Mr. Jung Park of the Interbrugo Industrial Korean Garage Point Four Junction and **Mr. Jung Del Park** of the City of Monrovia Liberia APPELLANT VERSUS Counselor **Philip J.L. Brumskine** of the City of Monrovia, Liberia by and thru his Attorney-In-Fact, Mr. William Bryant also of the City of Monrovia, Liberia APPELLEE.

LRSC 27

APPEAL FROM THE CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.

Heard: March 30, 2010. Decided: June 29, 2010.

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

The appellee in these appeal proceedings and plaintiff below, Counselor Philip J.L. Brumskine, on April 4, 2006, filed a six count action of ejectment at the Sixth Judicial Circuit for Montserrado County, sitting in its March 2006 Term. The action sought to oust from appellee's land, Mr. Jung Park of the Interburgo Industrial Korean Garage and Mr. Jung Del Park, appellants /defendants.

In his complaint, appellee claims that he owns one (1) lot of land situated at Point Four, Bushrod Island, Monrovia, which he obtained through purchase from one Mrs. Mattie Branch-Reynolds. In support of his claim, appellee attached copy of his title deed, probated at the Probate Court of Careysburg on October 6, 1987. Appellee complained further that without his permission, appellants have entered on his land and occupied it for ten (10) years. He further submitted that despite several attempts, short of litigation, to have appellants cooperate with him by either vacating his premises or entering an agreement to legitimize their continuous occupancy thereof, appellants have neglected and failed to show any interest in resolving the matter.

For wrongful and illegal withholding of his legitimate property and the loss he suffered consequent there upon, appellee prayed court to be paid US$65,000.00 (Sixty-five thousand United States Dollars) representing special damages in unpaid rentals. Appellee has further urged the court to award him general damages in an amount not less than one hundred percent of the special damages prayed for.

But in an eight count answer to the complaint, appellants denied illegal occupancy of appellee's premises. Appellants stated that they have openly and notoriously occupied the premises in issue since 1988 without any protest from appellee, Counselor Brumskine. The only exception was the late Mattie Branch Reynolds who protested

and subsequently instituted an action of ejectment against Madam Korpu Gartuah, appellants' lessor at the time. That action of ejectment was finally determined by the Supreme Court in favor of the late Mattie Branch- Reynolds in May 2003. As evidence thereof, copies of both the judgment along with the opinion of the Supreme Court of Liberia were attached to the answer.

Appellants wondered why Counselor Brumskine is asserting his claim now. Counselor Brumskine as one of counsels for the late Reynolds must have been aware that Madam Korpu Garfuah and the late Reynolds were in court for the property he is now claiming; yet appellee did nothing as required by law to intervene to protect his interest at the time. Appellants denied any knowledge about one (1) lot being conveyed to appellee. As far as appellants were concerned, they have been occupying the premises in question on the strength of an agreement of lease entered on June 1, A.D. 1997 by and between the late Mattie Branch- Reynolds, the same individual who allegedly sold the one lot in dispute to appellee. Appellants attached copy of the agreement of lease entered between appellants and the late Madam Mattie Branch-Reynolds in support of their stance. Appellants therefore argued that assuming Mrs. Reynolds conveyed the premises in issue to appellee, then it is only proper that the intestate estate of Mattie Branch-Reynolds be sued and held liable for conveying the impression that she was owner of the entire property at the time she entered lease agreement with appellants for the entire premises of three (3) acres.

Appellants also requested court to consider the amount US$65,000.00 of special damages, prayed for by appellee as mere speculation arguing that in keeping with law, special damages must not only be alleged but specifically pleaded and proved. Appellants concluded their answer by insisting that on the basis of the facts and the laws controlling, the court must deny and dismiss appellee's complaint in its entirety.

Appellee subsequently filed a nine count reply essentially affirming the averments contained in the complaint. Appellee also vehemently rejected appellants' argument that he should have participated in the ejectment suit filed by his grantor. Rather, appellee maintained that if indeed there was a judgment in favor of appellee's grantor, Mrs. Branch-Reynolds, said judgment covered him in so far as it relates to the one (1) town lot sold to him by the said grantor for reason that the grantor and her heirs are under a duty to warrant and defend grantee's rights to the property against anyone whomsoever, including appellants in these proceedings. Appellee also argued that assuming appellants occupied the premises pursuant to an agreement of lease entered in 1998; in that case appellants' lessor had no legal right to enter such agreement for the portion of land owned by appellee. Concluding, appellee urged the court to dismiss

appellants' entire answer and award appellee both special and general damages in keeping with the laws controlling.

Thereafter, pleadings rested. Presiding by assignment, His Honor, Emery S. Paye, on May 26, 2006, ruled the case to trial under the watchful eye of a trial jury.

Certified records reveal that a two count motion to join the intestate estate of Mattie Branch-Reynolds as party defendant was filed by appellants. In the motion, appellants/movants argued that they have been paying rentals for the premises, subject of the ejectment suit, based on the terms of an agreement of lease entered between appellants and the intestate estate of Mattie Branch Reynolds. They attached copy of said agreement along with rent payment receipts for the premises. Under the circumstance, the intestate estate, appellants urged the court, ought to be joined as a necessary party in order to get complete relief. The motion to join was resisted, argued by the parties and granted by the court.

In his ruling dated March 31, 2009 granting the motion to join, the trial court said:

"... This court takes judicial notice of the judgment rendered in 1993 in an action of ejectment involving the Late Mattie Branch Reynolds and one [Madam Korpu] Garfuah in which case Garfuah was liable. [Thereafter, Garfuah] took appeal to the Honorable Supreme Court. The judgment of this court awarding the property to Mattie Branch Reynolds in an action of ejectment was confirmed by the Honorable Supreme Court of the Republic of Liberia. The administrator of the said estate subsequently filed a cancellation proceeding before this court alleging fraud in the addendum to the lease agreement and this court decreed cancelling the aforesaid lease agreement. The Supreme Court, in its recent ruling of January, A.D. 2009, confirmed the cancellation of the addendum to the lease agreement and ordered the defendants [appellees in these proceedings] to pay a little over US300, 000.00 as rental arrears to the said estate. "

" ... .since the lease agreement between the lessee and the estate have been cancelled, the Supreme Court awarded the entire property to the aforesaid estate and ordered the lessee to pay all rental arrears to the estate. It is therefore only prudent that the estate be joined as a defendant party for a complete relief in this matter. This court also says that only the estate by and thru its administrator can confirm the sale of apportion of the subject property to the plaintiff. If the estate confirms the sale of a portion of the property, which was previously leased to the defendants, the estate will in turn reimburse the defendant for whatever rental arrears paid to the estate. This court also says, the joiner of the estate will make this case very simple and clear without further litigation by arbitration and/or an investigative survey to identify the exact location of the portion of the property, previously executed to the plaintiff prior to her death. [Emphasis Ours].

However, on motion nine days thereafter on April 9, 2009, His Honor, Judge Peter W. Gbeneweleh, rescinded the aforementioned ruling of March 31, 2009. Rescinding the March 31 ruling to join, Judge Gbeneweleh essentially reasoned as stated:

"... this court says that the grantor of the movant cannot be joined as a party defendant under our law, [on the strength of] the warranty contained in the deed [which] guarantees to protect and defend the grantee.

"There is no parity of legal reasoning that the grantor of the grantee who is by law required to protect and defend its grantee in the instant case be joined as a party defendant against the interest of its own grantee ... ... This court says that it inadvertently joined the grantor as defendant party in the action of ejectment instituted by the grantor against the respondent. In the case, Raymond International v. Dennis, 25 LLR, 131, syl. 7 (1976), *the Honorable Supreme Court held that:*

"A judge may modify or rescind a judgment in the term in which he is sitting but only upon notice to the parties."

In dictum, it must be said here that the use of syllibi, as the learned judge repeatedly did in his ruling under review, is discouraged and criticized by the Supreme Court. Far back in 1936, in the case: *Young v. Embree,* 5 LLR 242, (1936) Mr. Chief Justice Grimes speaking for this Court on citing syllibi, said: *"... it is a source of regret to us that some of our practitioners seem to be developing the habit of citing as authority the syllabi to opinions instead of the text of the opinions themselves. And, for that reason, it may not be amiss to remark here in passing, that the object of the syllabus is merely twofold: (1) to give at a glance an idea of the principles settled in an adjudicated case; and (2) to facilitate the preparation of the index."* Ibid. 249-50.

We reiterate that syllibi are editorial notes and they therefore do not form any approved part of a court's published opinion.

During regular trial thereafter, appellee/plaintiff presented two witnesses, including witness Tommy Branch, a Pastor of the Christian Revival Fellowship Church and also coadministrator of the late Mattie Branch- Reynolds Intestate Estate.

In his testimony in chief, Witness Tommy Branch told the court that the late Mattie Branch-Reynolds told him that she sold to appellee, Counselor Philip J.L. Brumskine, one lot out of the three acres of land she owned, lying and situated at Point Four. The witness also testified to the deed executed by the late Mattie Branch-Reynolds; said instrument was subsequently admitted into evidence without any objection.

For their part, appellants also presented two witnesses. The witnesses testified in support of appellant's averments. Also during the trial, the trial court sustained objection interposed by appellee's counsel to the admission into evidence of the memorandum of understanding (M.O.U.). The court also failed to take any judicial notice of said instrument notwithstanding that said instrument was filed with the court, for reason that the M.O.U. was not pleaded. In his ruling, the judge said:

"...this court sustained the objection of the plaintiff's counsel not to be admitted into evidence [the MO. U.] on grounds that it was not pleaded in the defendant's answer and should not be marked to be presented to the trial jury. This court noted the exceptions of the defendant's counsel as basis for review by the Honorable Supreme Court. In the case, Liberia Mining Company v. Kellee, 29 LLR, 237, syl.10 (1981), *the Supreme Court held, that, "A stipulation entered between parties before a court, agreed to the manner in which, payment is to be made, by the debtor, does not per se make such stipulation a judgment of a court, nor does the judge's signature thereon indicating his approval ....makes such stipulation a judgment. To constitute such stipulation, a judgment by consent the document should have been acknowledged in court and entered into the records by orders of the judge. In the same case: on page 225, syl. 8, the Supreme Court opined: "The rule in Walker v. Morris, 15 LLR, page 424 (1968) which holds that all documentary evidence which is material to the issue of facts raised in the pleadings, should be presented to the trial jury, presupposes that all documentary evidence must have previously been pleaded, annexed to the pleading, and exchanged or noticed for its production at the trial, was given in the pleadings exchanged by the parties, in order that the procedure may confirm with the requirement of notice to neither party of what is being intended to be proven.... "*

This Court shall accord more attentive consideration to the question of exclusion by the judge of the M.O.U. later in this opinion.

When the parties rested with production of evidence in toto, final arguments were entertained by the trial court, and the jury charged and ordered retired to deliberate and arrive at a verdict.

On May 20, 2009, a verdict of *"liable"* was returned by the jury against appellants.

The verdict awarded appellee the amount of US$45,000.00 (Forty-five thousand United States dollars) in general damages.

A motion for new trial was filed, resisted, heard and denied. Judge Gbeneweleh on May 25, 2009, entered final judgment confirming the verdict and ordered a writ of

possession issued and placed in the hands of the sheriff to oust, evict and eject appellants and place appellee in complete possession of the subject property.

It is from this final judgment appellants have perfected an appeal predicated upon a six count bill of exceptions. The three counts deemed appropriate for our review are quoted hereunder as follows:

"1. Your Honor erred by taking judicial notice of the records in the cancellation proceedings and stating/accepting among other things, that Tommy Branch Reynolds was one of the Administrators of the Intestate Estate of the late Mattie Branch-Reynolds who instituted the cancellation proceeding to cancel the lease agreement purportedly signed by Mattie Branch-Reynolds which enable the defendant to occupy the property in the final judgment but failed, refused and neglected to take judicial notice of the following facts on the ground that the petition for the cancellation of the lease agreement is separate and distinct from the action of ejectment. The facts which would have operated in favor of the defendant and which you refused to take judicial notice of are:

a. That the late Mattie Branch-Reynolds instituted an action of ejectment to recover three (3) acres of land in this Honorable Court in 1989 when the deed which Counselor Philip Brumskine annexed to the action of ejectment he instituted shows that the late Mattie Branch-Reynolds parted with one lot of the three (3) acres of land in September 1987. Had your Honor taken judicial notice of these facts when you were charging the jury [and also] in your ruling on the motion for new trial or in the final ruling, the outcome would have been different.

b. That the Honorable Supreme Court of the Republic of Liberia awarded the late Mattie Branch-Reynolds three (3) acres of land during the March Term A.D. 2003.

c. That following the rendition of the final judgment of the Honorable Supreme Court of Liberia in 2003, the Administrators of the Intestate Estate of the late Mattie Branch Reynolds, one of whom testified during this trial of ejectment of being in full knowledge of the transfer of one lot from the three acres by the late Mattie Branch-Reynolds to Plaintiff; instituted an action in this Honorable Court to cancel the lease agreement which was executed between the late Mattie Branch-Reynolds and the Defendant and annexed a copy of the judgment of the Honorable Supreme Court awarding three acres of land to the late Mattie Branch Reynolds. Defendant submits that the Administrators of the Intestate Estate of the late Mattie Branch-Reynolds heartily relied on the judgment of the Supreme Court to institute the cancellation proceedings.

"2. That Your Honor's refusal and failure to receive and place a mark of identification on the Memorandum of Understanding executed on March 6, 2009 by and between the Administrators of the Intestate Estate of the late Mattie Branch-Reynolds and the defendant and approved by Your

Honor deprived the defendant of the opportunity to establish the fact that he is legally occupying the premises, the subject matter of the dispute. Had the MOU been received, marked and sent to the trial jury, the jury would not have returned a verdict of liable against the defendant.

"3. That Your Honor's ruling granting the motion to rescind the ruling joining the Intestate Estate of the late Mattie Branch-Reynolds was one of the reasons why the jury awarded general damages to plaintiff: You, a signatory to the Memorandum of Understanding between defendant and the Intestate estate of the late Reynolds, are fully aware that the intestate estate of the late Reynolds is claiming three acres; that is to say the parcel of land defendant is occupying. You are also aware that the defendant is paying rental to the said estate for the period he has been occupying the said premises, that is to say since 1989. If the estate was a party defendant, all the information contained in this count would have gone to the jury and the jury would not have returned a verdict in favor of the plaintiff in these proceedings.

The substantive issue determinative of this appeal is whether under the facts and circumstances set forth and recited hereinabove, appellants could be properly held liable to appellee?

Both in their bill of exceptions and brief argued before this Court, appellants insisted that the refusal by the trial judge to take judicial notice of the facts which would have operated in appellants' favor resulted to the petty jury arriving at a wrong and erroneous outcome. According to appellants, relevant facts improperly excluded by the trial judge to appellants' material prejudice included the following:

(1) That in 1989 the late Mattie Branch-Reynolds instituted an action of ejectment in the Sixth Judicial Circuit, the very court, to recover three (3) acres of land But appellee's deed proffered in the ejectment case showed quite the contrary. Appellee's deed shows that two years earlier, that is, by September 1987, the Late Mattie Branch Reynolds had conveyed one lot of her said three (3) acres to appellee. However, when the Late Reynolds' ejectment case was entertained by the Honorable Supreme Court of the Republic of Liberia, and here we must state on the basis of the evidence before the Supreme Court, said Court sitting in its March Term A.D. 2003 affirmed the trial court's final judgment and awarded the three (3) acres to the late Mattie Branch Reynolds. Under the circumstances, appellants argued it was prejudicial for the court, which was the approving authority to a stipulation validating and legitimizing rental payment to Reynolds intestate estate for the entire three acres, to decline to take judicial notice of its own records, maintaining that those records/instruments were not pleaded The same court's record, to the full knowledge of the trial judge, contained irrefutable evidence that of the three acres, one lot had actually been conveyed to appellee; against this background, the court should have taken cognizance of its own records and ruled that the Reynolds intestate estate was not, and could not lay legitimate claims to rental arrears for the whole three acres. Unarguably, the

judge's refusal to consider this piece of evidence substantially deprived appellants of the opportunity to establish that their occupancy of the premises in dispute was being done under the color of legal authority of the intestate estate of Mattie Branch-Reynolds. Because of these, it is the Mattie Branch-Reynolds intestate estate that could be properly liable, not the appellants.

(2) That also, one of the administrators of the intestate estate of Mattie Branch-Reynolds testified in favor of Appellee Brumskine. The intestate estate having testified admitting parting with one (1) lot of the three (3) acres, and Appellee Counselor Brumskine's deed having been duly admitted into evidence by the trial court, in the face of this overwhelming irrefutable evidence, yet the trial court woefully failed to consider this material evidence. The court elected to erroneously conclude that the Reynolds intestate estate was legally entitled to rentals on the three acres for reason that the judgment of the Honorable Supreme Court had awarded the intestate estate the three acres. Appellants have wondered how a court of justice required to act within the law and equity in the face of unrefuted evidence, would proceed to misuse the opinion of the nation's highest court by entering the judgment now subject of these appeal proceedings.

As it can be seen, it is appellants' strong contention, and this Court is persuaded thereby, that the trial court was duty bound to take judicial notice of the MOU and its own records in the ejectment case. Its own records show that the whole three acres of land did not belong to the Reynolds intestate estate. This vital evidence should have been duly considered by the trial judge and sent to the trial jury. If this was done, according to appellants, the jury would have returned a verdict to the contrary and the appellants would not have been found "liable" to the appellee.

But the judge has justified his exclusion of the MOU for the reasons stated in his ruling in which he stated: *"this court sustained the objection of the plaintiff's counsel not to admit into evidence [the MO. U] on grounds that it was not pleaded in the defendant's answer and should not be marked to be presented to the trial jury. "*

We find ourselves unable to agree with this ruling. There is literally no end to the number of opinions in which the Supreme Court held that courts in this jurisdiction are required by law to take judicial notice of their own records. Referring to previous holdings on this question, this Court held in the case Gbassage v. Holt 24 LLR 293, 296 (1975):

"[E]very court is bound to take judicial cognizance of its own records; and no evidence of a fact of which the Court will take such notice need be given by the party alleging its existence.

"In the *Gbassage* case, a case analogous to the case at bar, the defendant answering in

an ejectment suit informed the court that the purported warranty deed relied on by the plaintiff and attached to his complaint, was a forgery. The defendant also told the court that the persons plaintiff alleged to have signed his deed actually never executed said instrument. The defendant further claimed that as a result of this forgery allegedly perpetrated by plaintiff, the heirs of C.A. Brown, the person who purportedly signed the deed, had filed a petition in the court for cancellation of said purported deed.

In his reply to these serious allegations of fraud, plaintiff amongst other things denied that any cancellation proceedings had been filed against his title. Meanwhile, one of the supposed grantors of plaintiff's deed, Elizabeth Brown, filed a motion and was granted permission to intervene. Interestingly, Elizabeth Brown joined the defendant in questioning plaintiff's title and his capacity therefore to sue.

Similar to the case on appeal before us, the trial judge in the *Gbassage* case, His Honor, Judge Tilman Dunbar dismissed defendant's answer; just as Judge Gbeneweleh failed to take judicial notice of the important evidentiary materials in the court possession. Judge Dunbar, as Judge Judge Gbeneweleh, ruled as follows:

"...in challenging the justness or truthfulness of the allegation in the answer, to the effect that cancellation proceedings had been instituted in the civil Law Court to cancel the title deed of the plaintiff.. .....it was incumbent upon the defendant to either invite the court to take judicial notice of its own record in the cancellation proceeding case, or the defendant should have made proffer of a certificate from the clerk of court showing that cancellation proceedings had been instituted in his office.

"Under the law plaintiff was entitled to be notified of allegations laid in the pleadings of all grounds of defense upon which defendant relied in defense of this action. The law confirms this position when it states that it is an elementary principle of our practice and is found in our statute, that the fundamental principle of all pleading is giving notice of what a party intends to prove at the trial. In keeping with this provision of the law count two of the answer is not sustained and the entire answer is therefore dismissed for want of legal merit, defendant being ruled to a bare denial of the facts stated in plaintiff's complaint and the reply."

Reversing Judge Dunbar, the Supreme Court cited the principle adopted in the case Phleps v. Williams 3 LLR 54, (1928), and directed that: *"....every court is bound to take judicial cognizance of its own records; and no evidence of a fact of which the court will take such notice need be given by the party alleging its existence. The judge, says the Supreme Court, could not claim therefore, that he had no invitation to take notice of a pleading in a case filed in his court in the Sixth Judicial Circuit. "* 24 LLR 293, 295-6(1975).

As the Supreme Court disagreed with Judge Dunbar in the cited case, we equally and totally disagree with Judge Gbeneweleh on this question. In doing so, we reaffirm the long held principle of law, emphasized by this Court in the case: Mim Liberia Corporation v. Toweh, 30 LLR, 611, 621 (1983), where it was held:

"A court has knowledge of the genuiness of its own records. Notice will uniformly be taken by a court of its own records in the case at bar, and of all matters paten on the face of such records, including all prior proceedings in the same case though not of matters which may merely be inferred from facts appearing on the face of the records.

This is true of appellate courts as well as courts of original jurisdiction, and it has been held that the appellate court may judicially recognize the records made upon the trial in the lower court. "

Further on this point, this Court, in Dopo v. City Supermarket 34 LLR 215, (1986) at page 217, held that a court of justice of the Republic of Liberia is required to take judicial notice of its own records, the purpose and reason being to *"obviate the need for the production of any further evidence"* [Emphasis Ours].

This Court also wonders why the court will disregard the testimony made by the administrator of the intestate estate of Reynolds to the effect that of the three acres, one (1) lot thereof was conveyed by the Late Reynolds to Appellee Brumskine. Under our law and practice, all admissions made by a party are conclusive evidence against such party, Dukuly v. Jackson 30 LLR 154, 159 (1982). Yet the court held otherwise.

Along this trend, let us examine the M.O.U. executed between appellants and the Reynolds Estate, excluded by the trial court, and said M.O.U.'s utility value to a just and equitable determination of the case at bar. The M.O.U. states:

In substance, the referenced MOU concluded under the supervision of the court with Judge Gbeneweleh's signature firmly affixed there unto, states as follows:

"THIS AGREEMENT is made and entered into this 6 th day of March, A.D. 2009 by and between THE KOREAN GARAGE, represented by its General Manager, Mr. J. Park of the City of Monrovia, Montserrado County, Republic of Liberia, hereinafter referred to and known as the "APPELLEE and THE INTESTATE ESTATE OF THE LATE MATTIE BRANCH- REYNOLDS, represented by and thru its Administrators & Administratrix also of the City of Monrovia, hereinafter known as the "APPELLANTS".

WHEREAS, the Honorable Supreme Court of the Republic of Liberia rendered a judgment

canceling the Lease Agreement entered into by and between the APPELLEE and the late Mattie Branch- Reynolds and

WHEREAS, in the ruling canceling the agreement, the Supreme Court ruled cost against the APPELLEE and

WHEREAS, following the reading of the mandate of the Honorable Supreme Court, a bill of cost in the total amount of USD327,712.00 (Three Hundred twenty seven thousand seven hundred twelve United States dollars) and LD 14, 125.00 (Fourteen thousand one hundred twenty five Liberian dollars) was prepared by the Civil Law Court and served on both counsels for taxation and

WHEREAS, the counsels for the parties had a meeting with the judge assigned in the Civil Law Court and

WHEREAS, during the meeting it was agreed that the APPELLEE should pay the total amount of USD175,000.00(One hundred and seventy five thousand United States Dollars) to the APPELLANTS as rental arrears for the period the APPELLEE has been occupying the premises which was the subject matter of dispute between the parties.

WHEREAS, the APPELLEE has agreed to pay the amount of USD175,000.00 (One hundred and seventy five thousand United States Dollars) to the APPELLANTS. WHEREAS, the APPELLANTS have agreed to accept the amount of USD175.00.00 (One hundred seventy five thousand United States Dollars);

NOW THEREFORE the parties have agreed to be bounded as follows:

1. That the APPELLEE shall pay the amount of USD15,000.00 (Fifteen thousand United States Dollars) on Friday, March 6, 2009 at 12:00p.m.

2. That the APPELLEE shall pay to the APPELLANTS the amount of USD160,000.00 (One hundred sixty thousand United States Dollars) on or before the r day of April 2009. In the event APPELLEE fails, refuses and neglects to pay the said amount, the APPELLANT shall pray court for the issuance of a writ of possession to have the Appellee evicted from the premises, the subject matter of these proceedings.

3. That following the payment of the entire amount of USD160,000.00 (One hundred and sixty thousand United States Dollars), the APPELLEE shall occupy the premises for the period of twelve (12) months without paying any rent and that before the expiration of the twelve (12) months free occupancy period, the parties herein shall negotiate a Lease Agreement.

4. That APPELLEE/MOVANT hereby agrees not to remove any of his personal effects from the premises. In the event he makes any move suggesting that he is vacating the premises without paying APPELLANT, APPELLANT shall move court for a writ of possession to immediately evict APPELLEE from the premises and to make the full payment of the original cost of court (US$327,712.00).

5. That it is mutually agreed and understood that this stipulation shall be binding upon the parties, assigns, successors-in-office, legal representatives executors and administrator/trix.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED ACKNOWLEDGED, AFFIXED THEIR SIGNATURES TO THIS INSTRUMENT AT THE PLACE, DATE AND YEAR ABOVE MENTIONED.

Signature:
Jung Dal Park Appellee
Signature:
Tommy Branch/Administrator Appellant
Signature: Miatta Peal/Administratrix
APPROVED: Signature
Peter W. Gbeneweleh Assigned Circuit Judge

This Court deems it appropriate to state at this juncture that the MOU of March 6, 2009 concluded between appellants and the intestate estate of Mattie Branch-Reynolds, under the watchful eyes of the Judge Gbeneweleh, had the single object of protecting the respective interests of the executing parties. The court having facilitated the conclusion of this MOU, it is reasonable to form an opinion that appellants were induced to believe that they will be protected by that tribunal of justice under whose supervision said MOU was concluded. Believing this as such, appellants proceeded and settled the full negotiated amount in rental arrears to the intestate estate of Mattie Branch Reynolds, a party due rental for only eleven(11) lots, and not twelve (12) lots as it obtained here under the trial court's approbation.

The negotiated amount for full settlement of the arrears having being paid as directed under the stipulation, and the trial court heretofore having also stated on April 9, 2009 ruling: *"If the estate confirms the sale of a portion of the property, which was previously leased to the defendants, the estate will in turn reimburse the defendant for whatever rental arrears paid to the estate.",*the question obviously suggesting itself will be, who owes the appellee the ten (10) year rental arrears?

Hereafter, this Court is at loss as to what equitable principle the trial judge held appellants/defendants liable for wrongful withholding of appellee/plaintiff s premises? We cannot accept this decision.

Recourse to the records further reveals that on May 6, 2009, three (3) days prior to the ruling of Judge Gbeneweleh quoted above, appellee's witness had testified in the ejectment case. The witness, Tommy Branch, told the court that his late aunty, Miatta Branch-Reynolds, confirmed that she sold to Appellee Counselor Brumskine, one (1) lot out of her three (3) acres of land situated at Point Four, Bushrod Island. During the trial also, the deed was identified by the witness and admitted into evidence without any objection from the adversary counsel.

It must also be observed that the M.O.U. referenced above was filed with the trial court on March 31, 2009 having been executed on March 6, 2009. It is interesting to note that the M.O.U. expressly states that counsels for the parties had a meeting with the judge assigned in the Civil Law Court; that it was agreed during said meeting that the appellants should pay the total amount of USD175,000.00(One hundred and seventy five thousand United States dollars) to the intestate estate of Mattie Branch Reynolds Intestate Estate as rental arrears for the period appellants have been occupying the premises, subject matter of dispute between the parties. It must also be noted that in his ruling of March 31, 2009 granting the motion to join the Mattie Reynolds intestate estate, a ruling subsequently rescinded, the judge indicated as follows:

"...This court also says that only the estate by and thru its administrator can confirm the sale of apportion of the subject property to the plaintiff. If the estate confirms the sale of a portion of the property, which was previously leased to the defendants, the estate will in turn reimburse the defendant for whatever rental arrears paid to the estate. [Emphasis ours].

With these obtaining facts, under what pale of legal reasoning could the court enter a judgment on May 25, 2009, adjudging appellants liable to Appellee Brumskine? For this Court of last resort to allow such a decision to stand at the detriment of appellants under the facts detailed in this opinion, will amount, in our opinion, to ushering injustice unto appellants. If this Court were to be so persuaded to upholding this decision, what a grave implication will our decision in that instance trigger for the credibility of a court of law and reliance by party litigants on judgment of tribunal of justice and equity! As the ultimate arbiter of justice in the nation, this Court shall lend no aid to any such conduct.

In Jackson v. Trinity 17 LLR 631 (1966) and Bailey v. Sancea 22 LLR 59, 66 (1973), this Court said, and we here reaffirm this principle that a court of equity shall not lend itself to perpetration of fraud and unjust enrichment.

By its approbation of the M.O.U. and same having been filed with the court, to the mind of this Court, the trial tribunal invariably placed a greater duty on itself to take judicial notice thereof. Its failure to take cognizance of such vital and material records is grave reversible error.

In his ruling under review, Judge Gbeneweleh cited and apparently relied on the case: *Liberia Mining Company Limited v. Keilee Lebbi* (1981). But the facts in the cited suit are succinctly distinguishable from those obtaining in the case at bar.

Touching on the stipulation made in the LMC case cited by the trial judge, this Court said that *"a stipulation entered into between parties before a court, stipulating as to manner in which payment is made by the debtor, does not per se make the stipulation a judgment of the court; nor does the judge's signature thereon, indicating his approval thereof ipso facto, make such a stipulation a judgment. To constitute such stipulation as a judgment by consent,* [the Supreme Court in the LMC case indicated] *that said instrument should be acknowledged as such in court and entered in the records by order of the judge."*

But as we have said, the facts in the said case are essentially different and clearly not analogous with those before us. The stipulation in the *LMC* case was not signed by counsel of the appellee, the party who reportedly signed the stipulation to discontinue the case. The absence of counsel's signature on said instrument contravened section 11.6(b) of 1LCL Rev., title I (1973) and made said instrument legally defective. Said provision of our statute requires that a stipulation shall be in writing signed by counsels of records for all parties.

The LMC case and the principle therefrom upon which the judge relied to disregard the stipulation in the case at bar was totally inapplicable.

Unlike the *LMC* case also, the stipulation in the case before us was negotiated by counsels of record of the parties and approved by the trial judge. And even of more importance, the instrument had been executed through settlement by appellants of the full rental arrears stipulated by the parties. All this information being available on the record and available with the court, the trial judge was certainly under a legal duty to take judicial notice thereof.

Another part of the trial court's ruling deserving our attention speaks to the judge's attitude on relief for the appellants in the instance it turned out that the intestate estate of Reynolds was not entitled to full rental payment. The judge stated as follows:

" ..... the plaintiff in [this] action of ejectment has remedy against his grantor for whatever rental arrears paid by the respondents [appellants in these proceedings] to the grantor."

We cannot agree with this ruling. Speaking on the equity principle adopted by this Court in Thorne v. Thomson, 3 LLR 193, 196 (1930), Mr. Chief Justice Johnson said: *"courts of equity administer to the ends of justice (1) by restraining the assertion of doubtful rights in a manner productive of irreparable damage: by preventing injury to a third person by all acts, omission, and concealment of a bridge of legal or equitable duty, trust or confidence, justly reposed and are injurious to others, or by which an un-conscientious advantage is taken of another."* The same principle is confirmed in the case: Jackson v. Trinity 17 LLR 631 (1966). It seems the leaned judge heeded none of these directives.

Further in the case: Benson v. Johnson 23 LLR 290, 299 (1974), Mr. Justice Henries speaking on equitable relief stated that: *"it is well settled as a general rule that the court of equity upon obtaining jurisdiction of an action administer full relief both legal and equitable, so far as it pertains to the same transaction on the same subject matter"* To do otherwise, to the mind of this Court, could not be considered just under the circumstances of this case.

We therefore reinstate Judge Gbeneweleh's ruling of March 31, 2009, joining the Reynolds Intestate Estate as a party defendant in these proceedings in light of the facts and circumstances of the case.

As far back as 1862, the case: Davis v. Republic, 1 LLR 17, 20 (1862), is a reference in point, the laws of this country make it obligatory on the Supreme Court of this country to reverse, affirm or treat otherwise all cases coming before it on appeal or in special proceedings. As it is also within the authority of this Court to award such decisions as in its opinion are deemed best, it is our opinion that appellants' bill of exceptions is sufficient to authorize a modification of the judgment entered by the trial court. Therefore, we decree as follows:

(1) The judgment of the trial court shall be, and same is hereby decreed modified.

(2) Consistent with the jury verdict as well as our decision to grant necessary equitable relief Appellee Brumskine's title to one (1) lot of the three (3) acres, subject of the ejectment action, is hereby confirmed.

(3) It is further directed that the rental arrears of USD175,00.00 (one hundred seventy five thousand United States dollars) paid by appellants to and duly received by the Mattie Branch-Reynolds Intestate Estate in settlement of rental arrears covering the period of ten (10) years, be made payable by the Mattie Branch-Reynolds Intestate Estate to Appellee Brumskine.

(4) Consistent with the above, the amount of 175,000, received improperly by the Mattie Reynolds Intestate Estate is hereby decreed prorated; that is to say, said amount of USD175,00.00 shall be divided by the 10 years for which it was paid, amounting to 17,500 per annum for the entire three (3) acres or twelve (12) lots. The annual rental of 17,500 for the three (3) acres or twelve (12) shall then be divided by twelve (12), recording USD 1,458.3 as the yearly rental amount per lot. The said annual rental of USD 1,458.3 is ordered multiplied by ten (10). The full and complete sum of USD14, 583.00 representing the ten (10) year arrears shall be payable to appellee for his one (1) lot by the Mattie Branch-Reynolds Intestate Estate.

(5) In satisfaction of this decree, the rental arrears of USD14, 583.00, ordered paid to appellee by this judgment shall have preference in all future rental payments by appellants, lessees to their lessor, the Mattie Branch-Reynolds Intestate Estate.

The Clerk of this Court is ordered to send a mandate to the judge in the court below to give effect to this judgment. AND IT IS SO ORDERED.

Counselor Beyan D. Howard of Legal Consultants, Inc. Law Offices appeared for appellants. Counselor Lavella Korboi Johnson of the Century Law Offices appeared for appellee.