IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH …….CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……...ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..……ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE Qui Qui GBEISAY……..ASSOCIATE JUSTICE

The Intestate Estate of the Shad Kaydea, represented by its administratrix, Anna Z. Kaydea, of the City of Monrovia, Monserrado County, Republic of Liberia…….Appellant	
Versus	APPEAL
Varlee Trawally of the City of Monrovia, Montserrado County, Liberia……Appellee	
GROWING OUT OF THE CASE:	
The Intestate Estate of Shad Kaydea represented by its administratrix Anna Z. Kaydea, of the City of Monrovia, Monsterrado County, Liberia ……Petitioner	PETITION FOR CANCELLATION OF LEASE
Versus	
Varlee Trawally of the City of Monrovia, Montserrado County, Liberia…….Respondent	

HEARD: May 2, 2023 DECIDED: July 5, 2023

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The facts in this case are not in dispute. The appellant (lessor) leased a piece of property known as the OAC compound to the appellee (lessee) on December 24, 2005, for a period of Twenty years (20) years, commencing from January 1, 2006 to December 31, 2026, for an annual rent of Three Thousand United States Dollars (US$3,000) payable at the beginning of each year. Clause Ten (10) of the lease agreement between the parties provides that in the event the leased property is assigned or subleased by the appellee to a third party, the appellant would be entitled to Twenty-Five Percent (25%) of the difference in the rent payable to the appellee under the sub-lease agreement and the rent payable by the appellee under the original lease agreement. Clause Six (6) of the lease agreement also provides that if the appellee fails to make rental payment within thirty (30) days of the

beginning of a year, such failure shall be considered a material breach of the agreement and the appellant shall have the right to oust and or evict the appellee from the leased property.

The appellee subsequently signed a sub-lease agreement, sub-letting the leased property to another tenant, Eric Wellington or Erico Worldwide Venture, for the amount of Thirty-Two Thousand United States Dollars (US$32,000.00) per annum, and though the difference in the original rental amount and the sub-lease rental amount is Twenty Nine Thousand United States Dollars (U$29,000.00), thus entitling the appellant to twenty five percent thereof, the appellee, however beginning January 2009, defaulted on both the payment of annual rental due under the original lease agreement and the twenty five percent due under the sub-lease agreement. Based on the appellee's default, the appellant filed an action of debt in the Debt Court for Montserrado County against the appellee for the outstanding rental amount owed and due as per the lease agreement signed by the parties. The Debt Court, on February 9, 2012, found the appellee liable and entered final judgment in the amount of Thirty-eight Thousand Seven Hundred & Fifty-five United States Dollars (US$38,755) in favor of the appellant.

On March 30, 2012, the appellant proceeded to the Civil Law Court for Montserrado County, and filed a petition for cancellation of the lease agreement, relying on clause 6 contained therein. The appellant attached to its petition the Debt Court's judgment as evidence of the appellee's indebtedness to it. The appellant alleged that the appellee had failed to pay any of the rents due under the lease agreement from 2009 and up to the date of filing of the petition for cancellation of the lease.

The appellee filed a motion to dismiss the appellant's petition on grounds that clause six (6) of the lease agreement provides that failure of the appellee to pay rent shall constitute a ground to oust and evict the appellee and not a ground for cancellation; that there is no agreement between the parties to cancel the agreement for failure to pay rent; that because the wrong form of action was filed by the appellant, same should be dismissed as a matter of law.

The judge denied the motion to dismiss, stating that section 11.2 of the Civil Procedure provides grounds for motion to dismiss and the appellee did not state under which ground(s) of the statute he had filed his motion.

The appellee thereafter filed a motion for summary judgment, contending that the petition for cancellation filed by the appellant in its entirety does not constitute any legal grounds for cancellation of the lease agreement executed by the parties; that the petition for cancellation was filed in bad faith as the appellant had obtained judgment against the appellee in an action of debt and the appellee has commenced payment of the judgment amount; that the appellee is committed to the payment of the debt as ordered by the debt court and while he is doing everything to pay the debt there can be no legally justifiable reason for the appellant to file for cancellation of the lease agreement.

In resisting the appellee's motion for summary judgment, the appellant prayed for a dismissal of the motion, contending that the appellee failed to state any averment or fact which supports the granting of such motion in his favor; that our law is settled that a motion for summary judgment will lie only if there is no material issue of fact in dispute; that the appellee's admission of its indebtedness to the appellant is a clear manifestation of the breach of the lease agreement which according to the terms and conditions of the agreement is a ground for cancellation; that the appellant could not enter upon and take possession of the leased property for non-payment of rent without resort to appropriate judicial proceedings; that under the circumstances, the legal processes available to the appellant are (i) judicial cancellation of the agreement of lease and (ii) summary proceeding to recover possession of real property should the appellee fail or refuse to possess the appellant after the decree of cancellation is issued.

The court, after a hearing on the motion for summary judgment, granted the motion and ruled as follows:

> "This court says that a cancellation proceeding is a special proceeding. The court is guided by equity and a sense of justice in entering determination in such a matter. The court observes that the property, the subject of the lease agreement was developed by the respondent. The court further observes that as the consequence of the action instituted by the petitioner, the respondent has commenced the satisfaction of the indebtedness to the petitioner. The court also takes judicial notice of the specific clause relied upon by the petitioner to pray for the cancellation in these proceedings. The court says that if that clause is to be given a real meaning, especially in light of the circumstances produced by these proceedings, this court will not be doing justice if it proceeds to order this agreement cancelled.
>
> The true language of the lease agreement to the mind of this court confers upon the petitioner herein, a right to institute an action for summary proceeding to recover possession of real property, and not for cancellation. This taken into consideration, with the fact that the

respondent herein has commenced satisfying its obligation based upon an action instituted by the petitioner herein, before the debt court, the court says that it will not be equitable for the court to order this agreement cancelled.

In light of the foregoing, this court hereby denies the prayer contained in the Petitioner's petition for cancellation. AND IT IS HEREBY SO ORDERED. COST DISALLOWED."

The appellant being dissatisfied with this ruling of the lower court noted his exceptions and appealed the ruling to the Supreme Court. In his bill of exceptions, the appellant basically contends that the ruling on the petition for cancellation was erroneous, specifically referring to the defining clause (Clause 6) of the lease agreement upon which the entire controversy revolves. Clause 6 of the agreement reads:

> "That the LESSEE covenant to pay or cause to be paid all rents when due within thirty (30) days as of the beginning of the lease year; failure on the LESSEE to make such payment as required shall be considered a material breach; at that point the LESSOR shall have the right to oust and or evict the LESSEE. **In this case, the LESSOR will not be responsible for any refund for investment made by the LESSEE." (emphasis ours).**

This Court notes that the crux of the appellant's argument is that clause six (6) of the lease agreement provides that if the appellee/lessee fails to make payment as required under the lease, the appellant/lessor shall have the right to oust and evict the appellee. The appellant argues that it was never and it could had never been the intentions of the parties that the appellant would summarily proceed to oust and evict the appellee while the lease agreement was in full force and effect, since this would have been untenable for two reasons: it would have constituted non-permissible self-help and the existence and continuation of the lease would be a valid legal defense to the appellee's possession and occupancy of the premises, therefore, the only legal remedy was to first cancel the lease before filing an action of summary proceedings to recover possession of real property.

The appellee on the other hand argues that the lease agreement is specific and clear as to the remedy available to the appellant in the event of a breach by the appellee to pay rent; that clause six (6) of the agreement provides that the course of action available to the appellant in case of appellee default to pay rent is to have the appellee "ousted" and "evicted"; that the remedy available to the appellant in this case is to file an action for summary proceedings to recover real property, and since the appellant did

not follow said course of action as provided for by law, the court was right to grant summary judgment as prayed for by the appellee.

We need not belabor the fact that clause six (6) of the lease agreement is clear, concise and straight; that it provides that in the event of failure on the part of the appellee to make rental payments as required under the lease, it shall be considered a material breach and the appellant shall have the right to oust and evict the appellee.

The Court notes that there is no contention regarding the facts that the appellee was under an obligation to pay the appellant an annual rental of Ten Thousand Two Hundred and Fifty United States Dollars (US$10,250), same being Three Thousand United Stated Dollars per annum (US$3,000) under the original lease agreement and Seven Thousand Two Hundred and Fifty United States Dollars (US$7,250.00) which represents the payment of the additional twenty-five percent (25%) difference of rental amount received by the appellee from its sub-lessee, Erico Worldwide Venture. The appellee having failed to pay the appellant the annual rent due under its agreement with the appellant, and by extension the rental from the sublease agreement with Erico Worldwide Venture from 2009 until the appellant instituted the petition for cancellation of the lease agreement, it is no dispute then that the appellee violated its agreement with the appellant and that the appellant could exercise its rights under clause 6 of the agreement.

The question to be decided on this appeal is whether the judge erred by granting the appellee's motion for summary judgment and dismissing the appellant's petition for cancellation of the lease agreement based on clause 6 of the agreement.

In his ruling quoted supra, the lower court judge held that having reviewed the petition for cancellation of the lease agreement filed by the appellant and taken cognizance of the appellant's plea for the court to dispossess the appellee based on his violation of clause 6 of the lease agreement, the proper action for the appellant to have filed was an action of summary proceeding to recover possession of real property and not a petition for cancellation of the lease.

The Black's Law Dictionary, 8th Edition defines "Oust" as putting out of possession, and "Evict", to expel a tenant from real property or to recover real property by legal process. This Court has opined that where a contract specifically grants a party the right of re-entry and repossession upon failure to pay rent, said stipulation and expressed right is not exercisable without

recourse to a court of law, and in such cases, such as the facts and circumstances of this case, the proper remedy, proper course to take to oust and evict the lessee is to file an action for summary proceeding to recover possession of real property; *Doe vs. Mitchell and Badio* 35 LLR 647, 651 (1988); *Anandani, et al. vs. Massaquoi, et al*, 26 LLR 286, (1977).

The appellant argues that ousting and evicting the appellee under an action of summary proceeding to recover possession of real property would be untenable since it would constitute a non-permissible self-help. We disagree.

An agreement may be cancelled for non-payment of rent only when it is expressly provided in the agreement or may be pursued by a party to an agreement where the lease was secured by fraud, misrepresentation or misinformation which is not the case before us.: *Doe vs. Mitchell and Badio, Ibid.* Obviously, the wording in clause 6 calls for ousting and evicting the appellee when he fails to pay the rent does not call for cancellation of the lease as the judge rightly stated. The true language of the lease agreement confers upon the appellant the right to institute an action for summary proceeding to recover possession of real property, and by the appellant filing this action the Court in no way sees it as constituting a non-permissible self-help. Dispossession by the court, based on an action of summary proceeding to recover real property filed by a party, is an action taken by the court and can in no way be attributed to an individual pursuing the action.

Howbeit, the facts and circumstances of this case compels a departure from the path taken by the trial judge in granting the appellee's motion for summary judgment. The facts of this case are not in dispute. The appellee concedes that he is in violation of the lease agreement, specifically, clause six (6) thereof. The appellee also concedes that the debt court has rendered judgment against him in consequence of his default to pay rent under the lease agreement with the appellant, and that he has made some payments against the judgment amount. The sole argument of the appellee is that cancellation of lease is not the proper remedy available to the appellant.

We believe that the trial judge should have recognized from the pleadings of the parties that the appellant's petition for cancellation of the lease agreement was clearly an error in the form of the relief applied for by the appellant, and he should have accordingly taken judicial notice of section 1.2.2 of the Civil Procedure Law in making the proper order for the prosecution of the case. Section 1.2.2 of the Civil Procedure Law provides: *"Error in form of application for relief:* If a court has obtained jurisdiction over the parties, an application for relief shall not be dismissed because not

brought as an action or special proceeding or motion, whichever may be proper, but the court shall make whatever order is required for its proper prosecution."

The appellant in counts 9 and 10 of its petition for cancellation writes:

9. "Petitioner says that the attached Debt Court judgment against the respondent is a prima facie evidence of his indebtedness to petitioner. Petitioner further says that since 2009 up to the time of the filing of this petition, the respondent has not paid any of the amounts of the rent owes the petitioner under the agreement of lease for the past nearly four years" the petitioner therefore prays the court for cancellation of the lease agreement."

10. "Petitioner says that Clause Six (6) of the Lease Agreement between petitioner and respondent expressly states that the failure to pay rent "shall be considered a material breach; at that point, the lessor shall have the right to oust and or evict the lessee" and that in the event of such cancellation and or evict the lessor "will not be responsible for any refund for investment made by the Lessee".

11. "Petitioner says in keeping with the provisions of Clause Six of the lease agreement, the said lease agreement is properly cancellable because of (i) the failure to pay rent by the respondent as fully detailed above and (ii) the clear and convincing evidence that such persistent failure continued and will continue."

The Court says that our Civil Procedure Law (1973) was adopted for the speedy dispensation of cases, and in this regard the Court has held that it is not the caption of an action which controls an action but rather the averments in the body of the case to which the courts must look to determine the cause of action.: *Mathies, FIMA Corporation, Ltd. (FCC) v. Alpha Int'l Investment. Ltd.,* 40 LLR 561, 570 (2001); Harouni v. Griege, Supreme Court Opinion, March Term, 2011; *Blamo v. His Honor Charles B. Zulu, Tor and Topor,* 30 LLR 586,587 (1983).

The lower court judge having reviewed the petition for cancellation of the lease filed by the appellant and taken cognizance of the appellant's plea for the court to repossess appellant based on the violation of the lease agreement with specific reference to clause 6 of the agreement, and the court having jurisdiction over an action for summary proceeding to recover possession of real property, the judge should have entered the appropriate order to prosecute the case as summary proceedings to recover possession of real property. Hence, he erred in granting the appellee motion for summary judgment.

The judge further stated in his ruling that the property, subject of the lease agreement, was developed by the appellee and that the appellee had commenced satisfying his obligation of indebtedness to the appellant and therefore it would not be equitable for the court to order the agreement cancelled. We disagree.

This Court has held that courts are under an obligation to recognize, protect and preserve the sanctity of valid contracts as stipulated under Article 25 of the Liberian Constitution which requires that obligations under contracts be guaranteed by the Republic and that no laws shall be passed which will impair this right. *Liberia Material, Ltd. v His Honor Gbenewelleh, et al.* Supreme Court Opinion, October Term, 2015; *Emirates Trading Company v. Global Africa Import and Export Company,* 42 LLR 204, 213 (2004).

This Court has also held that equity will not relieve against an unfortunate or improvident bargain where there has been no fraud or imposition. Should courts undertake, because of improvidence, to set aside contracts which are lawful, they would invade personal rights and disturb and destroy the safety of business transaction. *Nasser and Saleby v. Elias Brothers,* 5 LLR 108, 114 (1936); *Gooding v. the Intestate Estate of Toomey,* 38 LLR 534,543 (1008).

In this case, the parties of their own volition executed an agreement and inserted therein a clause which govern their conduct in case of a default. That agreement stipulates that the appellant would not be responsible for any refund for investment made by the appellee on the leased property in case of violation of clause six (6) which the parties recognized as being material to the agreement. There is no indication that the appellee was under any legal disability at the time of signing this agreement and the appellee does not raise any issue of fraud or misrepresentation to warrant the court disregarding the terms of the lease agreement between the parties in this case.

The lease agreement between the parties in this case is strictly enforceable by law and in the absence of any showing of fraud, mistake, misrepresentation, duress or undue influence by the appellant, equity cannot suffice to trump the clear terms of this agreement. This Court has held that an agreement voluntarily made between competent persons should not lightly be set aside on the grounds of public policy or because it has turned out unfortunately for one party. *Liberia Realty Management Corp. v. Montgomery,* 33 LLR 11, 14 (1985).

The basis for granting summary judgment is when the court 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. In this case, the party most entitled to summary judgment is the appellant as a matter of law, as the appellee has not denied that he owes the appellants outstanding rent. The appellee stated that he has begun making payments to the appellant since the Debt Court handed down its ruling. We however see in the records that although the Debt Court's ruling was handed down on February 9, 2012, the appellee did not start to make payments against the judgment amount until April 20, 2012, after the appellant had filed its petition on March 20, 2012. In addition, the appellant alleges that the appellee has paid only US$13,000.00 of the debt court's judgment amount of US$38,755.00 and has not paid any subsequent rent up to the time of the hearing before this Court, and which the appellee has not denied.

This Court holds that since the judge of the lower court can make such order as will ensure the speedy and proper disposition of the case, and this matter being purely an issue of law, that the court proceeds to make the order provided by law for the proper hearing and disposition of the case and ensure that a speedy and proper disposition of the case is had.

WHEREFORE AND IN VIEW OF THE FORGOING, the ruling of the lower court is set aside and the Clerk of this Court is ordered to send a mandate to the lower court to enforce this judgment. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR ABRAHIM B. SILLAH, SR. OF THE HERITAGE PARTNERS AND ASSOCIATES APPEARED FOR THE APPELLANT. COUNSELLOR PHILIP Y. GONGLOE OF THE GONGLOE ASSOCIATE LAW OFFICES APPEARED FOR THE APPELLEE.