

KHALIL FARHAT, Appellant, *v.*  
H. CAREY THOMAS, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,  
MONTERRADO COUNTY.

Argued November 13, 1975. Decided January 2, 1976.

1. It is reversible error for a trial judge not to pass upon the issues of law prior to ruling on the issues of fact in a proceeding.

The parties herein entered into a leasing agreement whereby if the conditions therein were met by the appellant, the property owned by appellee would be permanently leased to appellant. The appellee was of the opinion that the terms had not been met and refused to enter into the final lease agreement, whereupon appellant sought an injunction to enjoin appellee from exercising any proprietary rights over the property involved. Appellee brought on a motion to dissolve the preliminary injunction and deny the final injunction. The motion was granted and the decree refusing the injunction was appealed.

The Supreme Court was of the opinion that the trial court had committed reversible error in not passing upon the issues of law prior to ruling on the facts and consequently *reversed* the judgment and *remanded* the case to the lower court to dispose of it in accordance with the instructions of the Court.

*J. Dossen Richards* for appellant. *Samuel E. H. Pelham* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On October 1, 1966, appellee entered into a lease agreement with Naftali Furman, an Israeli national, for a

parcel of land situated on Camp Johnson Road, in the City of Monrovia, for fifteen years, whereon a multipurpose building was erected by Naftali Furman.

Lessee left the Republic of Liberia, and appellee sought cancellation proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, to recover his property, and a decree was given canceling the aforesaid lease agreement. Later, appellant negotiated with appellee to lease and maintain the building. This was agreed upon preliminarily by lessor.

However, appellant apparently failed to meet the terms of the precondition agreement, and appellee refused to formally enter into a regular lease agreement with appellant. Consequently, appellant applied to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for an injunction against appellee, enjoining him, or his agents, from asserting any proprietary rights over the property until a suit of damages had been finally determined. To this application, a nine-count answer was filed, followed by a motion to dissolve the injunction and a resistance thereto, in which several legal issues were raised. Judge Frederick K. Tulay granted the motion to dissolve the preliminary injunction and petitioner appealed to this Court.

When the case was called for argument before this Court, appellant's counsel contended that (a) the trial judge failed to pass upon issues of law raised in the pleadings; (b) the lower court judge arbitrarily ignored evidence presented to him and denied the application; (c) above all the judge's failure to pass upon the issues of law before disposing of the issues of fact in the case, was reversible error.

In perusing the record, it discloses that in counts 1 to 9 of appellant's application for a preliminary injunction he raised several factual issues which he felt were sufficient to grant the application, especially the agreement to lease entered into by Naftali Furman and appellee.

In appellee's answer, he raised factual issues and questioned appellant's right to institute the injunction proceedings. He denied that there was an agreement duly entered into by and between the parties concerned, therefore, the injunction should be denied, because the agreement proferted by plaintiff clearly states that defendant was willing to lease to the plaintiff if and when a decree cancelling the agreement which existed between defendant and Naftali Furman was obtained; he said that immediately after such cancellation of the agreement a lease agreement incorporating the terms in the conditional lease would be drawn up and signed. He denied the allegations of fact as set forth in appellant's application.

Also in the answer, appellee raised issues of law that included: (1) that where an adequate remedy exists at law, injunction should not be granted; (2) injunction should be granted only in cases where irreparable injury will result; (3) injunction should not and ought not be granted to impair a contractual obligation, which under the Constitution of the Republic of Liberia is to remain inviolate.

And in appellee's motion to dissolve the injunction, he cited his legal argument raised in his answer and prayed that the injunction be denied.

In plaintiff's resistance to defendant's motion to dissolve the injunction, the issue of fraud was raised, citing as evidence thereof that the defendant elected to have plaintiff institute the injunction suit against him, indicating that defendant had his mind on artifice.

Appellant cited reasons why the injunction should be granted: (1) no action at law would prohibit defendant from practicing fraud by receiving the rents and not giving appellee his share in keeping with their agreement; (2) that a preliminary injunction will be granted where defendant is about to do or is doing, as in the instant case, an act in violation of plaintiff's right respecting the subject of the action; (3) that the injunction is

prayed for to prohibit and enjoin defendant from again perpetrating fraud by receiving the rentals from 1975 onward and converting all to his own use and benefit, whereas he is only entitled to 25% thereof; (4) that the entire motion was evasive.

Disposition of issues of law before the trial of the facts has constantly and insistently been emphasized by this Court. Where there are mixed questions of law and fact, the issues of law must first be disposed of.

Moreover, recently, this Court speaking through our distinguished colleagues, Mr. Justice Henries in *King v. International Trust Company of Liberia*, 20 LLR 438, 440-441 (1971), an action of injunction, dealt with the point.

"In the case at bar, the judge did decide the issues of law first, and, therefore, did not err.

"It is also settled that where in a case the facts are admitted, leaving only issues of law to be determined, it is not error for the court to hear and determine same without the intervention of the jury. *Roberts v. Howard*, 2 LLR 226 (1916). However, a careful review of the records certified to this Court revealed that mixed issues of law and fact were presented, and that the parties were not in agreement on all of the facts. Under the circumstances, the lower court should have heard evidence on the factual issues, for it is a fundamental rule of law that evidence must support the allegations or averment in both law and equity proceedings. Evidence alone enables a court to decide with certainty the matter in dispute. *Pelham v. Pelham*, 4 LLR 56 (1934). It has been stated as the best judicial policy for a court not to pass on a motion to dismiss a bill for an injunction until the parties have brought in all the facts on final hearing and all the proofs are before the court. So if under the allegations of the bill it can reasonably be conceived that the complaint in the trial court could

establish a case entitling him to the injunction, a motion to dismiss should not be granted. An issue of fact cannot be adjudicated on a motion to dismiss a bill before trial.”

It is true that a defendant enjoined by a preliminary injunction may move, as was done herein, at any time on notice to the plaintiff, to vacate or modify it.

But when proceedings have not been conducted properly in the court below, the ends of justice demand that the case be remanded. A court of equity ought to do justice completely and not by halves. Hence, we are in the opinion that the trial judge erred when he dismissed the preliminary injunction without passing upon the issues of law before proceeding to dispose of the issues of fact.

In view of the foregoing, we have no alternative but to order a reversal of the trial judge’s ruling, with instructions to the court below that it resume jurisdiction over the case and proceed to pass upon the issues of law raised herein and thereafter grant a trial upon the factual merits in the case.

Costs shall abide pending final determination of the case. And it is hereby so ordered.

*Reversed and remanded.*