

Neh Dukuly Tolbert, represented by her Attorney-In-fact, **Stephen A. Tolbert, Jr.**, and **Aaron B. Milton, Dah W. Dukuly, Bindu Dukuly** and **Osman Dukuly** of the City of Monrovia, Liberia . APPELLANTS VERSUS The **Liberia Cement Corporation** (CEMENCO) represented) by its General Manager and/or any other authorized representatives acting within the scope of their authority and the **Intestate Estates of the late Ambolai V. Sirleaf** and **Samolu Dukuly** by and thru their respective Administrators of the City of Monrovia, Liberia APPELLEES

APPEAL FROM THE SIXTH JUDICIAL CIRCUIT FOR MONTSERRADO
COUNTY, REPUBLIC OF LIBERIA.

LRSC 13

Heard: November 3, 2009 Decided: January 22, 2010

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

On January 16, 1967, three individual persons, Momolu Dukuly, Ambolai V. Sirleaf, and Samolu Dukuly, jointly as LESSORS, entered an Agreement of Lease with LIBERIA CEMENT CORPORATION, a corporation duly organized and incorporated under the Laws of the Republic of Liberia, as LESSEE. The following articles of the 1967 Agreement of Lease, stipulate as follows:-

"Article 1.

That the Lessors for and in consideration of the rents hereinafter reserved and of the agreements, stipulations and covenants herein given, expressed and contained on the part and behalf of the Lessee to be paid, kept, performed and fulfilled, have granted demised and leased and by these presents doth grant, demise, lease and farmlet unto Lessee herein with all appurtenances, thereto belonging situated, lying and being on Bushrod Island, City of Monrovia, County of Montserrado, Republic of Liberia, the same being a portion of land of Block #1 Billima and bearing in the authentic records of said City bounded and described as follows:

"Commencing at the South Western corner of the said block 8.195 acres at the distance of 38 feet from the corner of the adjoining block leased by Mr. M. Wabbi of Monrovia. Thence running on a magnetic bearings North 28 degrees East 624 feet to point B. Thence running North 87 degree East 580 feet to point C. thence running South 28 degrees West 589.4 feet to point D. Thence running South 85 degrees West 589.4 feet to the point of commencement and contains 8.195 acres of land and no more."

"Article 2.

To have and to hold the above described and demised premises unto the Lessee together with all and

singular the appurtenances, privileges and usements thereto, belonging for and during a full and complete period of (20) twenty calendar years certain commencing on the 16th day of January A.D. 1967 up to and including the 16 day of January A.D. 1987, yielding and paying therefore an annual rental of \$1,200.00 (One thousand two hundred dollars) per acre making a total sum of \$9,834.00 payable yearly in advance on or before the 16 day of January of each and every year during the life of this agreement."

"Article 3.

That it is agreed and understood by and between the parties hereto that at the expiration of the certain period of this Agreement, Lessee shall have the right to enter into a new Agreement on the same terms and conditions for the said premises for an additional period of twenty (20) years commencing on the 16 day of January, A.D. 1987 and ending on the 16 day of January, A.D. 2007, except that he shall pay therefore, an annual rental of \$1,500.00 (one thousand five hundred dollars) per acre or \$12,292.50 (twelve thousand two hundred ninety two 50/100 dollars) payable yearly in advance on or before the 16 day of January of each successive year during the additional term."

Having affixed their respective signatures unto the Agreement of Lease, the three Lessors, Momolu Dukuly, Ambolai V. Sirleaf, and Samolu Dukuly thereafter appeared before a notary public in Montserrado County and notarized the same said instrument in further authentication and validation thereof. A notary certificate was issued as evidence thereof, reproduced verbatim in this opinion as follows:

"NOTARY CERTIFICATE

"REPUBLIC OF LIBERIA COUNTY OF MONT'SERRADO

On the 31st day of March A.D. 1967 before me personally came MOMOLU DUKULY, AMBOLAI SIRLEAF, SAMOLU DUKULY and LIBERIA CEMENT CORP to be known and known to me to be the individuals described in and who executed the foregoing instrument (s) and THEY duly acknowledged to me that THEY executed the same for the uses and purposes therein set forth.

Therefore, I Susanna E. Williams, Notary public aforesaid have attached my official signature and notary seal this 31st day of March A.D. 1967.

SUSANNA E. WILLIAMS

Signature

Notary Public for Montserrado County".

Three years subsequent to the execution of the Agreement of Lease above referenced, one of the three signatories thereto, Momolu Dukuly, on August 20, 1970, executed an

instrument which in part reads:

"I, Momolu Dukuly, of the City of Monrovia, County of Montserrado, Republic of Liberia, being of sound and disposing mind and memory, and not being under any duress, menace, fraud, or undue influence of any person whomsoever, do hereby make, publish and declare this to be my LAST WILL AND TESTAMENT, hereby revoking all former Wills or Instruments of a testamentary nature by me at any time heretofore made."

The above as quoted is the preface/forward to the instrument the Late Momolu Dukuly executed as his *"LAST WILL AND TESTAMENT"*.

The Mdmolu Dukuly's Last Will and Testament contains twenty (20) paragraphs/clauses. Clause number ten (10) of the Will is at the core of the controversy in this case. Clause ten (10) of the Will reads as follows:-

"Tenth: My 8.195 acres of land located in Billima, Bushrod Island, leased to the Liberia Cement Corporation, I will and devise to my children, Famatta G. Dukuly, Neh Dukuly Tolbert, Dah W. Dukuly, Bindu Dukuly and Osman Dukuly, share and share alike, for them and their heirs forever."

For a multiple reasons it would seem, including the obvious desire to give effect to clause 10 (ten) aforementioned contained in Momolu Dukuly last Will and Testament, appellants in these proceedings, Neh Dukuly Tolbert, Dah W. Dukuly, Bindu Dukuly and Osman Dukuly, on February 20, 2008, filed a petition for declaratory judgment in the Sixth Judicial Circuit for Montserrado County.

In their petition, appellants averred that they are heirs of the Late Momolu Dukuly who died seized of sundry property both personal and real within and without Liberia; that of the many properties their late father Momolu Dukuly died seized of was 27.10 acres of land situated and being in the area of Bushrod Island. In support thereof, they attached a copy of a deed issued by the Republic of Liberia and signed by President William V.S. Tubman in favor of the late Momolu Dukuly. Appellants submitted that on January 16, their late father Momolu Dukuly and Ambolai Sirlieaf and Samolu Dukuly, as Lessors, entered a forty (40) year agreement of lease which included an optional period of twenty (20) years with Liberia Cement Corporation as Lessee; that the land under lease is 8.195 acres which form part and parcel of the 27.10 acres of land issued in favor of the late Momolu Dukuly in fee simple and exclusively by the Republic of Liberia and the deed thereof signed by the late President William V.S. Tubman; that the 1967 agreement of lease expired on its terms on January 16, 2007; that in keeping with paragraph ten (10) of the Last Will and Testament of the late

Momolu Dukuly, the Testator devised to the herein appellants, his heirs, the said 8.915 acres of land, same being subject of agreement of lease with CEMENCO evidenced by his Last Will and Testament; that the Lessee CEMENCO at the expiry of the agreement in 2007 attempted to extend said agreement for a further period; however, that those efforts came to naught as there was no meeting of the minds; hence there exist no valid lease agreement for the premises occupied by CEMENCO, the premises having accordingly reverted to the owners of the land the heirs and devisees of the Late Momolu Dukuly.

Concluding, appellants prayed court, among others, to declare and confirm their rights to the 8.195 acres of land on which the Liberia Cement Corporation is situated as an integral part and parcel of a twenty (27) acres of land owned by Momolu Dukuly; and by virtue of these rights so declared, the court should thereby confirm that appellants are the only sole and legitimate owners of the 8.195 acres of land above described and that they are the sole and exclusive legal authority to possess, occupy, lease, convey, transfer and/or transact business therewith or thereon without hindrance or molestation from any person or persons whomsoever.

Co- appellee and first respondent Cemenco, along with co-appellees and second respondents, same being the administrators of the intestate estates of the late Ambolai V. Sirleaf and Samolu Dukuly, appeared and filed their returns, dismissing the petition as having no legal foundation or substance. Substantially, appellees contended that they are at a quandary that a highly educated and respectable personality in the Liberian Society and internationally as the late Honorable Momolu Dukuly, an erudite lawyer and former Secretary of State of the Republic of Liberia would jointly execute a lease agreement for property which he owned in fee simple, as appellants, Momolu Dukuly's heirs claim, and allow other individuals to be named therein and co-signed with him and enjoyed the benefit derived there from, for a period over forty (40) odd years. Under the circumstances, coappellees wonder under what pale of reasoning these persons could be considered other than co-owners of the property. Appellees have therefore strenuously argued that honorable Momolu Dukuly was without authority and did not have the legal right to devise property under his Last Will and Testament which he did not solely own as one can only properly and legally will and give out that which he or she owns absolutely.

As for Co-appellee CEMENCO, she has averred and maintained that meetings for the purpose of re-negotiating a new agreement were organized and held between the Heirs of the Late Honorable Momolu Dukuly and/or their designated representatives and CEMENCO; that points agreed upon were documented and signed by all of the parties;

that at these meetings, Mrs. Neh Dukuly Tolbert was represented by Mr. Aaron B. Milton consistent with the Power of Attorney executed on December 3, 1999, and Ms. Bindu F. Dukuly was represented in person while Mrs. Dah Dukuly Sherman was represented by her brother, Mr. Osman Dukuly who also represented himself; that prior to the consummation of the Agreement of Lease of May 23, 2005, the services of Mr. Augustus Caesar, a renounced Architect, was engaged by the Heirs of the late honorable Momolu Dukuly to assess the value of the property and because neither of them was prepared to pay his fees, Cemenco was requested to make the payment to Mr. Caesar with the express agreement that this amount would be treated as an advance against the rental for the new Agreement and would be deducted when time came for making rental payment to the appellants; that co-appellee Cemenco consented and did advance the proceeds to Mr. Caesar who undertook an assessment of the property and based on his assessment, the rental agreed upon and stipulated in the Lease of May 23, 2005 was derived. Copy of Receipt of payment made to Mr. Caesar by co-appellee Cemenco as well as copy of authorization to make such payment were attached to the petition; that consistent with the points agreed upon by and between the parties, a new lease was prepared and signed by co-appellants, Ms. Bindu F. Dukuly, Mr. Osman Dukuly for himself and as Attorney-In-Fact for his sister Mrs. Dah Dukuly Sherman with co-appellee Cemenco; that first and second rental payments had already been made to co-appellants, Ms. Bindu Dukuly and Mr. Osman Dukuly under the lease agreement of May 23, 2006 which they now are attempting to have this honorable court declare does not exist. Annexed to the resistance were seven (7) pages of payment receipts signed by appellants as well as the Lease Agreement of May 23, 2005. Co-appellee Cemenco further averred that the only issue raised by Mr. Aaron B. Milton at the time set for signing the negotiated agreement of lease, as communicated by him (Aaron Milton) to Co-appellee Cemenco was that he will not sign the lease *"based on the instruction from his principal that her son, Mr. Momolu Dukuly Tolbert's name was not included as co-lessor "* Co-appellee contends however that the demand made by Mrs. Neh Dukuly Tolbert that her son's name must be included as one of the lessors in the agreement of lease negotiated by all the parties, was untenable as the son, *Momolu Dukuly Tolbert*, could not properly be a direct beneficiary while his mother, Mrs. Neh Dukuly Tolbert was still alive, nor did he have a power of attorney from his mother at the time, to act on her behalf in this matter. A copy of the letter addressed to the Liberia Cement Corporation over the signature of Mr. Aaron B. Milton, demanding the inclusion of Momolu Dukuly Tolbert as one of the lessors to the newly negotiated instrument, was attached; that appellee contends and says that under the doctrine of respondent superior, whatever act an agent performs within the scope of his or her authority binds the principal, as in the instant case; that declaratory judgment is an equitable relief and he who comes to equity must come with clean hands; that petitioners having received

benefit under the agreement of lease of May 23, 2005 at the detriment of co-appellee CEMENCO, therefore, appellants cannot and should not now repudiate their own acts.

Co-appellees concluded by praying court to declare that the Lease Agreement entered into by and between appellants and co-appellee CEMENCO executed on May 23, A.D. 2005, is valid, binding and enforceable.

On October 20, 2008, having entertained and disposed of series of motions, His Honor, Yussif D. Kaba entered his final ruling declaring as stated: *"That from the evidence adduced by the parties in this matter 8.195 acres of land is a joint property of Momolu Dukuly, Ambolai B. Sirleaf and Samolu Dukuly; that the Lease Agreement of 2005 executed by the heirs of Momolu Dukuly with the Liberian Cement Corporation is valid, binding and enforceable."*

It is from this final ruling appellant has perfected an appeal and placed before this Court an 18-count bill of exceptions; counts 1, 3, 6, 12, 13, and 15 which we deem to deserve our attention:

"1. The law hoary with age in this jurisdiction is that the proof of title to real property is not a mere presumption of words spoken, but rather by a title deed. In passing on the issue whether the Respondents have any title other than the expired lease agreement of 1976, Your Honor erroneously ruled, "that from the evidence adduced by the parties in this matter, the 8.195 acres of land is a joint property of Momolu Dukuly, Ambolia B. Sirleaf and Samolu Sirleaf.

"3. Petitioners further say Your Honors' bias ruling is narrowly and purely based on the expired lease agreement of 1967 between the petitioners' late father and Co-Respondent CEMENCO and few cash receipts, all of which are no longer relevant to the case at bar without taking into account all documents such as Momolu Dukuly's titled deed and his last Will and Testament, which are all germane, authentic and relevant to the property issue in question. This renders your ruling of October 20, 2008 prejudicial and erroneous for which said ruling must be reversed.

"6. Your Honor also erred when your ruling you gave more probative value to the expired lease agreement of 1967 and the old self-serving cash receipts but treated less the Last Will and testament of the late Momolu Dukuly, which forms the sole basis of your prejudicial ruling.

"12. Your Honor also erred when you ruled that because the 8.195 acres of land was enjoyed in common by the Late Momolu Dukuly, Samolu Dukuly and Amboilai Sirleaf, by such act the ownership of said 8.195 [acres] had been settled and therefore, the court under your gavel cannot make a declaration to contradict the act of the three individuals named hereinabove, because according to Your Honor, such a declaration will be unsettling settled matter and opening room for confusion in the

society. This ruling of Your Honor is contrary to law in that if the ownership of the 8.195 acres of land were earlier settled that he, Momolu Dukuly, Ambolai Sirleaf and Samolu Dukuly were joint owners of the property, the testator, Momolu Dukuly would not have included the same property in his Will and devised it to his children. Further, no court of Liberia has ever passed on this issue and the very fact that the Late Momolu Dukuly devised said property to his children, gives good and sufficient reason why this court should and must make a determination as to the proper owner. Your Honor therefore erred when you either ignored these facts or overlooked them.

"13. Your Honor erred when you conceded Respondents' line of argument that because the Late Momolu Dukuly leased certain portion of his property to CEMENCO. in his own name, it was therefore unthinkable that he would have included the other individuals' names in the lease agreement of 1967, if they were not co-owners of said property. The point of serious evidence your Honor ignored is, if the Co-Respondents are Co-owners of the property, where is the deed bearing the names of the three persons for the 8.195 acres of land? Your Honor failed to take this cardinal issue into consideration thereby resulting to your bias ruling.

"15. Your Honor also erred when you ruled that the notes taken at a meeting attempted at discussing the possible second lease agreement constituted a conclusive lease agreement."

Summed up, the bill of exceptions clearly raises the following as dispositive issues of the case at bar:

"1. Did Momolu Dukuly have fee simple ownership to the disputed property such that in law, he could bequeath same to his heirs upon his demise? Or put differently, can appellants be properly regarded as the sole, legal and legitimate owners of the 8.195 acres of land after the three lessors had claimed title to one third each (1/3) each of the property for more than forty (40) years?

"2. Whether the agreement of lease entered between the heirs of the late Momolu Dukuly and CEMENCO on May 23, 2005 is legal, valid, binding and enforceable in light of the attendant circumstances?

We address the first issue, that is:

"whether Momolu Dukuly had fee simple ownership to the disputed property such that in law, in order to properly bequeath same to his heirs upon his demise?" Or differently put,

"if appellants could be properly regarded as the sole, legal and legitimate owners of the 8.195 acres of land after the three lessors had claimed title to one third each (1/3) each of the property for more than forty (40) years?"

It is appellants' contention that in a dispute of this kind, deed is the best and conclusive evidence of title. In advancing this argument, appellants have relied and cited the case: *Railey & Montgomery v. Clarke*, 10 LLR 330, 335 (1950).

In the cited case, this Court held that where a dispute arises over title to real estate, a deed is the best evidence to settle said dispute or to prove in whom title to said property is legally vested. This Court proceeded to pronounce that in a dispute over land ownership, the proper course for a party to take is to produce the deed for the property which said party contends belongs to him or her;'and if the original had been lost or destroyed a copy thereof be obtained either from the registrar's office or from the archives.

We uphold the legal principle in the *Railey* case as cited; this Court however disagrees that the principle in the *Railey* case is inapplicable to the facts and circumstances in the case at bar.

As we have determined that the ruling of the trial judge was correct on this point, we quote the relevant portion thereof in this opinion:

"The court also takes judicial notice of the 1967 lease agreement and, the survey report which was the basis for identifying the property, the subject of this petition. This survey report was pleaded by the first respondent in their resistance to the motion for newly discovered evidence that was filed by the petitioner and the said same instrument was pleaded in the amended returns of the second respondent. Yet, the petitioners in their reply failed to traverse the same."

"It is a principle of our law that what is pleaded and is denied or traversed by your adversary is deemed to be admitted. More besides, why will the owner of a real property which he holds in fee simple title allow the name of another party to be placed on the said property and permit him to benefit from that property for a period of 40-year and then, come to varied the language of that instrument? Courts are bind to maintain stability when it comes to real property. It is the law in this jurisdiction that one who entered upon a property occupied the same notoriously without adversary claim thereto, the whole world is estopped from ascertain claim to that property."

The ruling continues:

"In the instance case, more than 40-years ago, a survey report was prepared therein naming these three individuals [Momolu Dukuly, Samolu Dukuly and Ambolai V. Sirleaf] as owners of this property. More than forty years ago, real estate tax instruments were prepared therein naming these three

individuals jMomolu Dukuly, Ambolai V. Sirleaf, and Samolu Dukulyi as owners of this very property. More than forty years ago, a Lease Agreement was executed by these three individuals as owners of the said same property. Over the period forty years, these three individuals benefited from this property as three coowners of the same said property. Can this court now make a declaration that contradicts the act and expression of these three individuals? This court says that to do so will be unsettling settled matter and opening room for confusion in the society. Rights must be asserted at the time they accrue to one. Sitting supinely and allowing those rights to be taken by another may be interpreted as an abandonment of those rights and waiver of the same; and therefore, such individuals are estopped by their deeds and their actions from coming to assert those rights after others have relied on their abandonment of the same."

This Court must here indicate that in the case *Lamco J.V. Operating Company v. Azam* 31 LLR 649, 661-2 (1983), we re-affirmed adoption of the common law definition and application of the "*estoppel*" principle. Mr. Justice Koroma speaking for this Court in the Lamco case above cited, held:

"Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the fact, of benefits from a transaction, contract, instrument, regulation, or statute which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions, [The doctrine of estoppel] precludes one who accepts benefits from repudiating the accompanying or resulting obligation. And the principle of estoppel by the acceptance, of benefits may operate to prevent a party from profiting by his own wrong."

"Estoppel by the acceptance of benefits finds application in many different fields and under a wide variety of circumstances One of its most important applications is to prevent a party from establishing a right or title in himself, under one provision or implication of a deed or other instrument, by ignoring or contradicting, another provision or implication which is destructive or fatally repugnant. Similarly, as a general thing, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance."

Under the facts as herein narrated and applying the relevant laws thereto, this Court cannot but uphold the judgment of the trial court that the disputed subject land, 8.915 acres of land, for all intents and purposes, is and remains owned jointly by the lessors, Momolu Dukuly, Ambolai V. Sirleaf, and Samolu Dukuly, evidenced by the authenticated and notarized Agreement of Lease of 1967. The ruling of the trial judge on this issue is hereby affirmed.

As to the second issue, whether the agreement of lease reportedly entered between the heirs of the late Momolu Dukuly and CEMENCO on May 23, 2005 is legal, valid,

binding and enforceable in light of the attendant circumstances, we must again revert to the records.

The records transcribed to this Court reveal that during the trial, the judge during trial, found the following as points of agreement between the parties: (a) *there exist a track of land that is 8.195 acres that is presently being occupied by co-appelle, Cemenco; (b) Cemenco acquired possession of this piece of property, by virtue of a lease agreement; (c) the lease agreement was executed with Cemenco by the late father Momolu Dukuly, 'Samolu Dukuly, and Ambolia V. Sirleaf as Lessors; (d) that, sometime before the expiration of this lease agreement, Cemenco entered into negotiation with the all parties apparently with respect to obtaining a new lease for this property after Cemenco secured lease separate lease agreement from the other relevant parties; (e) that, after negotiation there was agreement reached on points to be included in the lease agreement between all the parties; (f) that, this agreement was drafted and that all of the parties exclusive of one, signed this new agreement and received benefits there under.*

It is however contended particularly by Co-appellant Neh Dukuly Tolbert that the 2005 Lease Agreement executed with Co-appellee Cemenco, is invalid because one of the beneficiaries or lessors, did not sign the same. But counter arguing, co-appellee Cemenco assumes the position that majority of the appellants including those who are named in the petition as petitioners, not only signed the lease agreement but in addition have received benefits thereunder; hence, they cannot at this stage be lent any judicial aid to repeal their own act nor be allowed to set aside the act of the majority.

Ruling on this contention and counter-contention, the trial court determined as stated:

"The [trial] court's notes the lease agreement of 2005 executed with the heirs and beneficiaries of the estate of the late Momolu Dukuly. The court observes that before this lease agreement could be prepared there was a process of negotiation by and between the parties".

"Each of the parties to this negotiation was either present or was represented by an agent and they all participated in the negotiations, agreed on points to be included in the New Lease Agreement by affixing their signatures on the agreed points which eventually formed the basis of the Agreement; (they later] placed thereupon notary stamps and have same registered and probated.

"The court [further] observes that all of the parties with the exclusion of Neh Dukuly-Tolbert also signed this lease agreement. [In addition], with the exclusion of Neh Dukuly-Tolbert, four out of five of the beneficiaries of the estate penned their signatures to the lease agreement. The court also observes that the agent for the Neh Dukuly-Tolbert indicated his reason for not affixing his signature on the lease agreement in question. According to him, he was under instruction by his principal not to sign

the lease agreement until the name of Momolu Dukuly-Tolbert has been added to the agreement. This letter did not raise any issue of title for the not signing the lease agreement."

Our examination of the records before us reveals that on June 9, 2005 attorney-in-fact for co-appellant Neh Dukuly Tolbert wrote the following communication to co-appellee CEMENCO:

"Dear Lady & Gentlemen:

On behalf of Her Excellency Ambassador Neh Dukuly-Tolbert and also on behalf of Mr. Momolu Dukuly Tolbert, I wish to extend kind greetings to all of you.

While greeting you, I hereby acknowledge receipt of one (1) photocopy of an Agreement of Lease prepared for execution between four (4) of the Heirs of the Late Hon. Ambolai M. Dukuly; and the Liberia Cement Corporation (CEMENCO) for lease of an 8.195 acres of land.

I write to confirm that I do represent Ambassador Neh Dukuly-Tolbert as well as Mr. Momolu Dukuly-Tolbert. I have read the above referenced agreement of lease delivered to my office this afternoon, and observe that name of one of the beneficiaries/Lessors in person of Mr. Momolu Dukuly Tolbert has not been included as one of the Lessors. Accordingly, on behalf of Ambassador Tolbert and Mr. Momolu Dukuly Tolbert, I am obliged to inform you that I am in Total Disagreement with the proposed lease due to the fact as stated herein above. I therefore respectfully notify all of you that I will not sign the said agreement of lease on behalf of Ambassador Neh Dukuly-Tolbert only until the name of the Beneficiary/Lessors, in persons of Mr. Momolu Dukuly Tolbert has been added to the agreement.

As you may all be aware, the question of excluding the said Mr. Tolbert who is designated as an Heir to the Late Mr. Ambullai Dukuly, is currently a subject of litigation currently pending in the Civil Law Court, Sixth Judicial Circuit, of Montserrado County (see attachment). Accordingly, until this matter is fully settled by the courts, it is not proper for this agreement of lease to be executed, unless the entire family arrives at a satisfactory agreement that the said Case be legally withdrawn from the courts; and it is signed by all of them.

I trust that you will fully understand and appreciate my position on this matter. Please do not hesitate to call on me for any clarification on the points given herein, as I remain with kind regards.

Faithfully yours,

For: AMB. NEH DUKULY-TOLBERT MR. MOMOLU DUKULY TOLBERT.

(Signature)

Aaron B. Milton, Sr

ATTORNEY-IN-FACT

In light of this letter, and other attendant circumstances, the trial court made the following observation:

"Additionally, the other signatory to this lease agreement received rents from the Lessee based upon this Lease Agreement. Therefore with respect to them, that is to say, those who signed the Lease Agreement and thereafter received benefit there from cannot be allowed to repeal their act, this certainly [would] constitute an unjust enrichment. Additional, where joint tenant owned a property, and the majority acted with respect to that property, a lone tenant cannot set aside the act of the majority. This is even truer under the factual circumstance and situation of this case. This court says that declaratory judgment is an equitable suit. The court must be guided by a sense of justice in making determination of such matter and, section 43.1 of the Civil Procedure Law, found in chapter, Declaratory judgment makes the grants of declaratory judgment a power that lies within the exercise and the sound discredit of the court."

The trial court therefore concluded and held as to this point in the manner to follow:

"That the Lease Agreement of 2005 executed by the heirs of Momolu Dukuly with the Liberian Cement Corporation is valid, binding and enforceable."

On appellate review, this Court has observed that Co-appellant Neh Dukuly Tolbert has not denied participating, through her attorney in fact, in the negotiation of the new agreement of lease executed on May 23, 2005. The records certified to this Court indicate that every point which ultimately formed the basis of the agreement, was painstakingly negotiated by every party or person benefiting from this lease on account of the Late Momolu Dukuly. Co-appellant Neh Dukuly-Tolbert through her attorney-in-fact however insisted, as stated:

"I write to confirm that I do represent Ambassador Neh Dukuly-Tolbert as well as Mr. Momolu Dukuly-Tolbert. I have read the above referenced agreement of lease delivered to my office this afternoon, and observe that name of one of the beneficiaries/Lessors in person of Mr. Momolu Dukuly Tolbert has not been included as one of the Lessors. Accordingly, on behalf of Ambassador Tolbert and Mr. Momolu Dukuly Tolbert, I am obliged to inform you that I am in Total Disagreement with the proposed lease due to the fact as stated herein above. I therefore respectfully notify all of you that I will not sign the said agreement of lease on behalf of Ambassador Neh Dukuly-Tolbert only until the name of the Beneficiary/Lessors, in persons of Mr. Momolu Dukuly Tolbert has been added to the agreement. [Emphasis ours]

From this letter, it is clear that Co-appellant Neh Dukuly Tolbert speaking through her attorney-in-fact does not deny by any scintilla of indication, participating in the step by step negotiation leading to final conclusion of the agreement of lease; or disagreeing on any point of law, germane to the logical conclusion of the May 23, 2005 agreement of lease. As this Court understands it, she insists and maintains however that she: *"... will not sign the said agreement of lease until the name of Mr. Momolu Dukuly Tolbert has been added to the agreement."*

For further clarity, this is what co-appellee Cemenco indicated in its brief filed with this Court:

"It is noteworthy to mention here that in addition to the US\$3,000.00 that was paid to Mr. F. Augustus Ceasar on behalf of all of the appellants with the understanding that the amount would be deducted from future rentals under the new lease agreement, two of the appellants, Mr. Ousman Dukuly and Ms. Bindu F. Dukuly representing themselves, received their share of the first payment of rental in the amounts of US\$20,000.00, respectively under the new agreement entered into in 2005 to take effect 2007. It is therefore very strange and surprising that Mr. Ousman Dukuly and Ms. Bindu F. Dukuly would joint in these proceedings (in a declaratory judgment) as co-petitioners."

"Co-appellee Cemenco's response to these contentions were that, with respect to Mrs. Neh Dukuly Tolbert's contention that her son, Mr. Momolu Dukuly Tolbert, was not included as a co-lessor, was that the agreement was being entered with the four lineal heirs of the late Momolu Dukuly and that things could become complicated were each of the four surviving children of Hon. Momolu Dukuly to insist that their children be made co-lessors. Further, Mrs. Neh Dukuly Tolbert had the option of granting her son a power of attorney to sign on her behalf. With respect to Mrs. Dah Dukuly Sherman, her attorney-in-fact, brother and himself an heir and beneficiary of the property, signed the lease agreement on her behalf. Consequently, she could now repudiate his acts as her said attorney-in-fact acted within the scope of his authority. Thus, under the doctrine of respondent superior his acts as her agent were binding on her, the principal. Black's Law Dictionary Eighth Edition page 1338. 3 AM JUR 2D, Agency, Section 84."

This Court says that under the objective theory of contract, and in light of the circumstances attendant to the making of this agreement of lease, we concur with the conclusion of the trial judge that there is a valid, binding and enforceable contract between co-appellee CEMENCO and the appellants/petitioners in the court below, including Coappellant/Co-petitioner Neh Dukuly Tolbert.

Law writers say and this Court is in perfect accord that:

"...even if a person subjectively does not intend to be legally bound, if his or her actions, gauged by an objective standard, support the conclusion that he or she accepted the agreement, that person will be legally bound to honor the contract. The court's inquiry in determining whether a contract exists is whether a reasonable person would, based upon the objective manifestation of assent and all the surrounding circumstances, conclude that the parties intended to be bound by the contract. The court looks not to the parties' subjective intent but rather to the objective evidence of their intent. 17A AM JUR 2nd, section 31, what constitutes mutual assent; objective test.

Under the circumstances detailed in this opinion, how could withholding of signature by Co-appellant Neh Dukuly Tolbert from an instrument she fully participated in negotiating and concluding, be properly excused, simply in order to avoid being bound thereby? This Court refuses to aid any such conduct.

AFTER A SURVEY OF THE CIRCUMSTANCES RELATING TO THIS CASE AND THE LAWS APPLICABLE, IT IS OUR CONSIDERED OPINION THAT THE JUDGMENT OF THE COURT BELOW BE, AND SAME IS HEREBY AFFIRMED WITH COSTS RULED AGAINST APPELLANTS. THE APPEAL IS DISMISSED.

THE CLERK OF THIS COURT IS HEREBY ORDERED TO SEND A MANDATE TO THE COURT BELOW INSTRUCTING THE JUDGE THEREIN PRESIDING TO GIVE EFFECT TO THIS JUDGMENT. AND IT IS SO ORDERED.

JUDGMENT AFFIRMED.

Roland F. Dahn, C. Alexandar B. Zoe and John L. Greaves appeared for appellants. Nyenanti Tuan, David A.B. Jallah and William B. Metzger Sr., as well as Roger K. Martin, Sr., appeared for appellees.