohammed K. Kafel, the appellant, as lessee. We take note, also, that the letter dated 10 October 2003 from the appellee and Dr. Moniba addressed to the appellant was signed by both the appellee and Dr. Moniba. We wonder why, therefore, the appellant did not demand of Dr. Moniba that the appellee co-execute the alleged addendum, or if this was not possible for whatever reasons, that he provide a power of attorney, duly probated and registered, creating the agency between the appellee, as principal, and Dr. Moniba, as agent.

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. The judgment of the trial court dated 16 November 2006 finding that the addendum of 31 March 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 1 August 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.

*Judgment affirmed with modification.*