Prim Africa, Inc., by and thru its General Manager, Clarence Tay of the City of Monrovia, Liberia APPELLANT VS. **Pealat Liberia Inc.**, by and thru its President/CEO Tony Lawal also of the City of Monrovia, Liberia APPELLEE

LRSC 28

HEARD: April 27, 2011 DECIDED: July 22, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This matter surrounds claims of two corporate entities and an individual alleging that the National Housing Authority (NHA), headed and represented by various Managing Directors, respectively entered agreements with them in the years 1997, 2009, and 1992, for the same premises, a cinema located in the Stephen Tolbert Estate in Gardnersville. The June 1, 1997 Agreement was entered into by Mr. J. Futon Dunbar, the then Managing Director of NHA, and West Coast Trading Company, Inc. represented by its Managing Director Mr. Matthew T. Mangolie; the Agreement of March 18, 2009 was entered into by Mr. Stephen Y. Neufville, Managing Director of NHA at the time, and P.G.L. Construction Company represented by its Chief Executive Director, Peace Glory Mama Lawal; and the 1992 agreement, entered into by Aaron T. Harris and NHA by and through its Managing Director, Veto Mason.

The West Africa Trading Company which is said to have later changed its name to Prim Africa Estate, by and through its General Manager, Clarence Tay, filed a complaint with the Sixth Judicial Circuit seeking to have Tony Abacha evicted from the premises of the cinema. A motion to intervene was later filed by Aaron T. Harris to join as an interested party. After pleadings rested, the appellant withdrew its complaint and refiled an amended complaint naming Pealat Liberia Inc, P.G.L. Construction Co. and Aaron Harris as defendants.

The appellant alleges that it entered a thirty (30) year agreement with the NHA in 1997 for the said cinema, which had been burnt during the civil crisis, for an agreed period of fifteen years certain from June 1, 1997 to May 3, 2011, for an annual rental of One Thousand, Five Hundred United States Dollar (US$1,500) and an optional period

running from June 1, 2012 to May 31, 2027, for annual payment of Two Thousand, United States (US$2,000). It was agreed that the appellant would reconstruct the cinema into a warehouse in consultations with the technical services department of the NHA to ensure that the NHA standards were adhered to. Because of the several years of civil war in Liberia which disrupted appellant's quiet peace and enjoyment of the demised property and lost investment due to the destruction of the property, the appellant requested the NHA in July 2004, for an extension of the 1997 lease; that the NHA being cognizant of the civil crisis did consider and entered an addendum to the 1997 lease with appellant for an additional ten (10) years. In consideration of the lease, the Managing Director of NHA then, J. Futon Dunbar, requested appellant to pre-finance a purchase of five vehicles, four small cars and a bus for the use of the executive members and employees of NHA; cost of said vehicles totaling US$34,599.99 to be discounted against rental payment for the cinema building. The amount was paid for the vehicles via invoice dated June 25, 1997 and signed by J. Futon Dunbar upon receiving the vehicles. There is no evidence that the appellant took actual possession of the cinema.

The appellees deny that they are illegally encroaching on the appellant's property; instead, they are occupying the property based on a lease agreement with the NHA entered into on March 18, 1992, by and between National Housing Authority and co-appellee Aaron Harris which agreement goes up to March 19, 2017. The appellees say they do not deny that appellant has a lease agreement with the NHA, but the appellant should have exercised due diligence in acquiring its rights to the property. A lease agreement by and between Aaron Harris and the NHA signed by the then Managing Director, Veto Mason was attached to the answer. They maintain that under our jurisdiction there is a doctrine of "Older Title", meaning that where two purchasers to real property trace their title to a common grantor, the one who first acquires title and had same duly registered and probated will prevail over the former. In the instant case Aaron Harris' title will prevail, not only that he and appellant have a common lessor but that Aaron Harris entered his lease agreement with NHA four years before the appellant, and by virtue of Aaron Harris, equitable title to the leasehold rights, he sold his rights to the other co-appellees, whom he promise at all times and manner to defend and protect. Appellees maintain that since appellant did not exercise due diligence in

acquiring his rights to the property, the best the appellant can do is to proceed against the NHA, or better still, wait until the year 2017, the period when Aaron T. Harris' lease shall have come to an end along with benefit of an option period allowed under his agreement.

The appellant contends that Aaron T. Harris, has shown no assignment of lease between him and the other co-appellees and that the agreement exhibited by him is fraudulent in that the signature said to be that of Veto Mason, the Managing Director at the time the agreement was entered into with the NHA is forged. To buttress its claim of fraud, the appellant proffered into evidence several communication said to have carried Mr. Mason's genuine signature. Besides, the appellant allege that an examination of the agreement shows though Veto Mason signed it as Managing Director, the document is stamped with the stamp of the Deputy Director of NHA.

Because of the allegation of fraud raised by the appellant, the Judge ruled the matter to trial by jury, dismissing the motion to dismiss the complaint filed by the appellees.

The appellant presented three witnesses and a rebuttal witness in support of its case. Two of appellant's witnesses, Agnes Sawyer and James Smith who had served several years with the NHA, testified specifically as to the non genuiness of Veto Mason's signature. . The appellees also brought four witnesses in support of their case, two of them, Esata Kermor and Counsellor Stanley Kparkillen, employees of NHA. After the presentation of evidence, the jury brought a verdict of not liable for the appellees to which verdict the appellant excepted and announced an appeal.

The appellant filed a seven count bill of exceptions, but for our determination of this case, we shall consider counts 2, 3, 5 and 6 all of which deal with the appellant's claim of fraud having been committed.

"2. That Intervenor, Aaron Harris claimed to have assigned his forged lease agreement of March 18, 1992 with the National Housing Authority, but no written assignment of rights contrary to the statute of fraud was entered into by and between the Intervenor, Amos Harris and Pealat Liberia by and thru Tony Abacha, the defendant, nor was any

written assignment exhibited in defendant's answer nor the motion to intervene when the assignment of rights is for US$24,583.00 in the lease agreement.

3. That the lease agreement allegedly entered into between the Intervenor and the [Defendant] NHA was signed under suspicious circumstances because the Deputy Managing Director for Administration's stamp was used when the Managing Director signed.

5. That the Plaintiff produced witnesses, former employees of NHA one of whom rose to the rank of Special Assistant to Veto Mason and Deputy Managing Director for Administration who testified that fraud was employed in the signature of the late Managing Director of NHA, Veto Mason on the lease agreement between NHA and the Intervenor, Aaron Harris, and even rebutted the claim of one of appellee's witnesses that the signature of Veto Mason on Aaron Harris' lease agreement with the Housing Authority is genuine.

6. That Your Honor, on September 3, 2010, denied Appellants' Motion for New Trial even though appellant/plaintiff established thru testimonies of its witnesses that there was fraud committed by intervenor in acquiring his lease agreement with NHA which lease agreement he allegedly assigned to appellee/defendant."

Appellant is contending that Aaron T. Harris claims to have assigned his agreement to the appellee but he produced no evidence of a written assignment, considering that the coappellee Harris alleged consideration to NHA for the lease was US$24,583.00, and there is no evidence of a written assignment between the parties for the property which absence thereof violates the statute of fraud.

The Intervenor, Aaron Harris testified as follows: "The relationship between Tony Abacha and myself was that I sold him the lease rights. The lease I obtained from N.H.A. in 1992. I got to know him when I was going back and forth from the United Sates. I left a gentleman on the property to take care of the property during my absence and when I came back, I met Tony in 1994, I think 1995, and I got to know him there and then; he was making furniture on the property. Then I came back in 1997 and he

asked if he could make blocks on the property. I granted him the right to do so. When I came back in 2004/2005, he approached me to lease the place from me. I said well, I'm back and forth from the States so why not let me sell to you the lease rights that I obtained from NHA. So we discussed that and we got into agreement for the lease that I obtained from NHA in 1992, through the late Veto Mason.

When I was running the property, I received threats from a lot of people saying the property was for them and every time I received threats for every activity that occurred on that property, I documented it and wrote NHA. The letters are on file at the National Housing Authority since the inception. Since I took over, every threat that was made against me, I wrote NHA asking them to intervene. When I turned the property over to Tony, he told me that there were a group of people or someone who was claiming the property, and I said no, that's my property that I am turning over to you. I am prepared to come in court and testify. I have the legitimate documents. We even went down to NHA and lodged the complaint, and I said this cannot be; you [NHA] gave me a genuine lease which I sold to someone and now someone else is claiming it. Where is the lease from the other party? That's what I want to see? I told Tony, I will be here to testify to this court that I gave you the property. He has legitimate lease from NHA as well."

In the records there is an agreement entered into by and between co-appellee PGL Construction's Company and NHA dated 2009 with stipulation payment summing up to Eight Hundred and Seventy One Thousand, Two Hundred Liberia Dollar. We find it strange that Aaron Harris having met with the co-appellee, Pealat Africa, Inc. and dealt with its Managing Director in 1994/1995 or thereabout, and again in 1997 when he gave his consent for co-appellee to occupy the premises, and in 2005 assigned the property to co-appellee, that co-appellee would go into a lease agreement with the NHA in March of 2009, paying a substantial consideration therefor. Co-appellee PGL Construction's Company lease with NHA makes no reference to Harris's assignment though his lease with NHA spans up to 2017, with an optional period of ten years. Besides, Clause 9, of the Harris' agreement states that the lessee can not assign the premises except by the lessor's written consent, and we see evidence of no written consent having been giving by the NHA.

We believe that there might be an understanding between Aaron T. Harris and co-appellees for the co-appellees' occupation of the premises, but we are not convinced from the records that a formal assignment exist between the Aaron Harris and the co-appellees. We note that as per the doctrine of "Older Title", P.G.L. Construction Company's agreement of 2009 would crumble against the appellant 1997 lease with NHA.

However, this brings us to the issue of the Aaron T. Harris' right to said property vis-a-vis the appellant's.

The appellant alleges that Aaron T. Harris' agreement of 1992 is fraudulent; that the signature of the then Managing Director of NHA, Veto Mason who is said to have signed the agreement was forged. That though Veto Mason is said to have signed the agreement, the agreement is stamped by the stamp of the Deputy Managing Director.

This Court has said burden of proof rest on the person who alleges fraud, and the facts and circumstances alleging fraud must be stated with particularity and proved at trial. Wilson et al vs. Wilson and Ivy 37LLR 420, 424,426 (1994).

Seeking to establish that the signature of the Managing Director, Veto Mason, on the 1992 agreement was forged, the appellant brought two witnesses, Agnes Sawyer, and James Smith, former employees of NHA to testify. Section 25.17 (1) of our CPLR provides that handwriting may be proved by the oath of a person acquainted with the handwriting of the person whose it is alleged to be, either from having seen him write or from having corresponded or transacted business with him; or it may be proved by comparison with undoubted writings of the person proved not to have been written after the dispute arose or under suspicious circumstances.

We must now review the records of the trial and find whether or not fraud was sufficiently established by the appellant so as to reverse the judgment of the court below.

Mrs. Agnes Sawyer said that she worked with the NHA for twenty six years and that the signature on the lease agreement of 1992 was not genuine as Mr. Veto Mason signed his name with a 'V' that comes down with a point and touch up and then it comes a long way. She stated,

"I don't know what this means anyway, but his signature always comes down like something like 'V' and then it goes like this. The 'V' is always like an arrow. It does not hang. It touches down. You can tell the difference between the two signatures." (Apparently referring to the 1992 agreement of Mr. Aaron T. Harris and another document purported to have been signed by Veto Mason).

Mr. James Smith who had worked with NHA in various capacities, rising from a Research Aid to Deputy Managing Director for Administration took the stand as appellant's rebuttal witness and testified that he and Veto had worked together for a long time and he knew how he signed documents. Veto, he said, always, firstly started signing with some-thing that looks like a V or an M because as he stated, Veto and Mason are V and M. Veto would combine the two, and when he signed, he would make strokes backwards twice. It was never once or even a straight line, it was always twice, and one would see the backwards movement twice on his signature. This is the signature according to him, he knew.

Referring to the signature on the 1992 Agreement, Mr. Smith said, "This one first of all, the "M" and the "V" are not formed the way they're formed by Veto that I know about. And this person tried to make backward strokes but it's only once. Veto always did it twice. If you look at the signatures, (referring to other documents signed by Mr. Veto Mason, you will see that it is always twice and this one is like a straight line and which I'm really not familiar with. I don't know who signed this..."

Appellees introduced four witnesses among which were Ms. Esata S. Kemoh an employee of the NHA for twenty two years and Counsellor Stanley S. Kparkillen the present Deputy Managing Director for NHA.

Ms. Esata Kermor testified that she had worked with appellant's witness, Mrs. Agnes

Sawyer in the accounts department as one of the receivable accountants; that the signature on the lease agreement of 1992, purported to be that of Mr. Veto Mason's was genuine. She testified further that the signature of Mrs. Agnes Sawyer on receipts said to be money paid by Aaron T. Harris on March 1992 and February 16, 1994 was the signature of Mrs. Sawyer. In her testimony, Mrs. Sawyer had denied signing said receipts, stating that the signature on the receipts was forged.

The appellees other witness, Counsellor Kparkillen testified essentially that since he was employed in October 2006, he has never heard of an entity called Prim Africa Estate, Inc. He explained that upon the resumption of Stephen Neufville in June 2008, as Managing Director, an announcement was sent out to all individuals who own property within the estate to come to NHA's office to regularize their status. It is in this light that Aaron T. Harris appeared and produced a lease agreement. Though NHA had a problem with the agreement, itdid not condemn the agreement but asked that the agreement be renegotiated based on President Sirleaf's pronouncement that, because of the war, there was lots of concession agreements negotiated without due diligence. NHA also got in contact with Tony Abacha, co-appellant who apparently may have bought co-appellee Aaron Harris' interest, and he agreed to renegotiate. So there are two agreements, he said; one between NHA and the second with Aaron T. Harris, which NHA considers as a valid arrangement. Counsellor Kparkillen confirmed co-appellee's agreement of March 18, 1992.

On the cross, the appellant's counsel asked witness Kparkillen since the lease was executed in 1992, how could he have possibly determined the genuine signature of Veto Mason? The witness answered that he was not a signature expert, but that at the time the document was presented to NHA in obedience to the NHA's pronouncement there was no contest and the documents presented were duly probated and showed that the lease had been renegotiated with NHA. The concern of NHA was not to disenfranchise those with agreements from NHA, but NHA was only out to ensure that it was not robbed of fair market value and that he had only come to testify that the NHA did deal with Aaron Harris and the co-appellee and had satisfactorily renegotiated their possession of the property.

When witness Kparkillen was cross examined about the stamp of the Deputy Managing Director on the document where Veto Mason as Managing Director had signed the document, the witness said yes, they saw the stamp but was not in the business to rewrite the lease, because it was already done, probated and registered. This question was then put to the witness:

Q. By that answer Mr. Witness, so you are admitting in this court that you made an error. Was there an error on the part of the MD at that time?

Ans: It was not an error on the part of the MD. The procedure is when a document is perfected, you tell the secretary to stamp it. It no longer goes back to the Managing Director to verify it. The most important thing is the signature, the suspected nature of the case is not the stamp; the suspected nature of this trial is to establish whether or not there was a legitimate agreement.

Having heard the testimonies and evidence presented by the parties, the jury brought judgment in favor of the appellees. The appellant moved the court for a new trial. The court denied the motion and thereafter the Judge gave a final judgment affirming the verdict of the trial jury.

In his ruling the Judge said, that the appellant produced evidence before the empanelled jury to establish that the signature appearing on the face of the lease agreement is a product of fraud. And the appellees in countering the appellant's evidence also produced evidence to establish that the signature is indeed the genuine signature of Veto A. Mason. The Judge says that under our law it is the jury that must decide whether or not the evidence adduced by the parties supports the contentions of each side. It is the office of the jury to decide the weight and credibility attached to the evidence and it is the office of the court to determine and decide on the sufficiency of the evidence, and in the mind of the court, evidence adduced at the trial was sufficient to support the verdict as determine by the jury.

Our CPLR, §26.4. relating to post trial motion for new trial states, "After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and

order a new trial of a claim or separate issue where the verdict is contrary to the weight of the evidence or in the interest of justice." In the case, Haid vs. Ebric, 17 LLR 662, 671 (1966), this Court said, "The granting of a new trial generally rest within the discretion of the trial court whose exercise of such discretion will not generally be disturbed by the Supreme Court absent a showing of abuse or prejudice. The appellant has not stated in its bill of exceptions nor have we seen any bias or prejudice of the judge toward the appellant or that the facts were insufficient. The trial court determines the admissibility of the evidence, and when evidence is admitted, the credibility thereof is to be decided by the jury, Beysolow vs. Coleman, 9LLR 156, 160 (1946). The jury being the judge of facts, it is within its province to consider the whole volume of testimony, estimate and weigh its value and determine its credibility. Accordingly, where the jury has reached a conclusion after having given consideration to evidence which is sufficient to support a verdict, and the judge in his discretion refused to grant a new trial, the decision will not be disturbed by this Court.

For these reasons stated above, we hereby affirm the judgment of the trial court.

THE APPELLANT WAS REPRESENTED BY COUNSELLLOR PETER W. HOWARD OF THE LEGAL CONSULTANT, INC. THE APPELLEES WERE REPRESENTED BY COUNSELLOR D. MILTON TAYLOR OF THE LAW OFFICES OF TAYLOR & ASSOCIATES AND COUNSELLOR THEOPHILUS C. GOULD OF THE KEMP & ASSOCIATES.