IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A. D. 2016

BEFORE HIS HONOR : FRANCIS S. KORKPOR, SR……CHIEF JUSTICE
BEFORE HIS HONOR : KABINEH M. JA'NEH……ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……ASSOCIATE JUSTICE
BEFORE HIS HONOR : PHILIP A. Z. BANKS, III……ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……ASSOCIATE JUSTICE

Martha Chebli, Pro Se, and as the widow of the late Henry Chebli.....APPELLANT	)	
VERSUS	)	**APPEAL**
Mabel S. Benson, Marjorie R. Cooper, James E. Pierre, Alexander A. Pierre, Gwendolyn H. McClain and Aldrich V. Pierre of the City of Monrovia.....APPELLEES	)	
GROWING OUT OF THE CASE:	)	
Mabel S. Benson, Marjorie R. Cooper, James E. Pierre, Alexander A. Pierre, Gwendolyn H. McClain and Aldrich V. Pierre of the City of Monrovia.....PETITIONERS	)	**PETITION FOR THE CANCELLATION OF OF A LEASE AGREEMENT**
VERSUS	)	
Martha Chebli, Pro Se, and as the widow of the late Henry Chebli.....RESPONDENTS	)	

Heard: July 21, 2016. **Decided: December 16, 2016.**

Counselor Sylvester D. Rennie of Legal Watch, Inc. appeared for the appellant. Counsellors James E. Pierre and James A. A. Pierre, II, of Pierre, Tweh and Associates, appeared for the appellees.

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

This appeal is the outgrowth of a final judgment entered by the Circuit Court for the Sixth Judicial Circuit, Montserrado County, canceling an Agreement of Lease that was executed on October 15, 1983 between Appellant Martha Chebli and her late husband, Henry Chebli, on the one hand, and the appellees and their mother, the late Rebecca Watts Pierre, on the other hand.

Under the provisions of the Lease Agreement, the appellees and their late mother, Rebecca Watts Pierre, leased to the appellant and her late husband, a

certain parcel of land, being Lot Number 55, situated at the corner of Benson and Mechlin Streets, in the City of Monrovia, for an initial certain period of twenty (20) years, said to have been commencing from October 14, 1983 and ending October 14, 2004, with the option of an additional period of ten (10) years, starting from October 14, 2004 and ending October 14, 2014. We note that the certain period, although seemingly intended to be for twenty (20) years, as stated in the Lease Agreement, and which therefore should have run from October 14, 1983 to October 14, 2003, was actually for twenty-one (21) years---from October 14, 1983 to October 14, 2004. However, as there was no issue raised in that respect, we shall make no further comments of the error.

Also, under the terms of the Lease Agreement, the appellant and her husband agreed, *inter alia*, to: (i) pay the annual rentals in advance; and (ii) demolish the existing concrete structure on the property and replace it with a new structure that would consists minimally of a three story building, which was to be completed within the first fifteen years of the lease agreement. We take further note that although the Lease Agreement stated that the appellant and her husband had fifteen years within which to complete the three story building, the appellant and her husband actually had sixteen years to complete the structure since the deadline stipulated in the Lease Agreement for the completion of the construction was October 14, 1999.

Additionally, under the Agreement, the appellant and her late husband were to (a) pay to the appellees ten percent (10%) of any amount received in excess of the annual rental, in the event the appellant and her late husband, lessees, assigned their leasehold rights to a third party or sub-let the premises; (b) keep and maintain an insurance policy on the newly constructed building and forward copies of the insurance policy, as well as the receipts evincing the payment of the premiums, to the appellees; and (c) pay all the real estate taxes which may become due on the property during the period of the leasehold.

Further, Article 13 of the Lease Agreement provided that if the appellant and her husband failed to keep or fulfill any of the terms of the Lease Agreement, specified above, the default would be deemed to constitute a violation of the Agreement, and, in such event, the lessors would communicate with the lessees, requiring them to cure the default within ninety (90) days of receipt of the written notification of the default. Moreover, Article 13 further

provided that if the lessees failed to comply with the requirement stated in the demand notice, the failure would constitute a sufficient ground for the appellees to proceed to cancel the Lease Agreement and the leasehold rights granted thereunder.

Consistent with the above mentioned Article 13 of the Lease Agreement, and upon the occurrence of a number of defaults by the appellant, Counsellor James E. Pierre, acting for and on behalf of the appellees, on July 18, 2011, wrote a letter to Appellant Martha Chebli informing her of the violations of the following four provisions of the lease agreement: (1) failure to pay the annual rentals for the preceding 5 years; (2) failure to construct the replacement three story building; (3) failure to maintain a casualty insurance on the building; and (4) failure to pay the real estate taxes. The notification letter also informed the appellant, Martha Chebli, that if the violations were not cured within ninety (90) days of the date of receipt of the notice, the appellees would avail themselves of the option of instituting cancellation proceedings to repossess the leased property, as per the terms of the agreement.

When the appellant failed to cure the violations within the ninety (90) day period specified in the notice letter, the appellees filed a petition before the Circuit Court for the Sixth Judicial Circuit, Montserrado County, praying the court to cancel the Lease Agreement. The petition reads as follows:

> **"The above named petitioners submit this petition praying for the entry of a decree cancelling a Lease Agreement which was executed between Petitioners as lessors and the respondents, the late Henry Chebli and his wife, Martha Chebli, as lessees, for the following legal and factual reasons, to wit:**
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> **1. On October 15, 1983, the petitioners and their mother, the late Rebecca Watts Pierre, executed a Lease Agreement with the respondents, Martha Chebli and her husband, the late Henry Chebli; a copy of the Lease Agreement is attached as Exhibit "P/1".**
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> **2. Under the terms of the Lease Agreement, the petitioners leased their property, a one (1) lot parcel of land located at the corners of Benson and Mechlin Streets in the City of Monrovia, to the respondents for an initial period of twenty (20) years and an optional period of an additional ten (10) years - a total of thirty (30) years - from October 15, 1983 to October 14, 2014.**
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> **THE RESPONDENTS' OBLIGATIONS UNDER THE TERMS OF THE LEASE**

3. In Article 3, the respondents were required to make timely advance annual rental payments on the anniversary date of the Lease, i.e., on October 15th of each year.

4. In Article 4 of the Lease Agreement, the petitioners granted the respondents the right to demolish the existing two (2) story concrete structure which had been erected on the property. In exchange for the right to demolish the existing structure, the respondents promised and warranted unto the petitioners in Articles 5 and 6 of the Lease Agreement that at the respondents' sole cost and expense, they would have the original building replaced with a minimum of a three (3) storey concrete building within fifteen (15) years of the date of execution of the lease - i.e., on or before October 14, 1999.

5. In Article 8 of the Agreement, the respondents were required to maintain a casualty insurance on the new replacement building which the respondents were obligated to have constructed.

6. In Article 12 of the Agreement, the respondents were required to make timely payments of all the applicable taxes and assessments which were assessed or imposed on the property during the periods of the lease.

THE RESPONDENTS' DEFAULTS

7. The respondents are in violation of Article 3 of the Lease Agreement because they have not paid the agreed annual rentals for over six (6) years, notwith-standing the fact that the petitioners were accepting rental payments exclusively in Liberian Dollars from the respondents while the respondents at the same time are sub-leasing stores both on the Benson and Mechlin Streets sides of the property and receiving payments exclusively in United States Dollars from their tenants.

8. The respondents are in violation of Articles 5 and 6 of the Agreement, because although they demolished the existing two (2) story building they met on the property, to date, they have not constructed the replacement three story building, although this should have been completed by October 15, 1999 - more than fourteen (14) years ago.

9. The respondents are in violation of Article 8 of the Agreement because they have failed and refused to insure the building or provide copies of the policy or evidence of their payments of the insurance premiums to keep the policy in effect.

10. The respondents are in violation of Article 12 of the Agreement because they are obligated to pay all the applicable taxes which are assessed or imposed on the property during the periods of the lease. Since the inception of the Agreement in 1983 the respondents have refused to provide the petitioners with any official receipts evidencing and confirming that they are

current and up to date in the payment of the taxes - despite petitioner's many requests to the respondents.

NOTICE TO RESPONDENTS TO CURE THE DEFAULTS

11. Article 13 of the Agreement provides that the respondents' failure to keep or fulfill any of the terms of the Lease Agreement constitutes a breach of the Agreement and their failure or refusal to cure the defaults within ninety (90) days after notification "....shall be construed and the lessees [i.e., the respondents] herewith agree that this shall constitute as between the parties to this agreement grounds for immediate cancellation of this agreement by the lessors [i.e., the petitioners]."

12. By a letter dated July 18, 2011, petitioners' counsel detailed the respondents' breaches of the Agreement and put them on formal legal notice that if the breaches were not cured within the ninety (90) day period mandated by the aforesaid Article 13, the petitioners would institute proceedings to have the agreement cancelled. Copy of the notification is attached as Exhibit "P/2".

RESPONDENTS' FAILURE TO CURE THE DEFAULTS

13. Further to Count 12 above, petitioners say to date - more than two (2) years later - they have not received a response to their notification from the respondents, nor have the defects been cured by the respondents. Petitioners therefore request that the Lease Agreement be cancelled in keeping with the provisions of the aforesaid Article 13.

WHEREFORE, and in view of the foregoing, petitioners pray Your Honour to enter a decree against the respondents cancelling the Lease Agreement and order further that thereafter the petitioners be put in sole and exclusive possession of the subject property and grant unto petitioners any and all further relief as Your Honour may deem to be just and legal"

The appellant, having been duly served with summons and the petition, filed returns challenging the appropriateness of the petition for cancellation of the Lease Agreement. The appellant did not deny or dispute that she and her late husband had violated the terms of the Lease Agreement or that the Agreement provided that in the event of such violations as had occurred and the failure of the lessees to cure the violations within ninety (90) days of the date of receipt of notification from the lessors of the violations, the lessors were then vested with the right to seek cancellation of the Lease Agreement if they chose to pursue that option. Instead, the appellant premised the allegation of the inappropriateness of the petition for cancellation the following defenses: (a)

that the event of *force majeure* caused by the Liberian civil war which had brought all activities to a halt and therefore rendered performance of the obligations under the Lease Agreement, including the non-payment of rental for several years, virtually impossible; (b) that the failure of the appellees to have squatters who were occupying the demised premises removed from the said property for a period of more than four years following the execution of the Lease Agreement; (c) that the civil war had caused the lessees not to be in control of the demised property for fifteen (15) years, which had forced the appellant to go into exile abroad, and which had effectively suspended the operation of the Lease Agreement; (d) that because of the civil war, the appellant had requested from the appellees an extension of the Lease Agreement to enable her to build the additional floors of the three story building provided for in the lease Agreement, but to no avail; and (e) that the appellant had returned to Liberia and was prepared to honor the obligations under the Lease Agreement, having invested more than US$200,000.00 in the leased property. We quote the six count returns herewith, as follows:

> **1. "That as to the entire petitioners' petition, respondent says that its failure to have made payment for a few years was due to force majeure and therefore excusable under the law. The respondent is, by operation of law, entitled to the time lost as a result of the war in Liberia after the execution of the agreement, the subject of these proceedings**
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> **2. That as to Counts one (1) and two (2) of the petitioners' petition, respondent says that these counts are in agreement with the agreement executed between the respondent's late husband and the parties named herein and therefore do not present any traversable issue.**
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> **3. That as to counts three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9) and ten (10) of the petitioners' petition, respondent agrees that these obligations were imposed upon the respondent as in keeping with the lease agreement. However, respondent says that between 1990 and 2005, a period of 15 years, she was not in effective control of the leased agreement as the result of the war. By any reasonable standard, the agreement was deemed suspended during the course of the Liberia civil crisis, especially so because respondent was forced to go into exile as the result of the war. When the respondent returned to Liberia sometime in 2005, she proposed an amend-ment to the lease agreement due to the war, specifically because the respondent was not able to remove the squatters from the property to start**

the construction as agreed upon within four (4) years. The four years that the respondent was making every effort to remove the squatters from the property and the war years affected the fulfillment of the respondent's obligation under the agreement. The communication sent to Cllr. James E. Pierre is hereto attached as respondent's Exhibit "R/1" to form cogent part of this return. As a matter of fact, the respondent followed this communication with a proposed amended lease and recommended that the rent be changed from Liberian dollars to United States Dollars all in an attempt to fulfill her obligation in good faith but the offer was rejected by Cllr. Pierre. Copy of the draft proposal is also attached hereto as respondent's Exhibit "R/2".

4. Further to count three (3) above, respondent also says that in November 2013, the respondent repeated her request to the petitioners' counsel for an extension of the lease based upon the Liberian civil crisis over which the respondent had no control. The purpose of the request was to enable the respondent to build the additional floors which could not have been done during the war years. The November 2013 communication was sent to the petitioners' counsel along with L$70,000.00 (Seventy Thousand Liberian Dollars) on a UBA check representing five (5) years rental but the petitioners' counsel refused to accept the envelope containing the envelope containing this request and the check bearing #0741001. Copy of the said communication of November 30, 2013 is also attached and marked as respondent's Exhibit "R/3" to form a part of this returns. Counts three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9) and ten (10) of the petitioners' petitioner should be disregarded and dismissed.

5. Further to count four (4) above, respondent says that the deferment of some of her responsibilities under the agreement was due to the war situation in Liberia and that the respondent had returned home from exile to ratify whatever obligation that was deferred as a result of the war.

6. That as to counts eleven (11), twelve (12) and thirteen (13) of the petitioners' petition, respondent says that indeed the petitioner is aware that while she and her husband were in exile, the husband died which brought serious setback in their plan to have returned earlier. Now that the respondent is in Liberia as a single parent and widow, she has begun to mobilize the necessary resources to ensuring that all of her obligations that were deferred as a result of the war and her departure from Liberia are met and that the additional floor will be placed over the building as required by the lease agreement because already, the respondent has invested a little over US$200,000.00 (Two Hundred Thousand United States Dollars) on the land. As a result of the war, she had not been able to recover even 25% of the

> **investment. Copy of the respondent's Resident Card and other instruments which show that she was out of the bailiwick of Liberia is hereto attached and marked as respondent's Exhibit "R/4" to form a part of this returns.**
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> **7. Respondent denies all and singular the allegation of both law and facts contained in this petitioners' petition, which were not made an issue of specific traversal in this returns.**
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> **WHEREFORE AND IN VIEW OF THE FOREGOING, respondent most respectfully prays Your Honor and this Honorable Court to deny and dismiss the petitioners' petition, order an amendment of the lease agreement based upon the war years to enable the respondent to fulfill those obligations that were deferred as a result of the war and to grant unto the respondent, all further relief that Your Honor will deem just, legal and equitable."**

The appellees responded to the returns in a seventeen (17) count reply, wherein they (a) acknowledged that this jurisdiction recognizes the principle of *force majeure* but contended (a) that under the circumstances revealed by the records in the instant case, the appellant could not avail herself of such defense so as to excuse her for the multiple violations of the terms of the Lease Agreement; (b) that they denied there had been any delays in removing squatters from the demised premises and turning over the said premises to the appellant and her husband; and (c) that the appellant had presented no legally justifiable reasons for the failure to pay the rent or the realty tax or to attach receipts showing that such payments were made of the realty tax; and (c) that the reasons advanced for the failure to insure the property, provided in the Lease Agreement, were without any legal or factual basis. The seventeen (17) count reply is quoted as follows:

> **"1 As to count 1 and the entire respondents' returns, petitioners deny that *force majeure* factors can be attributed to or is a valid defense to the Respondents' numerous defaults in the performance of the obligations which they assumed under the provisions of the agreement of lease which they executed with the petitioners.**
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> **2. Further to count 1 and as to Counts 3, 4, 5, 6 & 7 of the returns, petitioners say the respondents are deliberately lying when they allege that they were not in effective control of the property for the fifteen year period 1990-2005 and this was the reason why they defaulted in the performance of their contractual obligations which are detailed in Counts 7 through 10 of the petition and which form the basis for these cancellation proceedings. Petitioners say, and the**

records will confirm, that the property has been continuously in the sole and exclusive possession of the respondents and/or their lessees since the execution of the lease on October 15, 1983.

3. Further to count 2 above, petitioners reiterate and re-confirm the allegations of count 4 of the petition that there was a pre-existing large modern two story concrete building erected on the property at the time the agreement was signed on October 15, 1983. The agreement authorized the respondents to demolish the building on the condition that the respondents would replace same with a three story concrete building within the first fifteen (15) years of the agreement, i.e., by October 15, 1999. Although the respondents demolished the existing building, to date, thirty (30) years later, the respondents have still not constructed the replacement building. And petitioners deny that the respondents' refusal to do so was due to *force majeure* factors as is falsely alleged by the respondents.

4. Further to count 3 above, petitioners say after the agreement was signed on October 15, 1983, the respondents immediately demolished the existing building and constructed only the ground floor consisting of six (6) stores located on the Benson and Mechlin Streets sides of the property. After completion of the six (6) stores in 1987-1988, the respondents leased the stores and refused to construct the remaining two (2) floors as in violation of the terms of the agreement.

5. Still further to count 4 above, petitioners deny that the respondents' refusal to construct the additional floors was due to Force majeure factors as is falsely alleged by the respondents. Petitioners say the six (6) stores have been continuously leased by the respondents who have been receiving annual rentals in United States Dollars since 1988-1989. If the respondents had any intention of meeting their contractual obligations, these funds were intended for and should have been used to pay for the costs of continuing the construction of the additional two floors of the building. Therefore it is clear that the respondents' default was not attributed to *force majeure* factors.

6. Further to count 5 above, petitioners say even assuming, but without admitting the respondents' allegation that the civil crises prohibited them from constructing the additional floors and making timely payments of the rentals and taxes, petitioners say that the civil crises ended in 2003 and the respondents have had since then to complete the construction of the additional two floors and pay the rentals and taxes, especially so since they have been collecting rents continuously and uninterruptedly from 1988 - 1989 when the six (6) stores were completed and leased. Petitioners reiterate that the respondents' defense of Force majeure cannot be sustained because: (a)

none of the stores were damaged during the civil crises; b) the stores were continuously occupied during the entire period by the respondents' lessees; and (c) the Respondents received annual rentals exclusively in United States Dollars from their lessees continuously during the entire period of the civil crises and are continuing to receive the rentals up to the present. Petitioners submit that the respondents' refusal to construct the replacement three storey building is a breach of Articles 5 & 6 the agreement and their failure or refusal to cure the defaults within ninety (90) days after notification constitutes sufficient grounds for the immediate cancellation of this agreement by the petitioners under the provisions of Article 13 of the agreement.

7. Further to count 6 above, petitioners say although the respondents were residing in the United States for a limited period of time, however throughout the civil crises they continued to be in actual physical charge and control of the property. This is confirmed by the fact that during this period they executed lease agreements with their tenants for the stores and continued to receive the annual rentals from their lessees. In confirmation of same are copies of two of the most recent lease agreements which the respondents concluded with their tenants for the lease of two of the six (6) stores for the period December 1, 2003 - December 31, 2013 which are attached as Exhibits "P/3" and "P/4" respectively. Respondents' allegations are therefore clearly false that they did not have effective control or possession of the property during the fifteen (15) year period 1990-2005.

8. Further to Count 7 above, petitioners question how can the respondents allege in good faith that they were not in control of the property when they were executing lease agreements and collecting rents from their tenants? Petitioners also give notice that at the trial, they will produce additional evidence to confirm that the stores have been leased continuously by the respondents since approximately 1988-1989 and that the respondents have been receiving rentals for the entire period. Petitioners therefore deny that the respondents' defaults were due to *force majeure* factors as is falsely alleged by the respondents as a defense.

9. Petitioners submit that the respondents confirm in count 4 of their returns that they were five years in arrears in their rental payments totaling LD$70,000.00 and they offered to pay same in November 2013. This constitutes confirmation and a voluntary admission of the respondents' breach of Article 3 of the lease agreement. Petitioner says at the current prevailing rate of LD85.00 to US$1.00, LD$70,000.00 amounts to US$823.60for the five year period or - US$164.70 per annum. At that rate each of the petitioners should have received US$27.50 per annum.

10. Further to count 9 above, petitioners say their Exhibits "P/3" and "P/4" confirm that the respondents are receiving annual rentals exclusively in United States Dollars from their tenants. Notwithstanding this fact, the respondents still refused to pay the six (6) petitioners the annual rental of US$164.70 which amounts to an individual share for each petitioner of US$27.50 per annum. Petitioners submit that it is impossible for the respondents to justify why they refused to pay this ridiculous amount to their lessors for over five (5) years when they were receiving rental payments exclusively in United States Dollars. Petitioners submit that the respondents' refusal to pay their rentals is a breach of Article 3 of the agreement and their failure or refusal to cure the default within ninety (90) days after notification constitutes sufficient grounds for immediate cancellation of this agreement by the petitioners under the provisions of Article 13 of the agreement.

11. Further to count 10 above, petitioners say in their returns, the respondents did not deny that they are in violation of Article 12 of the Agreement because of their failure pay the applicable taxes which are assessed or imposed on the property during the periods of the lease since the inception of the Agreement in 1983 or to provide the petitioners with any official receipts evidencing and confirming that they are current and up to date in the payment of the taxes - despite petitioner's many requests to the respondents. Petitioners requests Your Honour to take judicial notice of the law of evidence that what is not denied is deemed as a matter of law to be an admission of fact. Respondents' refusal or failure to pay the taxes puts the property in danger of being seized by the Ministry of Finance for non-payment of taxes which will deprive the petitioners of their reversionary interest in the property at the expiration of the agreement of lease. Petitioners submit that the respondents' refusal to make pay the property taxes is a material breach of Article 12 of the agreement and their failure or refusal to cure the default within ninety (90) days after notification constitutes sufficient grounds for the immediate cancellation of this agreement by the petitioners under the provisions of Article 13 of the agreement.

12. Further to count 11 above, petitioners say in their returns, the respondents also did not deny that they are in violation of Article 8 of the Agreement because of their failure obtain or maintain a casualty insurance on the replacement building which they were required to construct. Petitioners submit that the respondents' refusal to do so is a breach of the aforesaid Article 8 and their failure or refusal to cure the default within ninety (90) days after notification constitutes sufficient grounds for the immediate cancellation

of this agreement by the petitioners under the provisions of Article 13 of the agreement.

13. Further to count 3 of the returns, petitioners say it is a categorical lie that the property was occupied by squatters at the time of the execution of the agreement in 1983 or that the respondents needed time to remove squatters. Petitioners say in 1983, the building was occupied by petitioners' relatives who vacated the property and the respondents were put in sole and exclusive possession even prior to the execution of the agreement. If indeed squatters were occupying the property as is falsely alleged by the respondents, the agreement would have reflected same with appropriate provisions included therein for the agreement to become effective only after the squatters had been removed and the respondents put in sole possession of the property. The fact that the agreement contains no such provision is proof of the falsity of the allegation.

14. Further to count 13 above, petitioners say additional and conclusive proof of the falsity of the allegation can be seen from the fact that the agreement was signed in October 1983 and the six (6) stores were completed in 1987-1988 - some six years after the date of the execution of the agreement. If indeed as the respondents would have Your Honour to believe that four (4) years were needed to evict the squatters before commencement of the construction of the six (6) stores, this would have meant that the construction commenced in 1987 and was completed in less than one year later in 1988.

15. Still further to count 14 above, petitioners say Counsellor James E. Pierre, is one of the prominent practicing lawyers in Liberia and also one of the petitioners. It is inconceivable that he would have permitted any squatters either to occupy his family property or to reside there for four (4) years as is falsely alleged by the respondents. Petitioners say this is an obvious but futile and unsuccessful attempt by the respondents to justify their violations of the agreement. Petitioners reiterate that the property was never occupied by squatters and that the respondents were put in sole and exclusive possession of the property even prior to signing the lease agreement in October 1983.

16. Further to count 6 of the returns, petitioners say even accepting the respondents' estimated US$200,000.00 cost of construction as valid, petitioners submit that the respondents have more than amortized their investment since 1988-1989 when they have been collecting annual rentals exclusively in United States dollars continuously and have not been paying any taxes and have been paying petitioners exclusively in Liberian Dollars.

17. Petitioners deny each and every allegation of both law and fact which was not made the subject of special traverse in this reply.

> **WHEREFORE, and in view of the foregoing and for the legal and factual reasons stated herein, petitioners pray Your Honour to overrule the respondents defense of *force majeure* and grant petitioners' request cancelling the agreement of lease - subject matter of these proceedings - and have petitioners put in sole and exclusive possession of the subject property and grant unto petitioners any and all further relief as Your Honour may deem to be just and legal."**

After pleadings had rested, and in keeping with the procedure provided by the Civil Procedure Law and articulated in several Opinions of this Court, the trial court proceeded to dispose of the issues of law. See *Hussan v Butler* decided on November 5, 2014; *Ketter v Jones et al*., 41 LLR 81 (2002); *Computer Services Bureau v Ehn*, 29 LLR 206 (1981). In his ruling on the law issues, the trial judge determined that the singular issue of law for disposition by the court was whether the defense of *force majeure,* raised by the appellant, was applicable as relates to the facts and circumstances revealed in the records.

In disposing of that lone issue, the trial judge stated that from the facts revealed by the records in the case "*Force majeure* could be used by the respondent as a defense only for an eight year period – from 1990-1997 – and for the year 2003...." The judge thereupon ruled that he was overruling the respondent's defense of *force majeure* for any other period claimed by the appellant since the facts, undisputed by the parties in their pleadings, clearly showed that only eight years of the lease period could fall within the ambit of *force majeure*, the period when the nation was actually engulfed in a war and which rendered certain activities impossible. As to the other issues raised, the judge said, they were of mixed law and facts, and hence ruled to trial.

The appellant, not being satisfied with the ruling of the trial judge, sought the intervention and review by the Justice in Chambers by way of a petition for the issuance of a writ of certiorari. After a conference was held with the Justice, however, the Justice declined to issue the writ and accordingly ordered that the lower court should resume jurisdiction over the case and proceed with the trial on the facts.

As per the mandate of the Justice, the trial court resumed jurisdiction over the case. The resumption of jurisdiction over the case by the trial court was followed, on January 5, 2015, by the appellees' filing of a motion to sequester

all future rental amounts owed to the appellant by the several tenants to whom she had subleased the property, pending full resolution of the case. The appellant's counsel not having interposed any objections to the motion, the trial judge granted same and ordered that all future rents to be paid into a special escrow account under the control of the Sheriff of the Circuit Court for the Sixth Judicial circuit, Montserrado County. The case thereafter proceeded to trial on the facts.

Following the production of evidence by the parties and arguments made before the court, the trial judge, on July 23, 2015, entered judgment in favor of the appellees. In his judgment, the judge ordered the cancellation of the lease agreement but with the proviso that the rental which had been paid by the sub-lessees up to 2014, and which had been placed in an escrow account under the control of the Sheriff for Montserrado County be turned over to the appellant. For the benefit of this Court's analysis and the issues presented and argued by the parties, we herewith capture the full text of the exhaustive and well-articulated ruling of the judge, as follows:

> **"COURT'S FINAL JUDGMENT**
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> **The petitioners instituted these proceedings requesting this court to cancel a Lease Agreement which was executed between them and the respondents on October 15, 1983 alleging as the basis the respondents, violation of the following terms of the lease agreement: (i) Failure to construct a three story replacement building within the first fifteen years of the lease; (ii) Failure to make the scheduled annual rental payments; (iii) Failure to insure the building; and (iv) Failure to present the official tax receipts evidencing the payment of the property taxes.**
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> **In their returns to the petition, the respondents did not deny the violations but raised the following two defenses as the reasons for their violations; (i) force majeure, based on the Liberian Civil Crises; and (ii) the squatters' occupancy of the property for four years after the agreement was signed in 1983.**
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> **In their reply to the respondents' returns, the petitioners denied the respondents' defense of force majeure and alleged that the civil crisis did not affect the property or the respondents' ability to generate revenue which they derived from their sub-leases of the ten stores of the ground floor of the building. The Petitioners also alleged that throughout the entire period of the civil crises the respondents continued to receive rentals from their tenants even while they were residing in the United States. As proof, in their reply, the petitioners exhibited several of the respondents' sublease agreements with the respondents' tenants which contained instructions to the tenants to have the rental payments paid directly into co-respondent Martha Chebli's bank account in the United States.**
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> **The petitioners also denied that squatters were occupying the property and that it took four years for the respondents to obtain possession of the property. The petitioners alleged in their reply that the respondents were put in possession of the property in 1983 and the respondents immediately demolished the existing building.**

The court confirms that after a review of the pleadings filed by the parties the following facts are not in dispute:

1. On October 15, 1983, the Petitioners executed a Lease Agreement with the Respondents. Under the terms of the lease agreement, the petitioners leased their property, a one (1) lot parcel of land located at the corners of Benson and Mechlin Streets in the City of Monrovia to the Respondents for an initial period of Twenty (20) years and an optional period of an additional ten (10) years a total of thirty (30) years from October 15, 1983 to October 14, 2014

2. In Article 3 of the Agreement, the respondents agreed to pay the annual rentals in advance on the anniversary date of the lease, i. e., on October 15th of each year.

3. In Article 4 of the agreement, the petitioners granted the respondents the right to demolish the existing two (2) story concrete structure which was on the property in exchange for the respondents' obligation to construct a replacement three story building within the first fifteen years of the lease, i.e., on or before October 15, 1999.

4. In Article 8 of the agreement, the respondents were required to maintain a casualty insurance policy on the new replacement building which the respondents had agreed to have constructed.

5. In Article 12 of the agreement, the respondents were required to make timely payments of all the applicable taxes and assessments which were assessed or imposed on the property during the periods of the lease and copies of the official receipts.

6. In Article 13 of the agreement, the respondents agreed that their failure to fulfill any of the terms of the lease agreement constituted a breach of the agreement and if the breach was not remedied within ninety (90) days after notification to do so, this would constitute sufficient grounds for the immediate cancellation of the lease.

7. On July 18, 2011, petitioners' counsel wrote respondent Martha Chebli detailing her violations of the Agreement. The letter also informed her that the petitioners would institute cancellation proceedings if the violations were not corrected within the 90 day period mandated by Article 13.

8. At the disposition of law issues our colleague, His Honour Judge Peter Gbeneweleh, overruled in part the respondents' defense of Force Majeure and determined that only eight years of the entire 30 years of the lease could be attributed to genuine elements of force majeure. He therefore ruled that as a matter of law, the respondents could not use force majeure as a valid defense for the respondents' failure to have constructed the three stories as the lease agreement mandated.

At the trial, the petitioners produced two general and two rebuttal witnesses.

Co-petitioner, Counselor James E. Pierre, petitioners' first witness, reiterated the allegations laid down in the petition and reply. He testified to the following five exhibits which were subsequently admitted into evidence.

i. **The October 15, 1983 Agreement of lease between the petitioners and the respondent;**
ii. **The July 18, 2011 letter from petitioners' counsel to Mrs. Martha Chebli;**
iii. **A September 10, 1995 Agreement of lease between Henry and Martha Chebli of the City of Monrovia and Lion Stationery Store;**
iv. **A December 1, 2003 agreement of lease between Martha Chebli of the City of Powder Springs, Georgia, United States of America and Lion Stationery;**
v. **A December 1, 2003 agreement of Lease between Martha Chebli of the City of Power Springs, Georgia, United States of America Metro Stationery Store.**

The witnesses further testified as follows:

1. **That the petitioners put the respondents in possession of the property in 1993.**

2. That the petitioners put the respondents in possession of the property in 1983.
3. That the three stories mandated by the Lease Agreement to be built were never constructed.
4. That the respondents were five years in arrears in the payment of the annual rental for the period of 2009 -2013.
5. That the building was never insured.
6. That the respondents did not submit receipts to the petitioners confirming the payments of the property taxes.

Petitioners' second witness was Counselor Cyril Jones, who testified that he along with Counselor Pierre, were co-counsel of the petitioners. He testified to and confirmed the existence of the Lease Agreement between the petitioners and the respondents' violations of the agreement which necessitated the filling of the cancellation proceedings after the respondent failed to cure the violation after written) notice from Counselor Pierre to do so.

Based on the agreement of counsel of both parties, Petitioners' prior application for the issuance of Subpoena Duces Tecum and Ad Testificadum for witnesses to produce and testify to the originals of the three sublease agreements was withdrawn and with the consent of both parties permanent marks of identification were placed on them.

Petitioners then rested both oral and documentary) evidence. In keeping with our practice, the respondent then proceeded to present her side of the case.

Mrs. Martha Chebli was the only witness called to testify for the respondents. She testified to the signing of the lease agreement on October 15, 1983. She also testified that it took the respondents four years to have the squatters removed from the property before) they could take possession of the property in 1983.

She further testified that all of the petitioners had left the country due to the 1980 coup and she was left to deal with the petitioner's mother, Mrs. Rebecca Pierre who had to send the agreement to the petitioners who were living abroad to have the agreement signed by the.

She testified that the Liberian civil crises prevented her from completing the remaining two stories and that she asked Counselor Pierre for an extension to be able to do so but he refused. She also confirmed that she received the letter from Counselor Pierre about the violations asking her to remedy them within 90 days.

She confirmed that she had subleased the completed ground floor of the building consisting of then stories. She also admitted that she did not insure the building and that she was in arrears in the payment of the annual rentals for the last five years of the lease.

She further testified that she transmitted to Cllr. Pierre thru letter a check for USD875.00, representing rental payment for five years which was rejected.

Permanent marks were placed on the following three documents to which she testified and they were admitted into evidence.

i. The October 15, 1983 lease agreement between the petitioners and the respondents;
ii. A letter dated March 1, 2005 from Mrs. Martha Chebli to Counselor James E. Pierre proposing an Amendment/Addendum to the lease agreement.
iii. A November 30, 2013 letter from Mrs. Martha Chebli to Counselor James E. Pierre requesting an extension of the lease and submitting a check of US$875.00 for the rental areas for the last five years.

The petitioners having previously given the required legal notice was allowed to produce two rebuttal witnesses.

Petitioners' first rebuttal witness was Julian Benson. He testified that he was the nephew of Counselor Pierre, that co-petitioner Mabel Benson was his stepmother and that the other petitioners were his aunts and uncles.

He testified that the building was occupied only by family members and that there were no squatters occupying the property in 1983. He told the Court that the property was turn over to the respondents in 1983.

Petitioners' second rebuttal witness was Mr. Erwin Jones. He testified that in 1983 he knew that Counselor Pierre was in Liberia because at that time he was working with his father the late Counselor M. Fahnbulleh Jones at his father's law office in Monrovia. He additionally testified that he also knew that co-petitioners Mrs. Mabel Benson and Alexander Pierre were in Liberia at that time because Mrs. Benson, who is his aunt, was living in Bong Mines with her husband Dr. Benson who was his uncle and he also knew co-petitioner Alexander Pierre was in Monrovia in 1983 because he used to play cards with him every Friday night.

The central issue in these proceedings is whether the petitioners presented sufficient credible evidence to confirm the violations by the respondents of the relevant provisions of the lease agreement which would justify their request for the cancellation of the lease agreement.

1. On the cross examination, when asked whether she had complied with the provision of the lease agreement which required her to construct the three story building, she confirmed that this did not take place. She stated that:
"It was impossible because of the war." We take judicial notice of Judge Gbeneweleh's April 25, 2014 ruling and determination when he disposed of Law Issues that the respondents' defense of force majeure was not a valid defense for the respondents' violation of article 4 of the lease agreement which required them to have constructed a three story building within the first fifteen years of the lease. As Judges of concurrent jurisdiction, we are legally stopped from reviewing our colleague's ruling denying the respondents' force majeure defense. Therefore we are compelled as a matter of law to confirm the petitioners' allegation of the respondents' violation of Article 4 of the Lease Agreement.

2. The respondents' second violation alleged by the petitioners was the respondents' failure to comply with the provisions of Article 3 of the agreement which required petitioners to make annual rental payments in advance. On the cross examination when asked whether she complied with this provision of the lease agreement which required her to pay the rentals annually in advance. She stated that: "We did until the last five years because of the civil war". The court takes judicial notice that one of the instruments testified to by the respondent and subsequently admitted into evidence is a November 30, 2013 letter from Mrs. Martha Chebli to Counselor Pierre submitting a US$875.00 check which was rejected.
According to Mrs. Chebli's letter, this payment represented rental arrears for the five year period 2009 to 2013. The court says Mr. Chebli's testimony and the instrument to which she testified constitutes voluntary admissions of the respondents' violation of article 3 of the agreement.
"All admissions made by a party himself or by his agent acting within the scope of his authority are admissible." for reliance; <u>1 LCLR CIVIL PROCEDURE LAW, SECTION 25.8(1).</u>

It is obvious that the respondents' failure to have paid the annual rentals for the period 2009 to 2013 cannot be attributed to the civil war. The court takes judicial notice that no civil war existed in Liberia between the five year period 2009 to 2013. For reliance: <u>1 LCLR CIVIL PROCEDURE LAW, SECTION 25.2</u>

The court takes judicial notice of two or Mrs. Chebli's sublease agreements which were admitted into evidence. Each of the lease which are for only two of the ten stores provide for rentals of US$22,500.00 for the period from 2009 to 2013. The court says it was therefore inexcusable for the respondent to have been in arrears of the rental payments for the five year period 2009 to 2013 when the respondent was receiving rentals from her tenants for the ten stores in United States Dollars and was paying her lessors, the petitioners, exclusively

in Liberian Dollars. The disparity can be seen from the November 30, 2013 proffer from Mrs. Chebli to Counselor Pierre of US$875.00 for the entire five year period. This amounts to US$175.00 a year.

On the cross examination, when questioned whether she had the building insured as agreed in Article 8 of the lease agreement, Mrs. Chebli admitted that she did not have building insured when she testified that: "Well we could not have done so because of the war no body was insuring any property". But was this also true since after the Civil crisis, most especially from 2006 up until present? The historical facts are not supported by this.

"Where a party offers not a scintilla of evidence at a trial in denial of testimony against him, it shall be considered a concession by him of the truth of the testimony offered, though his answer contains denials. "*Davis v. Davis*, 19 LLR 150 (1969), Syl. 2.

Also on the cross examination, Mrs. Chebli admitted that she did not submit tax receipts to the petitioners to evidence the respondents' payments of the property taxes on the property.

The Court says it is a well-established rule of law that in cancellation proceedings, the burden in the first instance is on the party seeking the cancellation of an instrument, but when he has made out a prima facie case, the burden in the first instance is on the party seeking the cancellation of an instrument, but when he has made out a prima facie case, the burden of proof shifts to the adverse party to establish facts sufficient to rebut the prima facie case and thereby sustain the instrument. 13 AM JUR 2D, cancellation of instruments, section 63, page 541. Our Civil Procedure Law is in harmony with the common law on this point. Preponderance of the evidence: It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence. "1 LCLR, section 25.5.

"A *prima facie* case' is one which is established by sufficient evidence and can be *overthrown* only by rebutting evidence adduced by the defense." *Republic v. Eid et al*., 37 LLR 761 (1995), Syl. 18.

From our analysis of the evidence adduced at the trial, we are of the considered opinion that not only did the petitioners established a prima facie case but also they also met their burden of proof through the production of clear and convincing evidence both oral and documentary of the respondents' violations of article 3, 5, 6, 8 and 12 of the lease agreement.

The court observes that in article 13 of the lease agreement, the respondents agreed that if their violations of the agreement were not cured within 90 days after written notification to do so, this would constitute sufficient grounds for the immediate cancellation of the agreement. In Vargas versus Eid, 40 LLR 624 (2001) the Supreme Court held that a consistent failure to pay the rentals coupled with a failure to procure an insurance policy to protect a leased building can be deemed a material breach an agreement and warrants the cancellation of the said agreement. This court therefore says under the terms of the agreement the respondents' failure to have the violations remedied within the agreed period of time are sufficient grounds for the cancellation of the lease agreement as was agreed by the parties in the aforesaid article 13.

The court observes that the agreement expired by its own terms on October 15, 2014 during the pendency of these proceedings. The court also notes that during the pendency of these proceedings, the rents from the lease of the property by the respondents were ordered sequestered. The court says that since these proceedings extended beyond the certain life of the agreements, it will only be fair and equitable for the respondents to enjoy the benefit of such rents less obligations due under the lease agreement.

WHEREFORE, in view of the foregoing, and for the reasons stated herein, it is the final judgment of this court that the October 15, 1983 agreement of lease between the petitioners and the respondents is hereby cancelled with the provision that sequestered rent due before October 15, 1983 less due rent and

taxes be paid to the respondent. Costs of these proceedings are ruled against the respondent. And it is hereby so ordered."

The appellant, not being satisfied with the decision of the trial judge, took exceptions thereto and announced an appeal to the October term, 2015, of this Honourable Court, which announcement was noted by the judge and the appeal granted. In furtherance of the appeal and in compliance with the initial prerequisites for the perfection of the appeal and the conferral of jurisdiction on the Supreme Court, the appellant filed a fifteen (15) count bill of exceptions with the clerk of the trial court, duly approved by the trial judge. We recite herewith the said bill of exceptions:

"Respondent in the above cause of action requests Your Honor to approve this bill of exceptions so as to enable the Honorable Supreme Court of Liberia review Your Honor's final judgment of July 23, 2015, and make a determination thereof.

1. That Your predecessor, His Honor Peter W. Gbenewelleh, while ruling on law issues on April 25, 2014, ruled that *force majeure* will only be considered as a defense of the respondent from 1990 to 1997, but it is a known history concerning the Liberian crises that there were subsequent wars fought in Monrovia and its environs to include the September 18, 1998 war in which the Chief of Staff of the Armed Forces of Liberia (AFL), the late General Dumuyan was killed, as well as the three separate wars that were fought in 2003 between the LURD forces and the Government of Liberia forces. Also in 2004, there was a religious war between the Christians and Muslims, which also affected Monrovia and its environs. Respondent says that were these wars not devastating to cause normal business activities to be disrupted for which His Honor Peter W. Gbenewelleh did not consider in determining the issue of *force majeure*? Respondent says that the wars that were fought between 1998 and 2004 were even more devastating than the wars that were fought between 1990 to 1997, as historical facts are known for which His Honor Peter W. Gbenewelleh should have given due recognition in determining the number of years to be considered FORCE MAJEURE. For His Honor Peter W. Gbenewelleh not recognizing these wars from 1998 to 2004 is a reversible error he did commit for which his ruling should be reversed and overturned.

2. That Your Honor committed a reversible error when you overruled the respondent's application for trial by jury prior to the commencement of the trial, especially so, when your predecessor, His Honor Peter W. Gbenewelleh, ruled on April 25, 2014 "This matter is hereby ruled to trial on the other mixed issues of law and facts as contained in the pleading other than *force majeure*. AND IT IS HEREBY SO ORDERED". Respondent says that your decision to deny them trial by jury especially so where the case was ruled to trial based on mixed issues of laws and facts is to review the decision of your colleague of concurrent jurisdiction, for which your ruling should be reversed as a result of the reversible error you did commit.

3. Your Honor committed a reversible error when you allowed the photocopy of the Lease Agreement of 1983 to be admitted into evidence when the Petitioners' first witness in person of Counsellor James E. Pierre informed this Court during the sixth (6th) day Chamber Session, June Term of Court, June 6, 2015, found on pages 12 and 13 respectively, that the original copy of the Lease Agreement got missing during the coup of 1980, which was at his father's

house, whereas the Agreement of Lease was executed in 1983; so how can an instrument which was executed in 1983 get missing in 1980 when same was not in existence? Your Honor ruled that the objection raised by the respondent's counsel is a factual issue, and if same is a factual issue, then it must be decided by a jury, not a judge sitting as both judge and jury de facto. Reversible error Your Honor did commit for which Your Honor's Final Judgment should be reversed.

4. Your Honor erred and committed a reversible error as can be more fully seen on the sixth (6tl) Day Chamber Session, June Term of Court, 2015, June 6, 2015, pages 17 and 18 respectively, when you overruled the respondent's Counsel objection after petitioners' had requested the court for a temporary mark of identification to be placed on a lease agreement made and entered into the l0th day of September. A.D. 1995 by and between Henry Chebli and Martha Chebli of the City of Monrovia, herein known and referred to as the lessors, and the Lion Stationary Store represented by Chanderbhan Tolaran, proprietor, of the City of Monrovia, referred to as the Lessee on ground that the said instrument was never pleaded by the petitioners, but Your Honor ruled that the petitioners gave notice in count 8 of the Reply for the production of evidence. The essence of annexing instruments to pleadings is to give the adverse party an opportunity to traverse the said instrument, and if a reply is filed giving notice to produce a strange instrument during trial, and after said instrument is introduced during trial, the adverse party will have no opportunity to travers same, and so this is a reversible error for which Your Honor final judgment should be reversed, reversible error Your Honor did commit.

5. Your Honor did err and committed a reversible error when you sustained the petitioners' counsel objection to the respondent's counsel question during the sixth (6th) Day Chamber Session, June Term of Court, A. D. 2015, June 5, 2015, page 23, when the respondent's counsel asked the petitioners' first witness in person of Cllr. James E. Pierre on the cross examination this question: "Since you stated in your answer that the area where the property is located was not affected by the war, are you telling this court that normal business activities were going on while bullets were flying in other areas?" This question was a result of previous answer stated on page 22 by witness Cllr. Pierre, when he said "As I stated earlier, the events did not affect the property in anyway....". Based on this answer, respondent says that the petitioners' witness admitted that while war was going on in Monrovia, the particular area had no war going on, and so the witness should have been given the opportunity to say what does he mean by saying that the property was not affected even though there was war in other areas of Monrovia, and his answer also presupposes that if bullets were flying on Broad Street, Benson Street where the property is located would not be affected as a result of the bullets that are flying on Broad Street. Your Honor is aware that Judges should take judicial cognizance of historical facts and everybody knows that if bullets are flying in Sinkor, Central Monrovia is not safe for any normal activity, least to say Broad Street. For Your Honor's refusal to allow the witness to answer the said question amounts to reversible error for which Your Honor's final judgment should be overturned and reversed.

6. Your Honor erred and committed a reversible error when *you* mentioned in your final judgment of July 23, 2015 that in Article 13 of Lease Agreement, the respondents agreed that if their violations of the agreement was not cured within 90 days after written notifications to do so, this will constitute sufficient grounds for the immediate cancellation of the Agreement. Your Honor then cited *Vargas versus Eid*, 40 LLR 624(20011. where Your Honor claimed that the Supreme Court held that a consistent failure to pay the rentals coupled with a failure to procure an insurance policy to protect a leased building can be deemed a material breach of an

agreement and warrants the cancellation of the said agreement. Contrary to this statement, the Supreme Court held in the herein mentioned case that the "inability of sub-lessee to pay the procured an insurance policy to protect the demised property against risk are material breaches of a sub-lease agreement which warrant the cancellation of the agreement." Your Honor's interpretation of the Supreme Court's Opinion in the *Vargas versus Eid*, 40 LLR 624 (2001) case is completely different from the actual Opinion of the Supreme Court in the said case, as the Supreme Court made mention of "sub-lessee" in the said case and not the "lessee" inability. Your Honor further erred and committed a reversible because the facts and circumstances in this case at bar are quite different from the facts and circumstances in the *Vargas versus Eid*, 40 LLR 624(2001) case. For Your Honor's failure to properly interpret the herein mentioned Opinion of the Honorable Supreme Court of Liberia consistent with the facts in this case and that of the Vargas versus Eid, 40 LLR 624 (2001) case, reversible error Your Honor did commit, for which Your Honor final judgment should be reversed.

7. Your Honor's final judgment needs to be reversed because the records in these proceedings showed that Your Honor's predecessor His Honor Johannes Z. Zlahn granted a motion for the sequestration of rent, but in Your Honor's final judgment, Your Honor decided that the sequestrated rent due before October 15, 1983, less due rent and taxes be paid to the respondent. Respondent says that Your Honor's decision to reverse the ruling of Your predecessor who granted the motion for the sequestration of rent is reversible error by Your Honor to review the act of Your colleague of concurrent jurisdiction since the sequestration of the rent is a separate action that grew out of this matter. Reversible error Your Honor did commit for which Your Honor's final judgment should be reversed.

8. Your Honor committed a reversible error when Your Honor confirmed and affirmed that the petitioners did not only establish a prima facie case, but also provided clear and convincing evidence both oral and documentary of the respondent's violation of Articles 3, 5, 6, 8 and 12 of the Lease Agreement, thereby establishing the burden of proof Your Honor further erred and committed a reversible error when Your Honor mentioned that the petitioners' witnesses testified that the respondents were put in possession of the property in 1983. Respondent says that this statement is untrue because petitioners' first witness Cllr. James E. Pierre in answering a question while on the witness stand said that the property was vacated and turned over to the respondent even prior to the execution of the Lease Agreement. Petitioners' second witness in person of Cllr. Cyril Jones also stated that he did not know actually when the respondents took possession of the leased property in 1983, but being a counsel of the petitioners and to his beliefs, he believes that it happened when the Agreement was executed. Petitioners' first rebuttal witness in person of Julian A. Benson while on the cross examination was asked a question that since he was aware of the Lease Agreement that was entered into by the petitioners and the respondents in 1983, could he tell the Court when did the respondents took possession of the leased property in 1983. He stated that he did not know the exact month, but he knew that it was in 1983. One of respondents' counsel then drew Your Honor's attention to the inconsistencies in the testimonies of petitioners' three (3) witnesses as to when did the respondents take possession of the property, especially so, when the respondents' only witness Mrs. Martha Chebli informed the court and Your Honor that they took actual possession of the property in 1987, due to the difficulties in removing the squatters that were on the premises. Your Honor failed to recognize these inconsistencies in the testimonies of the three (3) witnesses of the petitioners vis-a-vis the testimony of respondents' only witness as to when the respondents took possession of the property, especially so when a

lawsuit was instituted by one of the squatters who was removed from the leased property in 1987 by the name of Aba Boccum. Your Honor failed to make mention of this in the final judgment, reversible error Your Honor did commit for which Your Honor's final judgment should be reversed.

9. Your Honor did commit a reversible error when the respondents' only witness informed this court during her testimony that the respondents took full possession of the leased property in 1987 instead of 1983, and this was due to the occupancy of the leased premises by the squatters, one of whom she named as Aba Boccum, who subsequently instituted an action of damages against Mrs. Martha Chebli for removing him from the said premises, alleging damages to his property. Respondents' counsel says that this information was brought to the attention of Your Honor by the respondents' lone witness who further informed Your Honor that at the time the matter was taken to the Civil Law Court, Sixth Judicial Circuit, it was Your Honor who was presiding when she informed the Court that she never had a lawyer and as such the court should give her time to hire the services of a lawyer. And Your Honor granted that request from her being the presiding judge at the time. This allegation was not denied by the petitioners' counsel, but same was even buttressed by said counsel when cross examining the respondents' only witness, Mrs. Martha Chebli, when the Petitioners' Counsel asked her about the status of the case between she and Mr. Aba Boccum, and she informed him that her lawyer would know the status of the case. Petitioners' counsels further ask the witness as to whether Cllr. Thompson Jarbah was one of her lawyers in the said case with Mr. Aba Boccum, and she affirmed same, but said that Cllr. Jarbah came into the case very late. Petitioners' counsel further tried to introduce a communication while questioning the respondent's lone witness by requesting permission of court to have the said witness view a communication allegedly written and filed on her behalf by Cllr. Thompson Jarbah in the said Aba Boccum's Case, and this request was objected to by the respondents' counsel, and same was granted by Your Honor. respondents'/ appellants' counsel says that Your Honor cited the Davis v. Davis, 19 LLR, 150 (1969,1 Syl. 2, and we quote "Where a party offers not a scintilla of evidence at the trial in denial of testimony against him, it shall be considered a concession by him of the truth of the testimony offered, though his answer contains denials". The petitioners' counsel did not deny that Mr. Aba Boccum sued Mrs. Martha Chebli for the subject property as a result of him (Aba Boccum) being evicted from the premises in 1987, neither did the petitioners' counsel deny that there is a pending action against Mrs. Martha Chebli instituted by Mr. Aba Boccum still undetermined within a court in Liberia, resulting from the eviction of Mr. Boccum by the respondents from the leased property. Your Honor failed to recognize this salient and convincing fact, but only made mentioned of the occupancy of the property for four (4) years after the Lease Agreement was signed in 1983 by squatters as one of the defenses of the respondents not honoring the Lease Agreement. Since in Your Honor's final judgment the four (4) year occupancy of the property by squatters was mentioned as a defense, then Your Honor should have delved into the testimony made by the respondents' witness which was sufficiently buttressed by the petitioners' counsel, but surprisingly, same was never discussed fully in Your Honor's final judgment. This is a reversible error Your Honor did commit, for which Your Honor's final judgment should be reversed.

10. Your Honor committed a reversible error when you stated in your final judgment that the respondent raised two defenses as reasons for not adhering to the Lease Agreement, and they are *force majeure* and the occupancy of the premises by squatters for four (4) years after the signing of the agreement in 1983. Respondents' counsel says that not only did the respondent raised the two issues in their returns, but the respondent also stated in their returns and the lone witness testimony, which was never

denied by the petitioners, that they have made significant progress by constructing the entire ground floor and had commenced the second part of the project by erecting a floor over the first floor, which has amounted to a little over US$200,000.00 (Two Hundred Thousand United States Dollars), but the respondent has not even recovered 25% of what so far has been invested thereby drawing Your Honor's attention to what equitable relief that should have been given or stated in Your Honor's final judgment in favor of the respondents. For Your Honor's failure to single out only two defenses or counts in the respondents' returns as well as the significant investment made so far by the respondents in the face of all of these odds as mentioned in the records before Your Honor, Your Honor did commit a reversible error, as such, Your final judgment should be reversed.

11. Your Honor erred when you said in your Final Judgment that respondents' lone witness Mrs. Martha Chebli testified that she was frequent with the payment of the rental arrears until the last five years of the Lease Agreement during which period she was delinquent, and Your Honor took judicial notice of the November 30, 2013 letter from Mrs. Martha Chebli to Cllr. James E. Pierre, submitting a US$875.00 (Eight Hundred and Seventy Five United States Dollars) check which was rejected and represented rental arrears for the five years. Your Honor also failed to recognize and made mention of respondent's Exhibit R/2, which made proposal for an amendment or addendum to the Lease Agreement of 1983. Your Honor while ruling said that the testimony of Mrs. Martha Chebli and the instrument to which she testified constituted voluntary admission of the respondent failure or violation of Article 3 of the Lease Agreement, thereby making this, according to Your Honor an admission for violating said Lease Agreement. Respondents' counsel says that this cannot be an admission or violation by the respondent of the Lease Agreement especially so where it was not disputed by the petitioners that respondent was delinquent in the rental payment. The respondents only witness, Mrs. Martha Chebli went further by addressing a communication dated November 30, 2013 to Cllr. James E. Pierre annexing a check covering the five (5) years rental payment, and further giving reasons why said payment could not have been made, especially so where the respondents have been current with rental payment from the inception of the Lease Agreement in 1983. Your Honor failed to recognize the equitable nature in which the respondents have honored the rental payment, and Your Honor's failure to do so is a reversible error Your Honor did commit by saying that it was an admission by the respondents'/ appellants' witness for which Your Honor Final Judgment should be reversed.

12. Your Honor did err and committed a reversible error when Your Honor failed to recognize the testimony of Mrs. Martha Chebli, the respondents' only witness that she could not have insured the building when she testified because of the war, as no insurance company was insuring any property during the wartime. This statement by Mrs. Martha Chebli is evident by regulations and policies made by most if not all of the insurance companies, that insurance premiums on buildings during the war are not encouraged because it places the insurance companies at risk, but if an insurance company during the war intended to have insured the property of anybody, the owner of the said property or the Insured would have been tasked for "WAR RISKS", which would have been more expensive for entering into such venture. This, many insurance companies were not prepared to venture in said agreement, especially so, where the business climate was not conducive. Your Honor emphasized in your final judgment and agreed in part with the explanation of respondents' witness, Mrs. Martha Chebli that indeed it was impossible during the war years to have insured the building, but failed to realize and recognize the level of investment that the respondents had carried out on the said premises for which equitable relief

should have been given the respondent, but Your Honor made mentioned of the period of the war, in essence recognizing same, but emphasized from 2006 to the present, which Your Honor should have equitably passed upon. For this and other reasons mentioned herein, Your Honor made a reversible error by not recognizing that in cancellation proceedings, the judge sits both in law and in equity, and Your Honor's failure not to recognize same, especially with the level of investment made by the respondents on the premises, reversible error Your Honor did commit for which Your Honor's final ruling should be reversed.

13. Your Honor erred and committed a reversible error when you stated in your final judgment of July 23, 2015, page 17, third paragraph, that respondents' witness, Mrs. Martha Chebli, admitted while on the cross examination that she did not submit tax receipts to the petitioners as evidence of the respondent' payment of taxes on the property. Contrary to that statement, Mrs. Chebli, during the second day jury sitting, June Term of Court, June 16, 2015, during cross examination, as can be seen from pages 4 and 5 respectively, was asked by the petitioners' counsel that Clause 12 of the Agreement entered into by her and her husband stated that they agreed to pay the taxes for the property, the utility bills, and agreed to forward the receipts for the taxes and utility bills to the lessors during the life of the Agreement. The petitioners' counsel then asked as to whether this was done? In answering this question, Witness Mrs. Martha Chebli answered in the affirmative and said that the taxes were paid. A follow up to the said question was whether the tax receipts were forwarded to the lessors based on the said clause. Witness Mrs. Martha Chebli then said that due to series of breakdowns in the agreement and taking into consideration all of the time factors as a result of the war and other instances, she did not forward the receipt. These statements of the respondents' witness and that of Your Honor's statement made in the final judgment are quite different, as such, reversible Your Honor did commit for which Your Honor's final judgment should be reversed.

14. Your Honor committed a reversible error when Your Honor concluded in your final judgment that the court took judicial notice of two of Mrs. Martha Chebli's Sub-lease agreements which were admitted into evidence, and each of the lease agreements which are for only two of the ten stores for rentals of US$22,500 (Twenty Two Thousand Five Hundred United States Dollars) from the period of 2009 to 2003, thereby making it inexcusable for the respondents to have been in arrears for the rental payments for the five year period 2009 to 2003, when the respondent were receiving rentals from the tenants... Contrary to Your Honor's assertion, the two lease agreements were entered into between Mrs. Martha Chebli as lessor and Lion Stationary Store as lessee on one hand and Mrs. Martha Chebli as lessor and Metro Stationary Store as lessee on the other hand respectively. These agreements were entered into simultaneously on the 1st day of December, 2003 up to and including the 31st of December, 2013 respectively, for a period of ten (10) years each. Mathematically, it shows that the respondents were receiving US$2,250.00 (Two Thousand Two Hundred and Fifty United States Dollars) per year on each of the two agreements, and US$187.50 (One Hundred and Eighty Seven United States Dollars and Fifty Cents) per month on each of the two stores. Respondent says that realizing the minimum amount of US$187.50 (One Hundred, and Eighty Seven United States Dollars and Fifty Cents) per store per month or US$375.00 (Three Hundred and Seventy Five United States Dollars) for both stores per month, the respondent was expected to have carried on construction of the remaining two storeys based on the minimum amount being received. Respondent says that it is highly impossible with this minimum amount couple with other minimum amount received from other stores to have enabled the respondent meets the terms and conditions of this agreement. Realizing

> **this, the respondent wrote ten (10) years to the expiry of this Contract to the lessors informing the lessors about all that have happened as it relates to the wars that took place in Liberia and the prevailing business climate in the country, thereby requesting for an amendment or addendum to the Lease Agreement reflecting additional years to be given the lessee by the Lessors and changing the amount of the rent to reflect a balanced situation that will enable the lessee to complete the terms of the agreement and receive returns from said investment, as well as ensuring the durability of the property for the use of the Lessors when the lease shall have expired. This is where Your Honor further erred by not recognizing the equitable relief that should have been given the lessee realizing such a minimum amount that was being realized by the Lessee. Respondent says that Your Honor presiding over this matter is sitting in both law and equity and under the conditions stated herein, some equitable reliefs should have been given by Your Honor, and since this was not the 'case, Your Honor has committed a reversible error for which Your Honor's final judgment should be reversed.**
>
> **15. Your Honor committed a reversible error by not taking into account equitable relief that should have been accorded the respondent realizing the historical facts that the law has asked all judges to take judicial cognizance of in determining matters of such reversible error Your Honor did commit for which Your Honor's final judgment should be reversed.**
>
> **WHEREFORE and in view of the foregoing, respondent submits this bill of exceptions to Your Honor's Final Judgment for Your Honor's approval so as to enable the Honorable Supreme Court of Liberia review Your Honor's final judgment of July 23, 2015. And so submits."**

Before we proceed to address the issues raised in the bill of exceptions, further articulated in the brief filed by the parties and argued before this Court, we wish to take note that no exceptions were taken to or appeal announced by the appellees from the ruling of the trial judge, which leaves upon this Court the impression that they were satisfied with both the content and the conclusions reached by the trial judge in the ruling. Hence, the appellees' role in this appeal proceeding is basically to support and justify the actions taken and judgment entered by the trial court. It is important to highlight this point because it serves to preclude the appellees from raising issues or contesting elements of the judgment which they are defending, or challenging issues contained in rulings made by the lower court, either at the disposition of the law issues or during the trial, and regarding which they may have entered exceptions thereto at the time, or which were not raised by the appellant in the bill of exceptions. This is consistent with the multiple Opinions of the Supreme Court wherein it pronounced that it will take cognizance only of issues raised in the bill of exceptions and not issues which, although exceptions were noted in the course of the pre-trial and trial, were either not appealed from or not contained in the bill of exceptions, and which are therefore deemed to have been waived by the parties. *Vincent-Harding v. Harding,* 32 LLR 582 (1985); *National Milling*

***Company of Liberia v. Bridgeway Corporation*, 36 LLR 776 (1990); *Messrs. C. M. B. Transport of Belgium v. Messrs. Family Textile Center*, 37 LLR 733 (1995); *The Heirs of the Intestate Estate of the late S. B. Nagbe, Jr. v. The Intestate Estate of the late S. B. Nagbe, Sr.,* 40 LLR 337 (2001).**

With the clarification made above, we now take recourse to the bill of exceptions. In doing so, we must again take note, as we believe is warranted under the circumstances of this case, that while the bill of exceptions presents a number of procedural and substantive issues for resolution, we do not believe that the overwhelming procedural issues raised are of such significance or inflict any meaningful prejudice to the appellant as would change the outcome of the results reached herein and hence do not warrant this Court belaboring itself in according them any substantive consideration. Those procedural issues include (a) that the trial judge had erred in admitting into evidence a photo-copy of the Lease Agreement entered into between the parties in 1983 since the witness for the appellees had testified that the original copy got missing during the 1980 coup; (b) that the trial judge erred in having mark of identification placed on a lease agreement since, although the appellees had given notice in their pleadings that they would produce such instrument, the judge's action deprived the appellant of the opportunity of traversing the instrument; (c) that in his judgment the trial judge misinterpreted the Supreme Court's Opinion upon which he relied; (d) that the trial judge erred when he reviewed the ruling made by his predecessor on a motion for the sequestration of rent; (e) that the trial judge erred in not taking into account the alleged contradictory testimonies of the appellees' three witnesses as to the exact time period the appellant took over the demised property; (f) that the trial judge erred in not recognizing the statement of the appellant as to the reasons for not having the property insured; (g) that the trial judge erred in not taking into account the statement of the appellant that she had paid the taxes on the property but that for reasons stated she had not forwarded the receipts of such payments to the appellees; and (h) that the trial judge erred in not taking into account the principle of equitable relief.

In not according any substantial attention to the contentions highlighted above, this Court acts consistent with the many Opinions handed down and pronouncements made by it to the effect that the Supreme Court need not

address every issue raised by the parties, especially where the issues do not go to the core of the dispute, are of no meaningful significance, are trivial or inconsequential in the mind of the Court and therefore do not prejudice the rights of the parties, or out rightly lack any legal or factual merits or importance. *Lamco J. V. Operating Company v. Verdier*, 26 LLR 445 (1878); *Halaby et al. v. Cooper,* 41 LLR 136 (2002); *The Management of United States Trading Company v. Morris et al.,* 41 LLR 191 (2002); *Liberia Material Ltd v. Gbeneweleh et al.,* Supreme Court Opinion, October Term, 2014.

The only procedural issues which we believe to be worthy and deserving of consideration by this Court, raised in the bill of exceptions by the appellant, is whether an error was committed by the trial court in not mandatorily according to the appellant a trial by jury even though not requested or demanded by the appellant and notwithstanding the appellant acquiesced in and fully participated throughout the bench trial proceedings without any protests or objections? In its bill of exception and arguments before this Court, the appellant maintained that the trial judge denied it the right to a jury trial which his predecessor had accorded the appellant in the course of disposing of the law issues, contending further that the act of the trial judge, in conducting a trial without a jury, was not only tantamount to reviewing the ruling of his predecessor of concurrent jurisdiction, but that it was also a violation of the Constitution and statutory laws of the country which accorded that right compulsorily to the appellant.

We have thoroughly reviewed the entire records in the case file and do not find that the contentions of the appellant in regard to the mentioned issue have any support in law as relates to the case or backed by the facts disclosed in the records in the case. We do not see that the trial judge, in conducting a bench trial transgressed the law or the facts, or reviewed or reversed the ruling of his predecessor. Let us firstly look at what the predecessor judge who disposed of the law issues said in his ruling regarding the trial that was to subsequently ensue following the disposition of the law issues:

> **"We therefore overrule respondent's legal defense of force majeure since the facts clearly showed and indicated during the trial that only eight years of the lease could be attributed to force majeure. The other issues both issues of mixed law and facts and therefore ruled to trial accordingly. We also take**

> **judicial notice of Article 13 of the Agreement, which provides that the respondent's failure to fulfill any of the terms of the Agreement and if not cured within ninety days after written notification, same constitutes ground for immediate cancellation of the Agreement. This matter is hereby ruled to trial as the other mixed issues of law and facts as contained in the pleading other than force majeure. AND IT IS SO ORDERED."**

We take keen note that nowhere in the ruling quoted above did the trial judge make mention of a jury trial. He makes mention only of the case being ruled to trial since it contained mixed issues of law and facts. We wonder, therefore, how the appellant and its counsel transposed the judge's statement from "trial" to "jury trial" such that they can accuse the subsequent trial judge of concurrent jurisdiction of reviewing and reversing his predecessor's ruling because he, the latter judge, conducted the trial of the facts without the aid of jury. We assume, and rightly so by virtue of the appointment of the judge to the position held by him, that he knows or should know the distinction between a "trial" and a "jury trial". The former is one that is conducted with or without a jury while the latter is one compulsorily with a jury. Thus, had the judge that ruled on the law issues stated that the case was ruled to a "jury trial" rather than just a "trial", one could subscribe to the theory and contention advanced by the appellant and hold that it has legal merits, and accordingly, that the judge who tried the factual issues in the case was in error in trying the case without the aid of a jury, that his action was tantamount to a reversal of the ruling of his predecessor of concurrent jurisdiction, and that a reversal of his action is warranted. But that was not the case. The judge that tried the case without the aid of a jury did not review or reverse his predecessor's ruling since his predecessor did not mandate or rule that a trial should be had or conducted with a jury. Hence, we do not believe that the argument, theory or contention warrants being accorded any credence by this Court.

We do not deny that the Liberian Constitution mandates that the right to a jury trial shall be guaranteed. LIB. CONST., ART. 29(a)(1986). This is how Article 20(a) of the Constitution reads: "… in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury." There is therefore no question that ordinarily a party to a

judicial proceeding has a right to a trial by jury, and this Court has repeatedly said that the right, the same as the right of appeal, is inviolable.

We also do not dispute or disclaim that the Civil Procedure Law, enacted by the Legislature under mandate of the Constitution, states similarly that the right to a jury trial is a guaranteed right. Here is how the Civil Procedure Law words that right to a jury trial: "The right to trial by jury as declared by Chapter III, Article 20(a) of the Constitution or as given by statute shall be preserved inviolate. Civil Procedure Law, Rev. Code 1:22.1(1).

However, this Court has held that the right cannot be and is not exercisable in a vacuum, that it is not self-executing, and that the exercise of the right must be guided by procedures and requirements set up by the Legislature to ensure that there is orderliness to the process for a person's enjoyment of the right accorded, as indeed was contemplated by the framers of both instruments. Here is how the Supreme Court characterized the contemplation of the framers: "

As noted in the Opinions of the Supreme Court, referenced and quoted above, a right such as the right to a jury trial, not being one that is self-executing but dependent on legislation to be actualized, and, as stated before, that to have that actualization pursued in a frame or state of orderliness and equality, the Legislature was specifically authorized and mandated to pass laws that effectuated the exercise of the right. It was given the sense of this constitutional and legislative mandate that the Civil Procedure Law, at section 22.1(2), declared by the Supreme Court to be constitutional, set out the procedure, process and requirement for the exercise of the right. This is what the section says: "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties." Civil Procedure Law, Rev. Code 1:22.1(2).

As clearly seen in the quoted section of the Civil Procedure Law, a person desiring to have his or her case tried by a jury, as opposed to a bench trial, must file a demand for such trial and serve notice of the demand notice on the

opposing party within the time-frame specified by the statute. If the party fails to make such a demand within the time-frame stated by the statute, the person is deemed to have waived the right. Here is how the statute captures the waiver: "The failure of a party to serve a demand for trial by jury of an issue as required by this section and to file it as required by section 8.2 constitutes a waiver by him of trial by jury of such issue unless such a demand has been served by another party. If a demand for trial by jury has been made under this section a party nevertheless waives his right to trial by jury by: (a) Failing to appear at the trial; (b) Filing a written waiver with the clerk; or (c) Orally consenting in open court to trial without a jury." Civil Procedure Law, Rev. Code 1:22.1(4).

But we should also emphasize, however, that the Supreme Court has held that equitable proceedings such as cancellation of lease agreements can be determined by a judge without the assistance of a jury. *Doe v. Mitchell et al.,* 35 LLR 647 (1988).

In the instant case, the records not only reveal that the predecessor trial judge, in ruling on the law issues, did not specifically rule the case to a jury trial, but rather only to trial of the facts. No remedial process was sought against the ruling. And while the records do reveal that the appellant, subsequent to the ruling of the trial judge on the law issues, did request a jury trial, the request was clearly in violation of the statute, and hence, the trial judge did not abuse the discretion granted him under the statute in deciding to proceed to trial without a jury.

In respect of the above, we emphasize that this Court recognizes that although a right may be granted a person, either by the Constitution or by statute, the exercise of the right may not be forced upon the person, except in certain extraordinary circumstances, if the person chooses not to exercise the right. Indeed, the person to whom the right is granted also has the further right or option of deciding whether or not to waive the exercise of that right. The waiver of the exercise of the right, stated by the statute to be evidenced in a number of ways, and recognized by the Supreme Court, may be reflected in any one of several sets of conduct by a party. In the instant case, the waiver was reflected in the appellant's failure to request or demand the right in the manner and at the time provided for by the statute. Under those circumstances, the

appellant cannot now assert the claim or seek to make the case that it was denied its constitutional and statutory right to a jury trial, and especially in light of the Supreme Court's decision in the *Doe v. Mitchell* case. This Court, therefore, not finding any magnitude in the contention or seeing any legal or factual merits in the claim, herewith denies and dismisses the said contention and claim.

We now turn our attention to the more substantive issues which we believe are worthy of consideration by this Court and dispositive of the case. Our review of the bill of exceptions reveals them to be the following:

(1) Whether *force majeure* is a valid defense available to the appellant as would excuse the breaches of the provisions of the Lease Agreement by her and her late husband, lessees to the said Agreement, such that the appellees are precluded from seeking cancellation of the Lease Agreement? Stated another way, the issue could be crafted as whether or not the trial judge committed error in applying the principle of force majeure and for the period 1990 to 1997?

(2) Whether the appellant met the burden of proof to substantiate the allegation that the continued occupation of the demised property from 1983 to 1987 caused a delay in her and her late husband taking possession of the property, and that being a major factor in their failure to construct the three story building within the time frame stated in the lease agreement, it cannot form a basis for cancellation of the Agreement?

The first substantive issue, as stated above, relates to the question of the applicability of the principle of *force majeure,* such that it precludes the appellees commencing the proceedings for the cancellation of the Lease Agreement entered into between the appellant and her husband on the one hand and the appellees on the other hand. The principle of *force majeure,* accepted and endorsed in this jurisdiction, is defined by Black's Law Dictionary, recognized as an authoritative secondary source in this jurisdiction, as "[A]n event or effect that can be neither anticipated nor controlled" and it "includes both acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars)". BLACK'S LAW DICTIONARY 718 (9th ed. 2009). The recorded Opinions of the Supreme Court indicate that the Supreme Court has subscribed

to the tenets of the concept, even when it has not specifically referred to the concept by its name, as described by Black's Law Dictionary, as far back as 1916. In the case *Steinberg v Greywood*, found in 2 LLR 238 (1916), the Supreme Court referenced the Latin legal maxim *Actus Dei nemini facit injuriam,* which the Court said "that no one should be injured through the act of God". In expanding on the principle, even without stating the principle by its exact nomenclature, the Court declared further: "Now it is true, and it would be unreasonable if it were otherwise, that those things which are inevitable, such as storms, tempests, lightning, war, or other agencies, which no industry can avoid, no skill prevent, shall not operate to the prejudice of those to whom no laches can be imputed." *Id*., at 240. Indeed, when the Supreme Court has not called the concept by its acceptable name, it has recognized the basic elements embedded in the term. In the case *Messrs. C. M. B. Transport of Belgium v. Messrs. Family Textile Center*, decided in 1995, this is what the Supreme Court said of the issue, without specifically stating that it was acting pursuant to the principle of *force majeure*: "A further point advanced by the appellants is that the appellee was time barred. They maintain the action was not brought within one year as directed by the Liberian Maritime Law in such cases. The right of action accrued in June, 1990. The action was filed in February, 1993. Under the normal circumstances, this would mean that the action was filed almost three years after the right of action accrued. But the times were not normal. There was a breakdown of law and order in the country which we must judicially notice and so no party litigant could sue before the courts were re-constituted. The yardstick we must adopt is the time when the Supreme Court itself was re-constituted, which is March, 1992." Id., 37 LLR 733, 739 (1995).

Similarly, in the case *Family Planning Association of Liberia (FPAL) v. Harris,* 42 LLR 86 (2004), the Supreme Court said: "This Court says that the total award of US$41,406.00 was derived from the erroneous conclusion that the appellee was entitled to pay for eleven years from 1990 to 2001. It must be noted that in June, 1990, the appellant paid the appellee and other employees' salaries for six months and told them to wait until the civil war was over. Thereafter, the appellant closed all operations and did not resume until 1993. Therefore, the appellant cannot legally be held to pay the appellee for the

period when its operations were closed due to the civil war, a situation that was not caused by the appellant or the appellee." *Id*., at 100.

Hence, by the declaration of this Court, there is no disputing, firstly, that in this jurisdiction the principle of *force majeure* is accepted to excuse a party from performance of an obligation under a contract and, secondly, that the Liberia Civil War created an event of *force majeure*. The only thing that is at issue is what period is covered by the *force majeure* as excused the appellant from performance of the obligations undertaken by the parties to the Lease Agreement.

The lower court judge that disposed of the law issues, although purporting to deny the appellant's defense of the *force majeure*, in reality granted the defense in part, stating that the defense [of *force majeure*] was available to the appellant but only for the period of eight years, from 1990 to 1997, and 2003. The appellant takes issue with that determination made by the judge, insisting that the period of *force majeure* extended from 1990 to 2004 since the nation was at war for the entire period and that it was therefore not possible to conduct normal business and other activities. The appellees, on the other hand, contend that while they recognize that *force majeure* did occur, they dispute the timeframe stated by the lower court judge in ruling on the law issues since the judge's determination of the period ran contrary to the Supreme Court's decision in the *Messrs. C. M. B. Transport of Belgium v. Messrs. Family Textile Center* case.

As we noted earlier, we cannot give credence to the contention advanced by the appellees since they neither excepted to the ruling on the law issues or sought remedial redress nor appealed the final ruling of the trial judge which was predicated upon the said ruling. Hence, our consideration is restricted to whether the trial judge erred in his final ruling in granting only eight years of the fourteen years requested by the appellant under the *force majeure* principle.

In addressing the issue stated hereinbefore, we hold that the trial judge was not in error in stating that the Liberian Civil War did constitute an act of force majeure, and that to a large extent and for a period it rendered virtually impossible the performance of contractual obligations. This Court, as was the lower court, is duty bound under the laws of this jurisdiction, especially Section 25.2 of our Civil Procedure Law, to take judicial notice of such undisputed

historical event. This is what the Section says: "The judge shall of his own motion take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute." Civil Procedure Law, Rev. Code 1:25.2. The Supreme Court has consistently and continuously adhered to this statutory command. See also *Constance et al. v. Ajavon,* 40 LLR 295 (2001); *Super Cold Service v. Liberian-American Insurance Corporation,* 40 LLR 189 (2001). This is how the Supreme Court couched its adherence to the judicial notice command: The Supreme Court is "the cognizance of certain facts which a judge under rule of legal procedure or otherwise has properly taken or acted upon without proof because they are already known to him, or because of that knowledge which a judge has, or is assumed to have, by virtue of his office." *Forestry Development Authority v. Nimely et al*., 35 LLR 658 (1988). As a matter of public historical fact, without dispute, Liberia did experience an armed civil crisis, in the nature and proportion of a civil war; the crisis spanned the period beginning December 1989 through January 1997, and again in 2003. We take judicial notice that the Liberian civil war affected each and every type of relationship in Liberia, from familial relationship amongst family members, to educational relationship between teachers and students, to judicial relationships between the courts and thus affecting the ability of aggrieved parties to seek justice, to governmental relationships between the State and its citizens, to business and contractual relationships between parties to an agreement. See *Farhat v TRADEVCO* decided on January 29, 2016; *African Construction & Financing Corp. v NASSCORP* decided on August 31, 2010; *Lamin et al v Save the Children (UK)*, 41 LLR 3 (2002); *National Port Authority v Willie et al*., 37 LLR 676 (1994). Hence, the appellant was not obliged to prove the existence of the Liberian Civil War and no one doubts that the events mentioned above had the propensity to trigger a state of *force majeure.*

It is on that fundamental basis that this Court recognizes that although a contract may not contain a *force majeure* clause, as is the case with the present lease agreement executed between the appellant and her late husband and the appellees, the law allows the doctrine to be imputed into contracts which may not contain such provision. However, the Court has also noted that in applying the principle, it is also under a legal obligation to ensure that the doctrine is not abused and that obligations under contracts which can be performed are not

neglected or reneged upon to the detriment and injustice of other parties to the contract on the excuse of the doctrine of *force majeure* or impossibility of performance. We take due note and judicial notice also, as required by law, that while the Liberian civil war affected each and every type of relationship in Liberia, from familial relationship amongst family members, to educational relationship between teachers and students, to judicial relationships between the courts and thus affecting the ability of aggrieved parties to seek justice, to governmental relationships between the State and its citizens, to business and contractual relationships between parties to an agreement, all of which are a matter of public historical records, yet, in order for a court of law in Liberia to accept as adequate the defense of the doctrine of *force majeure* to excuse a contracting party's non-performance of the contractual obligations within a certain timeframe, the non-performing party must provide sufficient proof that a *force majeure* existed at the time of the non-performance and that the event was the proximate cause for defaulting on the contract. Stated more precisely, although this Court recognizes that there was a civil war in Liberia and that it substantially interrupted the performance of contractual relationships, we also recognize that "the existence of a state of war is, of itself [and in the absence of proof of a connective affect], no excuse for a breach of the contract, whether the contract is concluded before or after the commencement of hostilities. 17 AM. JUR, 2D, *Contracts*, § 431. Hence, in the instant case, the appellant, the party relying on such defense, is not excused from the legal obligation to prove that there was a proximate causal link between the war and each of the various breaches of the lease agreement.

We do not believe that from the evidence adduced at the trial of the case the appellant met that burden of proof required by law. This Court has said on many occasions that mere allegations are not proof and that allegations made in the pleadings must be substantiated by a preponderance of the evidence at the trial. *Mano Insurance Corporation v. Picasso Cafeteria*, 38 LLR 37 (1995); *Salara rubber Corporation v. Garlawolu,* 39 LLR 609 (1999); *Knuckles v. Liberian Trading and Development Bank,* 40 LLR 115 (2000); *Pentee v. Tulay*, 40 LLR 207 (2000); *Morgan v. Barclay*, 42 LLR 259 (2004). Further, this court has always emphasized unambiguously that a party who alleges the existence of a fact has the burden of proving the existence of that fact and the connection of the injury

or default to the existence of that fact. *Sio v. Sio*, 35 LLR 92 (1988); *The Intestate Estate of the late James P. Gaye v. Eurobank,* 37 LLR 592 (1994); *Frankyu et al. v. Action Contre La Faim*, 39 LLR 289 (1999*); Konnah and Tiawan v. Carver*, 36 LLR 319 (1989); *The Management of the United States Trading Company v. Richards and Brown,* 41 LLR 205 (2002).

In their petition for cancellation of the lease agreement, the appellees alleged that the appellant and her late husband had violated four of the provisions contained in the Lease Agreement and defaulted on all of the obligations contained therein, and that these formed the basis for their request to the court, as they had the right to do under the mentioned Agreement, to judicially cancel the Lease Agreement. The appellant did not deny, either in her responsive pleading or in her testimony during the trial of the case, that the allegations made by the appellees of violations or breaches by the appellant and her husband of Lease Agreement and the obligations contained therein, which they were contractually obligated to adhere to. Instead, she set up as a defense, firstly, that the failure or default in not performing the contractual obligations required of them under the Lease Agreement was due to the Liberian Civil War which she said was an act of *force majeure.* She also set up a number of other factors not associated with the act of force majeure, which she said also contributed to the default, and thereby exonerating her from the act of non-performance and precluding the appellees invoking the cancellation clause in the Lease Agreement. But even if we were to discount her open admission to the violations, which she did in both the pleadings and testimony, the fact alone that there was no denial of the violations is deemed in law to be an admission to the truthfulness of the allegations made by the appellees and proved at the trial. *Liberia Agricultural Company v. Reeves and Tarr*, 36 LLR 867 (1990); *Kamara ad Kollie v. Kindi et al*., 39 LLR 102 (1998); *The Augustus W. Cooper Heirs v. Swope and The heirs of the late Jessie R. Cooper*, 39 LLR 220 (1998).

Our examination of the records and of the events that obtained at various points in time following the execution of the Lease Agreement, as revealed by the pleadings and the testimonies of the witnesses, leave us unimpressed with the arguments made and the contentions advanced by the appellant to warrant the application of the principle of *force majeure* to the entire fourteen years sought by the appellant and, hence, preclude the appellees from seeking

cancellation of the Lease Agreement. We hold, to the contrary, that although the principle of *force majeure* is applicable to certain years, its application is confined to specific periods and not to the intermittent fourteen years of the civil conflict as advocated by the appellant.

The trial judge, in deciding on the time period that qualified as the "war years" or *force majeure*, for the purposes of excusing the appellant and her husband from performance of their obligations under the Lease Agreement, identified 1990-1997 and 2003, a period of eight years, as the active years of instability and, hence, the eligible periods for the application of *force majeure.* We acknowledge that the position taken by the judge when, in ruling on the law issues, he stated that the war lasted for a straight seven years, between 1990 and 1997, plus an additional year (2003), with activities grounded to a halt, has a number of difficulties, including that it deviates from and contradicts the Supreme Court's Opinion in the case *Messrs. C. M. B. Transport of Belgium v. Messrs. Family Textile Center*, 37 LLR 733 (1995), wherein the Supreme Court defined the measuring yard stick for determining the applicability of *force majeure* during the war years as being up to the point when the Supreme Court was established; that the judge's decision is predicated upon a faulty and wrong premise; that the decision failed to take into account or to take judicial notice of the factual realities that existed in the country after 1992; and that it makes the faulty assumption that the war lasted without interruption from 1990-1997.

Notwithstanding the above, we refrain from any further comments on or discussion of the position taken by the judge given the fact that the appellees did not except to the ruling and hence did not deem it appropriate to bring it before this Court; and that the ruling was only challenged by the appellant in the context of the judge not according to the appellant the full fourteen years advocated by it. Hence, we do not see that the specificity of the issue as to whether the eight (8) years should have been accorded the appellant is properly before this Court. The issue that is more properly before the Court is whether the judge erred in not granting the appellant the full fourteen years advocated by it to be covered by the principle of *force majeure*.

However, in spite of what we have said above, but given that our refusal to address the issue of the eight (8) years granted by the judge of the lower court as a period of *force majeure* is not misconstrued to mean that the ruling of

the judge has the force of law, we state unequivocally that the said ruling has effect only in regard to this case and not any other case in which the issue is placed or properly before the courts of Liberia for resolution. Further, so that it is clear as to this Court's position on the principle of force majeure as relates to the Liberian Civil War, we quote excerpts from the case Messrs. C. M. B. *Transport of Belgium v. Messrs. Family Textile Center*, 37 LLR 733, wherein the Court said: "Under normal circumstances, this would mean that the action was filed almost three years after the right of action accrued. But the times were not normal. There was a breakdown of law and order in the country which we must judicially notice and so no party litigant could sue before the courts were re-constituted. The yardstick we must adopt is the time when the Supreme Court itself was re-constituted, which was March, 1992." We note that if this yardstick had not been established, persons who operated businesses during the period of non-hostilities could, while benefitting from the operation of their businesses, unscrupulously use the *force majeure* principle as an excuse to evade or avoid honoring their legal contractual obligations. This Court is not disposed to accord its blessings generally to such unethical business prescription or conduct.

We must note further that in spite of the foregoing, the appellant makes the argument that she and her husband should be excused from the non-performance of their obligations under the Lease Agreement by the application of the principle of *force majeure* for the period 1990 to 2004. We disagree, and in that respect, let us review each of the defaults, starting with the failure to construct the three story commercial building within fifteen years of the execution of the Lease Agreement, as provided in the Agreement, placing the review of the failure in the context of the *force majeure* principle.

At the risk of being redundant, we reiterate that the Lease Agreement was executed on October 15, 1983, and that under Clauses 5 and 6, the appellant and her husband, as lessees, were to construct a three story commercial building within fifteen years of the execution of the Lease Agreement. The Liberian civil war commenced almost at the end of December, 1989. The war occurred and therefore interrupted the years of the lease as of the beginning of 1990, triggering the application of force majeure. The judge who disposed of the law issues accorded the appellant seven years, from 1990

to 1997, as well as 2003, as the period when force majeure was applicable. Thus, eight (8) years were added to the period when the construction of the three story commercial building was to be completed. If one added this eight (8) year period to the date (October 15, 1999) when construction of the building was expected to be completed, this means that the new deadline period for completion of the construction of the three story building was October 15, 2007. However, the records reveal that as at that time, no construction of the second and third stories of the building had even commenced. As of the date following October 15, 2007, the appellant and her late husband were in default of the Lease Agreement, which act triggered the right at any time thereafter in the appellees to give notice to the lessees of the default, demand that the default be cured within ninety days of the date of receipt of the notice of the default, and in the event of a failure by the lessees to cure the default within the ninety day period, as demanded by the lessor, to seek cancellation of the Lease Agreement.

What is further disturbing about the conduct of the appellant is that although the appellees did not immediately give notice of the default, indeed for several years, thereby providing additional time to enable the appellant to cure the default at her own time pace and on her own accord, she still refused and/or neglected to correct or cure the default for up to another four (4) years (2011), when on July 18, 2011 the appellees communicated with the appellant informing her of the default and demanding that the default be cured within ninety days of the date of receipt of the letter or that the appellees would be constrained to seek cancellation of the Lease Agreement. We take note that indeed almost two and one-half years after the notification of the default, the appellant had still not corrected or made attempts to correct the default, and that it was only after such period that the appellees, on January 3, 2014, commenced proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, against the appellant to cancel the Lease Agreement. The fact the appellees chose not to commence cancellation proceedings earlier than they did, and as they could have, perhaps to give the appellant additional time to cure the default, did not preclude them from commencing the proceedings when they did.

Accordingly, under the circumstances, we do not see how the trial court could have been expected to excuse such demeaning and outrageous conduct by the appellant, and we certainly would not have subscribed to the trial court condoning such conduct or subjecting the appellees to further deprivation of rights secured not only by law but also under the agreement which they had entered into with the appellant. The argument that the trial court should have allowed such conduct under the flimsy excuse that there were occasional surges of armed hostilities in Central Monrovia, the duration of which ranged from several days, and in some instances for several weeks, and which did not have a sustained impact on business operations and activities was, in our view, an attempt to make a mockery of the court and our justice system. Indeed, we believe that the judge of the lower court was very magnanimous in even granting to the appellant, under the principle of force majeure, excuse for years when there were no active armed hostilities and when businesses increased rather than cease to operate. And although there were a few upsurges, such as the April 6 conflict, the courts, including the Supreme Court, were never disbanded or ceased to function, and in each instance, business activities did not cease except for a short period of time.

In fact, evidence was introduced during the trial confirming that the appellant leased several stores and received rental payments for a substantial portion of the decade of the 1990s. The war did not prevent the appellant from renting the property on a multi-year lease agreement during the 1990s so why should she expect this Court to use the war as a valid reason for her not upholding her obligations to her lessors during the very same time period she was receiving rental payments from her tenants? In the wake of these revelations, and the presentation of no justifiable reasons for the appellant's failure to comply with the clause in the Lease Agreement imposing the obligation to construct a three story commercial building, other than the force majeure period already accorded by the judge, we view the conduct of the appellant as not just reprehensible but an utter attempt at the abuse and travesty of justice, which this Court has said numerously it will not tolerate or condone. We therefore uphold the decision and ruling of the trial judge ordering the cancellation of the Lease Agreement and directing the repossession of the demised premises by the appellees.

But the appellant seeks to further excuse the default of her and her late husband in not constructing the three story building as stipulated in the Lease Agreement by asserting that as squatters were occupying the property from 1983 to 1987, a period of four years, there was a delay in her and her late husband taking possession of the property to commence the construction of the three story building. In her testimony, she claimed that the squatters were eventually moved by members of the People's Redemption Council. The appellees adamantly denied this claim. They insisted that no squatters were occupying the property and that the appellant and her late husband were put in possession in 1983 when the lease agreement was executed. Mr. Julian Benson was called to testify as the appellees' rebuttal witness to rebut the appellant's testimony that squatters occupied the property from 1983 to 1987. He corroborated Co-appellee James Pierre's testimony that no squatters were occupying the property in 1983 and that only family members who he named, occupied the property in 1983 when the lease agreement was signed. The Supreme Court has held that mere allegations and averments do not amount to and is not a substitute for proof. *Harmon v Bility*, 29 LLR 389 (1981). See also *Min. of Lands, Mines and Energy v Liberty Gold and Diamond Company et al*. decided on January 16, 2014; *Morgan v. Barclay*, 42 LLR 259 (2004); *Salala Rubber Corp. v Garlawolu*, 39 LLR 609 (1999). For this reason, in the face of the appellees' denial, which was corroborated by the testimony of their rebuttal witness, Julian Benson, the appellant was under a duty to have presented evidence to substantiate her allegation that the property was occupied by squatters for four years, which she failed to do. With the appellant's failure to present evidence in support of her assertion, it is difficult for this Court to lend any credibility to the appellant's testimony, especially as it is implausible that any lessee would allow squatters to remain for four years on a parcel of property that has been demised to them without communicating with the lessor, in writing, to address the situation, and particularly where, as in the instant case, where the lessees had a specific period of time within which to construct a three story commercial building. This Court has held, "Where a party offers not a scintilla of evidence at a trial in denial of the testimony against him, it shall be considered a concession by him of the truthfulness of the testimony offered though his answer contains denials." *Davis vs Davis*, 19 LLR 150 (1969).

Let us see how the appellant responded to a question propounded to her on the cross examination in regard to the issue:

> **"Q. Did you tell your lessors that you were finding it difficult to get the squatters from the property?**
>
> **"A. Verbally and not in writing and we did not want to bother her as she was in distress. They had killed her husband and we were still counseling her.**

The "her" referred to by the appellant in her answer is the co-lessor Rebecca Watts Pierre who was the widow of the former Chief Justice, His Honour James A. A. Pierre and this Court finds appellant's response to be rather pathetic because if the appellee truly did not want to disturb the wife of the late Chief Justice due to his death in the 1980 coup by handing her written communication about squatters on the demised premises, then why, we wonder, did she undertake to inform her verbally? Was the appellant under the impression that it is better to relay disturbing information to a grieving and distressed widow verbally rather than via a written document? But more than that, the appellant did not believe that there was a problem with negotiating and executing a lease agreement with a distressed widow but that there was a problem with informing the distressed widow, by written communication, that squatters were still on the demised premises. We therefore do not find her answer to be convincing which leads this Court to believe that there were no squatters on the property.

In addition, we should state that even if credence were to be accorded the assertion by the appellant and add to the force majeure years accorded by the trial judge the four years said to have been lost on account of the alleged squatters continued occupation of the demised premises, the appellant and her late husband would still have been in default as the deduction of the four years would not have been sufficient to erase or remove the appellant out of the defaulting quagmire situation in which she had embroiled herself.

Another violation alleged by the appellees was the appellant's failure to pay the taxes and forward copies of the receipts to the lessors evidencing the payments as mandated by Article 12 of the lease agreement. Article 12 reads as follows:

> **"That it is further agreed to and understood that Lessees shall be responsible for and shall pay all general or special taxes, assessments and penalties which may be assessed by the Government of Liberia or any of its agencies or Municipal sub-divisions on the building(s) subject to this lease . . . The Lessees shall keep the payment of these charges current in order to avoid any encumbrances on the said demised premises, without any deduction from the rental, and shall forward to Lessors, copies of all taxes and utilities receipts paid by the Lessees."**

The appellant maintained on the cross examination that she did pay the taxes but when asked whether she forwarded the receipts to her lessors as required under Article 12 of the agreement, she responded that: "We did not do that because there was a lot of breakdown in the agreement and all of the time factors." The court questions the veracity of the appellant's answer because if she had indeed paid the taxes as she claimed in her testimony, it is reasonable to assume that she would have presented evidence of her payments when she was initially notified of this violation in the appellees' July 18, 2011 notification to her. In her returns to the appellees' petition for cancellation of the lease, she would also have denied the allegations of count 12 of the appellees' petition which assigned as one of the grounds for the cancellation of the lease, the Appellant's failure to pay the taxes and present copies of the payment receipts to her lessors. In her responsive pleading, she admitted that she was obligated to pay the taxes but did not pay them. She belatedly waited to get on the witness stand to assert that she paid the taxes but when one's testimony conflicts with the averments within their pleadings, the portion of the testimony that is at variance with their pleadings shall not be deemed to be credible. Hence, this Court is of the view that the taxes were not paid and her failure to have done so amounts to a breach of the agreement.

Another violation the appellees relied on as the basis to have the agreement of lease cancelled and the appellant is seeking for this Court to excuse is the refusal to insure the building. The appellant conceded that the building had not been insured but argued that it was not possible to insure the building because "of the war no body was insuring any property." The appellant's allegation is patently false because we are aware that insurance companies continued to operate through the civil crises. Conclusive evidence of this is the fact that we have determined several cases which dealt with insurance contracts and claims for property damaged during the civil crises.

In *Picasso Cafeteria et al v Mano Insurance Corp*., 38 LLR 297 (1996), it was held that, "As a matter of law, to warrant a denial of insurance claims on the basis of a war risk exclusion clause of the insurance policy, it is a settled principle that the injury subject of the claim must have been a direct result of the war. An actual military offensive or defensive operation, the direct effect of which gave rise to the claim, is required, and not just a remote effect." See also *Razzouk v. Liberian American Insurance Company,* 42 LLR 321 (2004) and *Sun Pharmacy v. United Security Insurance Co. et al* decided on May 11, 2007. Additionally, In *Eid v. Vargas*, 40 LLR 624 (2001), this court held that a failure to regularly pay the rentals, coupled with a failure to procure an insurance policy to protect the leased building can be deemed material breaches of a lease agreement.

The last breach by the appellant, and which formed the basis for the cancellation proceedings, was the appellant's failure to pay the annual rental for the five years from 2009 to 2013. When asked on the cross examination whether she complied with her contractual obligations to make timely payments of the annual rentals, she responded that: "We did until the last five years because of the war." The appellant's testimony constituted a voluntary admission of the violation of Article 3 of the lease agreement. "All admissions made by a party himself or by his agent acting within the scope of his authority are admissible." 1 LCLR, Section 25.8(1).

It is obvious that the appellant's failure to pay the annual rentals for the period 2009 to 2013 cannot be attributed to the civil war, since the country was not in a state of war civil war at any time during 2009 to 2013.

Moreover, during this period the appellant was receiving rentals in United States Dollars from her tenants for the lease of the stores. Lease agreements for the lease of two of the ten stores, admitted into evidence, showed that the appellant had received a total of US$45,000.00. We are of the strong opinion and belief that it was therefore inexcusable for the appellant to be in rental arrears when the appellant was receiving her rentals from the lease of the stores in United States Dollars while she was paying the appellees, her lessors, exclusively in Liberian Dollars. The obvious disparity can be seen from the proffer the appellant made to Counselor Pierre of US$875.00 for the five year period – 2009 to 2013, which amounted to US$175.00 per year.

The Supreme Court has held that while nonpayment of rent is typically not a ground for cancellation of a lease agreement, when the lease agreement contains a provision that allows for its cancellation in the event the lessee defaults on the rental payment, cancellation proceedings are appropriate. The Court specifically said, "Non-payment of rent on a lease is no ground for ejectment or cancellation of a lease agreement, except where the said agreement has specifically provided for cancellation in case of non-payment of rents. Cancellation of the lease agreement can only be obtained where the lease has been obtained by fraud, misrepresentation or misinformation. Where a lessee fails in the payment of his rent, the proper cause open to the lessor is an action of debt or an action of damages for breach of contract in order to obtain his outstanding rents. He cannot proceed on an action of ejectment or for cancellation of the lease agreement simply for non-payment of rent, unless the agreement had particularly made that provision." *Doe v. Mitchell et al*., 35 LLR 647, 651-52 (1988). See also *Hage v. Sherman* decided on September 15, 2005. In the instant case, Article Thirteen of the Lease Agreement states that the appellant's failure to keep or fulfill any of the terms of the Lease Agreement constitutes a breach of the Agreement and their failure or refusal to cure the defaults within ninety (90) days after notification "....shall be construed and the lessees [the appellant] herewith agree that this shall constitute as between the parties to this agreement grounds for immediate cancellation of this agreement by the lessors [the appellees]."

Therefore, by agreement of the parties, the non-payment of the annual rental by the appellant, after written notification to do so within ninety days, constitutes grounds for the cancellation of the lease agreement. As a matter of observation only, this Court is completely perplexed that the appellant indulged not only in the non-payment of the annual rental, as insignificant and minimal the rental may have seemed, when at the same time she was receiving enormous rental for subletting the premises, but also in other defaulting acts which showed a total lack of commitment to compliance with the law and the sanctity of contract. We refer specifically to the failure to construct the three story commercial building, to pay the taxes and present the payment receipts to the appellees, and to have the building insured, all of which are breaches of the lease and for which, under Article 13 of the Lease Agreement, constitute

grounds for cancellation of the Agreement. We are therefore convinced that there existed every ingredient under the law and the facts of the case to justify the cancellation of the Lease Agreement. Accordingly, we have no hesitation in confirming and affirming the judgment of the lower court cancelling the Lease Agreement and ordering that the appellees be repossessed of the premises.

We note, however, that the trial court's judgment contained a proviso that the appellant is entitled to all the sequestered rent owed before October 15, 1983, less any unpaid rent and taxes which are owed. We hereby modify the proviso to provide that all rent sequestered for the period beyond October 15, 2014, the time when the Lease Agreement expired of its own accord, allowing for the period of *force majeure*, should be paid to the appellees and that the appellant is liable for the payment of all unpaid taxes for the period up to October 15, 2014. Law, equity and justice dictate such a course. However, all realty or other tax due and payable on the property effective as of October 15, 2014 shall be for the account of the appellees.

Wherefore and in view of the foregoing, and for the reasons stated herein, the judgment of the trial court canceling the Lease Agreement is affirmed.

The Clerk of this Court is hereby ordered to send a Mandate to the court below ordering the Judge presiding therein to resume jurisdiction over this case and to give effect to this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.