

Suhaila Hussan of the City of Monrovia Liberia, APPELLANT Versus **Augusta Yarvo Butler, Jerome Butler and Thomas Butler, Jr.** thru their Attorney-In-Fact Aurelius Butler also of the City of Monrovia, Liberia, APPELLEE

APPEAL
LRSC 51

HEARD: April 9, 2014 Decided: November 5, 2014

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

This case is before us on an appeal from a ruling of the Civil Law Court sitting in its December Term A.D. 2012, wherein the trial judge, His Honor Yussif D. Kaba terminated the case during the disposition of law issues. The records reveal that on March 22, 2012, the appellees, Augusta Yarvo Butler, Jerome Butler and Thomas Butler, represented by and through their attorney-in-fact, Aurelius Butler petitioned the Civil Law Court to cancel the lease agreement executed between Suhaila Hussan, the appellant herein and the late Moore T. Butler, the appellees' deceased brother. During the disposition of law issues the trial judge entered a ruling cancelling the appellant's lease agreement and held the appellant liable to the appellees for the amount of USD 35,000.00 (Thirty Five Thousand United States Dollars). Being dissatisfied with the trial court's ruling, the appellant excepted thereto and announced an appeal to the Honorable Supreme Court, for judicial review, basically contending that there were factual issues that should have been submitted to the jury.

In the mind of this Court, the act of the trial judge raises one cardinal issue, that is, whether or not the trial judge reversibly erred by cancelling the appellant's lease agreement and terminating the cause of action while disposing of the law issues.

In order to appreciate the controlling principles of laws in this appeal, this Court has decided to diligently expound on the legal rudimental standards with respect to the disposition of law issues vis a vis factual issues within our jurisdiction as they relate to trials in the lower courts.

According to the Supreme Court, the phrase, "disposition of law issues is a pre-trial determination by the court on points of law." *Massaquoi et al. v. Dennis* 40 LLR 698, 705 (2001). Black's Law Dictionary Ninth Edition defines law issue as a "point on which the evidence is undisputed and the outcome depending on the court's interpretation of the law". It is a question usually at the foundation of a case that requires a court's interpretation. *Id.* Matters of law concern the legal significance of facts and they require neither reference to extrinsic evidence nor the consideration of credibility questions for its resolution. 75 Am Jur 2d Trial §599. Questions relating to the construction, meaning or interpretation of statutes, including the applicability to a given situation or set of facts are matters of law for the court.

Id §600. Given the unique nature of law issues, the Honorable Supreme Court has consistently held that judges must first dispose of issues of law before issues of fact and that failure on the part of a judge to dispose of law issues raised in the pleadings is a ground for reversal of a judgment. *Stubblefield v. Nassah* 26 LLR 153, 158-159 (1977); *Computer Services Bureau v. Ehn* 29 LLR 206, 211 (1981); *Kennedy v. Cooper* Supreme Court Opinion March Term 2008.

In our jurisprudence, proceedings which are justiciable solely on law issues are either adjudicated by summary judgment or declaratory judgment. Our statute and case laws provide that "the court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law". [Emphasis ours]. Civil Procedure Law, Rev Code 1:11.3(3) provides; *Dennis v. Philips* 21 LLR 506, 513 (1973); *Sio v. Sio* 35 LLR 92, 98 (1988).

Declaratory judgment like summary judgment, adjudicate cases in which the facts or evidence are undisputed and the inherent nature of the case begs for the court's legal interpretation of the law. The Civil Procedure Law, Rev Code 1:43.1 states that "courts of record within their respective jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed...the declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment". However, it is the law that when a proceeding involves the determination of an issue of fact, the right to trial by jury may be demanded under the circumstances and in the manner provided by law. Id. Section 43.9. [Emphasis ours]

Issue of fact has been defined as "a point supported by one party's evidence and controverted by another's. Black's Law Dictionary Ninth Edition. Issue of fact exist whenever it can be said that, from the evidence and all reasonable inferences to be drawn from it, fair-minded people in the exercise of reasonable judgment could reach differing conclusions on the issue in controversy. 75 Am Jur 2d Trial §602. It is trite law, practice and procedure in this jurisdiction that issues of fact should be submitted to the jury or a judge sitting alone as the trier of facts and the Supreme Court has been unswaying, consistent and unwavering in holding that it is the function of a jury or a judge sitting without a jury, to hear and decide the factual issues upon the evidence adduced at a trial. *Lartey v. Corneh* JBLLR 177, 179 (1967); *King v. International Trust Company* 20LLR 438, 441, (1971); *Ketter v. Jones et al.* 41LLR 81, 85 (2002).

Applying these principles of laws and reverting to the only issue raised supra which is whether or not the trial judge reversibly erred by cancelling the appellant's lease agreement and terminating the cause of action while disposing of the law issues, the Court in answering this question must first determine whether the appellees' petition and the evidence attached thereto are controverted by the evidence exhibited in the appellant's returns. In other words this Court must first determine whether there were

no factual issues raised in the pleadings by the parties in the trial court.

The facts of the matter as revealed by the certified records indicate that on March 22, 2012 the appellees petitioned the Civil Law Court, Montserrado County for the cancellation of the appellant's lease agreement on grounds that the appellant's lessor, Mr. Moore Titus Butler, the appellees' brother was without authority to solely execute and enter into said lease agreement with the appellant and that they the appellees had notified the appellant not to execute any subsequent lease agreement with their brother without their consent. The Court has decided to quote the appellees' nine (9) counts petition which is germane to these appeal proceedings. The petition reads as follow:

1. "Petitioners say that they have authorized and empowered their brother, Mr. Aurelius Butler, as their lawful Attorney-In-Fact to act in all matters affecting their joint property located and situated on Gurley Street in the City of Monrovia, Liberia. Attached and marked EXHIBIT PP/1 is a copy of the Power of Attorney.
2. Petitioners say that they are joint owners, along with their attorney-in-fact, of a piece of property situated and lying on Gurley Street in the City of Monrovia, Liberia. Attached and marked EXHIBIT PP/2 is a copy of the title deed to the said property.
3. Petitioners say that their late brother, Moore Titus Butler, who was another joint owner of the said property, entered into and executed a lease agreement with the respondent, representing to the respondent at the time that their mother, Mrs. Beatrice Butler, was the owner of the property and that he, Moore Titus Butler, was her representative. Attached and marked EXHIBIT PP/3 is a copy of the 1996 lease agreement which expired on January 1, 2002.
4. Petitioners say that when they learned of the said lease agreement they informed the respondent that their mother was not the owner of the said property therefore could not have entered into a lease agreement with the respondent without the full consent of the owners of the property. Petitioner further say that they informed the respondent that at the end of the five years period she should vacate the property as they did not have any intentions to lease the property to her. Attached and marked EXHIBIT PP/4 is a copy of the letter from petitioners' brother and their Attorney-In-Fact, to the respondent.
5. Petitioners say that despite their opposition to the respondent entering into the 1996 lease agreement with their late brother, Moore Butler, and advising the respondent not to transact any business with their late brother in reference to their jointly held property, the respondent, prior to the expiration of the 1996 lease agreement on January F1 2002, entered into and executed another lease agreement with their late brother on January 2nd 2001 for the upstairs portion of the property and another lease agreement was entered into on February 5 2002 for the down stairs portion. Attached and marked EXHIBIT PP/5 in bulk are copies of the said lease agreements.
6. Petitioners say that from a careful perusal of the lease agreements, the lease agreement of January 1st 2001 for the upstairs portion of the property was signed by their late brother in his own name as

though he was the sole owner of the property even though the respondent had prior knowledge that the property does not belong to their late brother and/or mother; the February 5 2002 lease agreement was signed by their late brother in a representative capacity (signing for and on behalf of their mother). Petitioners say that the lease agreement were wrongfully executed with their late brother because the respondent had reasons to know and was informed by the Petitioners that the said property did not belong to their mother and/or their late brother alone. The action of the respondent was deliberate and is solely intended to deprive the petitioners of their legal property.

7. Petitioners say that from a careful perusal of the deed of the property, the property formally belonged to their late father, Thomas G. Butler, whose estate passed title of the property to his children including their late brother Moore Butler, that their mother, as Administratrix, signed the deed in keeping with law.

8. Petitioners say that their mother not having title to the said property cannot enter into a lease agreement by and through any representative including one of the joint owners of the said property in the person of their late brother Moore Butler.

9. Petitioners say that cancellation will lie to cancel the lease agreements executed by and between their late brother Moore Butler and the Respondent.

WHEREFORE AND IN VIEW of the foregoing, petitioners pray that you will enter judgment for Petitioners as follows:

A) Grant petitioners' petition and order the lease agreement cancelled;

B) Rule that the respondent be made to pay the amount of US\$35,000.00 as general damages for the withholding of petitioners property against petitioners ' will, and

C) Rule all costs against the [respondent] petitioners."

On April 25, 2012, the appellant/respondent filed its returns to the appellees' petition, praying the court to deny and dismiss the appellees'/petitioners' petition. Also considering the relevance of the appellant's eighteen (18) counts returns, we have decided to quote same verbatim as follow:

1. "That the respondent possesses valid lease agreement and that the petitioners' petition is wanting of legal ground to cancel same.

2. Respondent submits that the current lease agreement between she and the late Moore Butler is the second in series and that all lease payments made to the late Moore Butler was divided into two; with half received by Moore Butler himself and the balance half remitted to the United States for the maintenance of the petitioners.

3. As to count one (1) of the petitioners' petition, respondent submits that same presents no traversable issue.

4. As to count two (2) of petitioners ' petition, respondent submits and maintains that she does not deny the joint ownership of the demised property subject of the lease agreement sought to be cancelled. However, respondent maintains that when joint owners of property gave consent to one of the joint owners to lease the property with all of the joint owners' acquiescence, and benefiting from the proceeds of the lease or sale, they cannot be permitted by law or equity to revoke what they have sanctioned.

5. Further to count four (4) above, respondent maintains that the property, though own by five (5)

brothers and sisters, four (4) of whom live in the United States with their mother, their late brother, Moore T Butler was entrusted with the property and he leased it all throughout while he (Mr. Butler) was alive to many persons including, Senator Adolphus Dolo; and, that all proceeds received were share between the late Moore T. Butler and the rest of the family in the United States. The petitioners having acknowledged, acquiesced and benefited from the act of their brother, they cannot now seek to cancel the identical lease agreement which they have benefited from the proceeds. Court of equity and law do not allow a person or group of persons to benefit from their own wrong.

6. Further to count five (5) above, at the expiration of the 1997 Lease Agreement and considering the massive renovation of the property by the defendant/lessee, the respondent entered a second 20-year lease agreement with the late Moore T. Butler and the petitioners' named above did not only acquiesced, but benefited from the rentals paid by respondent under the 20- year lease agreement as well. Hereto attached are copies of the lease agreement marked in bulk R/1 to form a cogent part of respondent's returns.

7. Further to count six (6) above, the late Moore T. Butler ensured that 1Y2 of the lease payment from the respondent, from time to time herein, was regularly transferred to the family members abroad (Thomas G. Butler, Jr., Augusta Yarvo Butler, Jerome Butler and Aurelius Butler) through the account of Augusta Yarvo Butler 's (account number 2800762112) for their maintenance, while Mr. Moore T Butler's share of the lease payment was received by him in Monrovia throughout the life of the agreement. Hereto attached are copies of rent transferred to the petitioners" herein to America marked in bulk R/2 to form a material part of this action.

8. Further to count seven (7) above, respondent further says that during the life of the 1997 Agreement, two of the petitioners, Aurelius Butler and Augusta Yarvo Butler constantly visited Liberia, made friend with the respondent and personally received rents and gifts from the respondent to their mother and other family members abroad. This action clearly confirms the full knowledge and acquiescence of the petitioners of their late brother, Moore T. Butler 's authority to manage their properties in Liberia, including the property, subject of litigation. Hereto attached is a receipt issued by co-petitioners, Aurelius Butler and his brother, Moore T. Butler together acknowledging receipt of rent from respondent for themselves and their mother, Beatrice Butler Tolbert and Uncle Padmore marked R/3 to form a cogent part of this respondent returns.

9. As to the entire petitioners petition, respondent argues and maintains that acknowledgement and acquiescence are the bone of contention in this action,· that is to say, respondent agrees with the law extent in this jurisdiction that no joint owner of the

property can divest the other joint owners of title or possessory right, except by their approval and/or acquiescence. Respondent says that in the instant case, the co-petitioners' herein have approved the co- owner of the property, their late brother, Moore T. Butler 's action for ten (10) years that is, from 1997-2007. More besides, the entire family has received benefits from both the 1997 Lease Agreement and the current Lease Agreement, which clearly testifies to the fact that their late brother was acting for and on their behalf and with knowledge and consent. Hence, the entire petition should be overruled and the totality of the complaint be dismissed and denied.

10. Respondent says further that based on the cordial relationship between her and the Butler's family, she has maintained, renovated and improved the value of property in question, when it was hit by

rocket and damaged, upon the request of her landlord, the late Moore T. Butler during the civil war in an amount of over Seventeen Thousand United States Dollars (\$17,000.00). Hereto attached are some of the receipts for said renovation marked in bulk R/4 to form a cogent part of the respondent's returns.

11. As to the entire petitioners' petition, respondent submits and maintains that assuming without admitting that at one point in time the late Butler was the representative of petitioners' mother at which time title of the property was still under her administration, this has got nothing to do with the present issue before the court. The issue before the court is simple. The issue is whether or not the petitioner herein acquiesced and benefited from the proceeds of the lease agreement that they seek cancel? The answer is YES. Hereto attached is a copy of application form for money transfer to co-petitioner, Yarvo A. Butler to form an integral of this return.

12. As to count four (4) of the petitioners' petition, respondent says that at no time was she informed not to enter agreement with Moore Butler and the petitioners' mother. The fact of the matter is that while the petitioners' mother was alive, she may have passed title to the petitioners, but she and her first son, Moore T. Butler, the only son who lived in Liberia were in firm control of the property and had all authorities to lease same. Assuming and not admitting that the lease was illegal or wrongful, respondent submits and argues that the petitioners cannot prevail, because they have also benefited from the proceeds of the lease which means that they approved and consented to the lease agreement.

13. Further to count four (4) of petitioners' petition, respondent says that exhibit PP/4 is grossly false and misleading and that no such discussion was ever held between co-petitioner and respondent. The PP/4 is a self-serving instrument created for the purpose of this litigation.

14. As to count five (5) of petitioners' petition, respondent contends that to her knowledge there was no opposition to her entering to the second lease agreement with the late Moore T. Butler. The fact is that at the time the entire property was dilapidated as a result of the war due to a rocket that hit and damaged the property. The respondent expended her own resources in the amount of United States Seventeen Thousand Dollars (\$17,000.00) to practically rebuild the property, the amount which she did not ask for refund or debit against the rent. The petitioners having seen their property renovated and the value enhanced, but for greed of money, they are now seeking for cancellation so as to rent the property for higher price. Hence, count five (5) should be over ruled.

15. As to count six (6) of the petitioners' petition, respondent vehemently argues and contends that assuming and not admitting that the late Moore Butler and the mother of the Petitioners did not have the legal authority to enter into lease agreement with the respondent, the fact that petitioners received and benefited from the proceeds of the so-called illegal agreement made the agreement legal and legitimate by operation of law. To allow the petitioners to cancel the agreement will be tantamount to permitting petitioners to benefit from their wrong. Hereto, attached is a copy of money transfer dated January 20, 2004 in which One Thousand United States Dollars was transferred to co-petitioner, Yarvo A. Butler.

16. As to count seven (7) of Petitioners' petition, respondent submits that as a lease holder, she had no qualm whatsoever with the title of the property being at the moment in the name of the petitioners'. But respondent sole contention is that the petitioners' acquiesced and approved the act of their brother, the lessor, when they received some of the proceeds of the lease agreement which they now

claim is illegal. Hence, count seven (7) should be overruled and dismissed in its totality.

17. As to count eight (8) and count nine (9) of petitioners' petition, respondent incorporate count eleven (11) of her returns and says that cancellation cannot lie in equity when the petitioners have approved, confirmed and affirmed the acts of one of the joint owners of the property by receiving and enjoying the proceeds of an agreement they claim to be illegal. Hence, count eight and nine ought to be overruled.

18. Respondent denies any all claim, counts, paragraph and averments of the petitioners' petition which may not have been specifically traversed in these Returns.

On May 4, 2012, the appellees filed their reply reaffirming and confirming the averments in their petition. Regarding the issue of the US 1,000.00 (One Thousand United States Dollars) remitted to co-appellee Yarvo Butler as alleged in count 15 of the appellant's returns, the appellees acknowledged receiving the money but stated that said amount was returned to the appellant.

Pleadings having rested, the court assigned the case for disposition of law issues on February 7, 2013. Following arguments pro et con, the trial judge on February 13, 2013, ruled ordering the cancellation of the appellant's lease agreements and held the appellant liable to the appellees in the amount of US\$35,000.00 (Thirty Five Thousand United States Dollars) for withholding the appellees' property. We have also determined that the trial judge's ruling being pertinent to the present appeal, we quote same hereunder verbatim:

"COURT'S RULING

This petition raises one cardinal issue, and that issue is whether or not, a person who enters a lease agreement without the legal authority and standing to do so can bind the proper parties to that lease agreement? The Court answers this question in the negative. This action was instituted by Augustus Butler and others against Suhaillia Hussein for the cancellation of a lease agreement that was entered into by and between the said Suhaillia Hussein and one of the brothers of the Petitioner herein, in his own name, and for and on behalf of his mother.

The undisputed fact in this matter is that the property the subject of the lease agreement is owned by Mr. Butler and five other siblings including the signatories to the lease agreement the subject of these proceedings. The file shows that in the absence of the other four siblings Mr. Moore Butler proceeded to enter into a lease agreement with the Respondent herein, for the property the subject of this dispute, in the name of his mother as attorney-in-fact of his mother. The petition and the resistance thereto, show that after the consummation of this lease agreement, the Petitioners herein appeared and informed the Respondent herein, that Mr. Moore Butler lacks the legal competence to have executed the said lease agreement; but that in respect of the name of their mother, the said lease agreement will be honored, and that the Respondent herein, should no longer enter into any lease agreement with Mr. Moore Butler until and unless written consent is given by the Petitioners herein. Notwithstanding this advice, which was reduced in writing, to the Respondent on January 20, 1999, which communication was not denied by the Respondent, the Respondent proceeded to yet again execute two new lease agreements with Mr. Moore Butler for the selfsame property, one of those lease agreements in his personal name, and the other for and on behalf of his mother, knowing that

his mother did not have an estate in the property the subject of the lease agreement, and that Moore Butler was one of several joint tenants who owned the said property; and in spite of the advice given to the said Respondent in the letter just referred to herein above.

The Petitioners therefore petitioned this Court to cancel the said two lease agreements because the lessor therein, lacks the legal competence to have executed the said lease agreement. The Respondent appeared and claimed that the Petitioners herein acquiesced in the execution of the lease agreement by receiving benefits there under.

The Court says that if a party proceeds and receives benefit from an act, then of course that party is estopped from challenging that act. But in the instant case, the Respondent has failed to demonstrate how the Petitioner herein, received any such benefit from the Respondent so as to estopped them from proceeding for the cancellation of this lease agreement. In the first place, assuming but not admitting, that indeed the Petitioners received benefit from the act of their sibling. Why then did the sibling adopt to enter this lease agreement not in the name of the Petitioners herein, as co-owners of the property, but rather in the name of his mother and in his name personally? Why in the phase of the letter communicated to the Respondent herein, by the Petitioners informing the Respondent that indeed the act of their brother was not sanctioned by them and that any future action must be by their acquiescence; the said Respondent elected to proceed to execute a lease agreement ignoring the language communicated to the Respondent in the name of their brother Moore Butler and the mother. The Court says that certainly from an analysis of the factual situation of this matter, the Respondent herein, did not act in good faith, and acted against the interest of the Petitioners herein. Since the property was not owned by Moore Butler in fee simple, and therefore since the said Moore Butler lacks the legal capacity to have consummated the said lease agreement, and because the mother also does not own any property in the estate, this Court hereby adjudged the Respondent liable in cancellation, and by that ordered the two lease agreements entered into by and between Moore Butler, one on behalf of his mother, and the other in his own name cancelled, and of no legal effect and substance.

The Respondent is ordered to pay or caused to be paid unto the Petitioners herein, the amount US\$35,000 the same representing the rental for the period of the illegal occupancy of the said premises by the Respondent herein. Cost of these proceedings ruled against the Petitioner. SO ORDERED."

It is this ruling that the appellant challenged on April 19, 2013 in a four count bill of exceptions and has called on the Supreme Court to determine whether there exist factual controversies or issues raised in the pleadings. This Court deem the appellant's four count bill of exception germane to this appeal and have decided to quote below the bill of exception in its entirety, to wit:

- 1) "That Your Honor erred when you dismissed the respondent returns in its entirety without considering the factual issues raised which required testimony from witness.
- 2) That Your Honor erred when without taking evidence you so believed and accepted that the rent sent to co-appellee Augusta Yarvo Butler in 2004 was returned to the appellant and therefore the appellees have received no benefit from the new agreement. How Your Honor arrived at such conclusion without documentary evidence testified to and admitted into evidence is a wonder.
- 3) That Your Honor erred when you dismissed appellant/respondent's returns and cancelled her lease

agreement, when there was no clear factual issues as to whether or not Augusta Yarvo Butler actually returned the US 1,000.00 (One Thousand United States Dollar) rent sent to her by appellant/respondent, Suhaila Hussien which was wired to her thereby benefiting from the proceeds of the second lease agreement.

4) That Your Honor erred when you dismissed the respondent entire returns and cancelled her lease agreement when there was no motion file to dismiss the returns".

Having meticulously presented the circumstances evolving the cancellation of the appellant's lease agreement, can it be emphatically stated that the facts in these proceedings are wholly undisputed and are entirely dependent on the trial court's interpretation of the law; in other words can it be stated that no factual issues were raised in the pleadings by the parties? We think not.

The pleadings as quoted above are overwhelmed and weighty with sufficient factual issues to warrant consideration by a jury as the trier of factual issues. Amongst these factual issues that needed to be submitted to a jury are:

a) The capacity of the appellant's lessor, Mr. Moore Butler to enter into a lease agreement with the appellant: It is the contention of the appellees that their late brother, Mr. Moore Butler lacked the authority to solely lease the property to the appellant without their consent. On the other hand the appellant disagrees and contended that the late Mr. Moore Butler was entrusted with the property throughout his entire life time and that all rents were paid to him and subsequently remitted to the appellees who were residing in the United States of America.

b) The appellees' notification or letter dated January 20, 1999 addressed to the appellant: According to the appellees, they wrote a letter notifying the appellant not to enter into any subsequent lease agreement with their late brother, Mr. Moore Butler without their consent. The appellant for her part denied receiving any such letter or notification.

c) The issue of the appellees acquiescing to the lease agreement: It is the contention of the appellant that the appellees acquiesced to the second lease agreement by accepting and benefiting from the proceeds of the rent that were remitted to the appellees while they were residing in the United States of America. This contention of the appellant was countered by the appellees on grounds that only the first lease was honored for their mother sake and that the appellant was warned not to enter into any subsequent lease agreement with their late brother Mr. Moore Butler.

d) The allegation and counter allegation of the parties concerning the US\$ 1,000.00 (One Thousand United States Dollars): The appellant pleaded remittance slips alleging that US\$ 1,000.00 (One Thousand United States Dollars) which represented rental payment for the second lease agreement was remitted to co-appellee Augusta Yarvo Butler. The appellees for their part acknowledged receiving the said US\$ 1,000.00 (One Thousand United States Dollars) but stated that the said amount was returned to the appellant.

e) The alleged opposition to the appellant's lease agreement: The appellees alleged that they opposed the appellant's lease agreement and warned the appellant not to enter into any subsequent lease agreement with their late brother, Mr. Moore Butler. The appellant for her part denied this contention of the appellees and further pleaded in her returns that there existed a cordial relationship between she and the appellees to the extent that she was asked by her landlords to renovate the property which according to the appellant cost her US 17,000 (Seventeen Thousand United States Dollars).

Notwithstanding, these glaring factual issues as have been numerated supra of which the court should have taken evidence, the trial judge in disposing of the law issues terminated the case without allowing a jury to pass on these issues of fact. It should also be quickly noted that even the court's lone issue raised - "whether or not a person who enters a lease agreement without the legal authority and standing do so can bind the proper parties to that lease agreement" - in itself, is riddled with issues of fact that had to be submitted to a jury. This Court is at sea as to how the trial judge could make judicial determination of this factual issue when he did not delve into the merits of the case.

In the case, *The Heirs of the late Jesse Cooper & Edward Cooper v. The Heirs of Augustus Cooper Estate and the Heirs the Late James Cooper* 39 LLR 750 (1999), the Honorable Supreme Court was called on to address a similar issue as to whether the trial judge erred by rendering final judgment without taking evidence whatsoever to establish the factual issues alluded to in his ruling.

The facts in the cooper case indicated that the appellees moved to intervene into a summary proceedings to recover possession of real property on grounds that they were members of the Cooper family and had vested interest in a leased property willed to them by their late grandfather, James Francis Cooper. The appellants resisted the motion to intervene on grounds that the appellees were not qualified to benefit from the lease property since they were not born into marriage which would have qualified them under count four of the will of the late James Francis Cooper to be beneficiaries of the leased property. The trial court in that case granted the motion to intervene on grounds that the appellees were members of the cooper family and had vested interest in the leased property. On appeal the appellants challenged the court's ruling on grounds that the court made a final determination of the case without taking evidence to establish whether the appellees were entitled to benefit from the leased property under count 4 of the will. The Supreme Court reversed the trial court's ruling and remanded the case. The Court speaking through Mr. Justice Wright ruled that "it was an error for the trial judge to have concluded that appellees have vested interest in the subject property without first taking evidence on both sides to prove or disprove their respective allegations and denials as raised in the pleadings ". We hereby reaffirm the holding of the Honorable Supreme Court in the Cooper Case.

Having established that there were factual issues in the pleadings before the trial court this Court will now focus on the one and only issue raised at the beginning of this opinion which is whether or not the trial judge reversibly erred by canceling the appellant's lease agreement and terminating this case during the disposition of law issues.

The Court will revert to the wisdom of its predecessors and distinguished champions who were called on to address this same issue. In 1977 the Court was called on in the case *Stubblefield et al v. Nassah* 26 LLR 153 (1977) to determine whether a trial judge committed a reversible error by cancelling a lease agreement during the disposition of law issues without affording the jury to pass on the factual issues. In the Stubblefield case the appellant instituted cancellation proceedings of a lease agreement against the appellee on grounds that she did not enter into a new lease agreement with the appellee neither did she negotiate a new lease agreement with the appellee when she borrowed the amount of \$500.00 (Five Hundred Dollars) from the appellee. The appellee filed its returns denying the averments of the appellant on grounds that the appellee did negotiate and enter into a new lease agreement with the appellant. A motion to dismiss the appellant's cancellation proceedings was subsequently filed by the

appellee along with its returns. The motion was resisted by the appellant and was subsequently heard and granted by the trial while disposing of law issues.

On appeal, the appellant challenged the trial court's judgment on grounds that there were factual issues that needed to be passed on by the jury and not the judge and that the trial judge erred by passing on said factual issues during the disposition of law issues. This Court reversed the ruling of the trial judge and remanded the case to the trial court. In reversing the trial court's ruling the Supreme Court speaking through Mr. Justice Azango held that, "a court may on hearing of a motion try and determine immediately any disputed questions of fact presupposing that if issues of law were raised in subsequent pleadings to the complaint they should be disposed of firstly before proceeding with the trial of the facts ". The Court then held that "issues of law must be decided before issues of fact".

In 2002 the Honorable Supreme Court was again called on in the case *Ketter v. Jones et al.*, 41 LLR 81 (2002) to address this same issue in an ejectment proceeding. In the *Ketter* case the appellant instituted an action of ejectment against the appellee by filing and serving the necessary precepts. The appellee upon receipt of the complaint filed its answer challenging and denying the averments in the appellant's complaint. Pleadings having rested, the trial court during the disposition of law issues dismissed the appellant's ejectment case without prejudice, on grounds that the documents attached to the pleadings were confusing. On appeal the Supreme Court was called on to determine whether the trial judge erred in dismissing the appellant's action of ejectment on the disposition of law issues. This was the Supreme Court's response to the issue raised back then which we herein quote below:

"A judge is charged with the responsibility of passing on issues of law and the jury that of passing on issues of fact. The disposition of law issues is the sole responsibility of a trial judge, but it is the function of a jury, as the trier of facts, to hear and decide the factual issues upon the evidence adduced at a trial. It is improper for a trial judge to constitute himself as the sole judge of factual issues in matters which should properly be determined by a jury... It is an elementary principle of law, practice, and procedure in this jurisdiction that all documentary evidence which is material to the issues of fact raised in the pleading should be submitted to the jury...and that all issues of law must be decided before any questions of fact can properly go to a jury for trial. "

The Supreme Court concluded by holding that "all actions of ejectment involve mix issues of law and fact. As such the trial judge was legally bound to hear evidence in the case to enable him decide with certainty this matter in dispute". The Court further stated that "a trial judge invades the province and usurps the functions of the trial jury when he determines factual issues ...during disposition of the law issues without presenting the question of fact to the jury for its determination". Though this principle of law was enounced in an ejectment case we find it applicable to these present cancellation proceedings. Cancellation of a lease agreement for property is in equity, a proceeding which seeks to reach and do complete justice. *Kashouh v. The heirs of the late Mozart Bernard* Supreme Court Opinion March Term A.D. 2008. We are cognizant that the questions of property especially real property are to be handled with every available care by our courts.

If a man is deprived of his real property unjustifiably, he is deprived of a basic existence. Therefore judges are required to afford all parties who stand to lose property every chance to appear and defend

their cause according to the means accorded them by law. Kennedy et al., v. Goodridge et al., 33 LLR 398, 405 (1985).

In view of these legal principles of laws articulated herein this Court hereby confirm and affirm the holdings of the Honorable Supreme Court quoted herein and hold that the trial judge committed reversible error by canceling the appellant's lease agreement and terminating the cause during the disposition of law issues. We further hold that it was reversible error for a trial judge to base his ruling on law issues without delving into the merits of the case.

WHEREFORE and in view of the facts which we have stated and the laws cited herein, it is our considered opinion that the ruling of the trial judge cancelling appellant's lease agreement and holding the appellant liable to the appellee is hereby reversed and the case remanded to the trial court to be heard nunc pro tunc, commencing with the disposition of law issues.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and to proceed in conformity with this opinion. Costs are to abide the final determination of the case. It is hereby so ordered.

Ruling reversed, case remanded.

The appellant was represented by Counsellor Yamie Quiqui Gbeisay, Sr. of the Tiala Law Associates.

The appellee was represented by Counsellor G. Wiefueh Alfred Sayeh of the Sayeh and Sayeh, Inc.

