

**TANIOS BAAKLINI and TALINCO GENERAL  
CONSTRUCTION & TRADING ENTERPRISES,  
INC., by & thru its General Manager, TANIOS  
BAAKLINI, Appellants, v. KAREL LOGGING  
CORPORATION, by & thru its President, VICTOR  
G. HAIKAL, Appellee.**

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

Heard: May 18, 1993. Decided: July 23, 1993.

1. The Supreme Court will not consider any ruling made by the trial judge that has not been excepted to on the trial records.
2. Jurisdiction over the subject matter may be raised at any time before final judgment.
3. A court must, of its own motion, determine the question of its jurisdiction over any subject brought before it even if not raised by the parties since it is bound to take notice of its own authority. In the absence of jurisdiction, a court cannot proceed at all, but announce the fact and dismiss the case.
4. The test of jurisdiction is whether or not the tribunal has power to enter upon the inquiry, not whether its conclusion is right or wrong.
5. An action by a lessor against a lessee for rent, being founded on privity of contract, is transitory, and therefore the venue need not be laid in the county where the land is situated
6. The transitory nature of a cause of action based on contract is not affected by the fact that real property is involved. Hence the action to recover rent is transitory and not local, although the subject of the lease is real property.
7. The rule that action involving realty or affecting title to realty must be brought in the county in which the land is situated is inapplicable to actions to recover damages for breach of contract of a real estate sales contract because the latter is merely one to recover money damages, and although the question of title may be accidentally involved, it is not an action affecting title to realty or to recover real property.
8. Section 4.2 of the Civil Procedure Law, Rev. Code 1, governs action which seeks to enforce judgment that will affect realty and not the person.

Appellants instituted an action of damages for breach of an assignment of lease agreement, and an addendum thereto, alleging that defendant has failed to perform its obligations under the terms of the assignment of lease. Appellee/defendant

filed an answer and subsequently filed a motion to dismiss the complaint for lack of jurisdiction contending that since the subject matter of the action involves real property in Bopolu Chiefdom, Lower Lofa County, and the action was brought in Montserrado County, the judge lacked territorial jurisdiction. The trial court accordingly dismissed the action. On appeal, the Supreme Court reversed the ruling holding that since enforcement of judgment will not affect the property, but rather the person, it is deemed an action in personam and, therefore, was properly brought in the Sixth Judicial Circuit Court for Montserrado County, even though the subject property is located in Lofa County. *Judgment reversed.*

*Frank W. Smith* and *Frederick Cherue* appeared for the appellants. *Farmere S. Stubblefield*, in association with *Clarence L. Simpson, Jr.*, appeared for the appellee.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

This matter is before this Court on appeal from the final ruling made by His Honour J. Henric Pearson, who at the time was the presiding judge of the Sixth Judicial Circuit in Montserrado County, dismissing an action of damages for breach of contract filed by appellants. The judge dismissed the said action on the grounds that the court lacked jurisdiction to try the said action because the subject matter of the contract, the breach of which damages was being sought is realty located in Bopolu Chiefdom, Lower Lofa County. The following are the facts as they evolved in the court below:

On November 30, 1989, appellants filed an action of damages for breach of an assignment of lease agreement and addendum thereto, against appellee in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The complaint alleged, inter alia, that defendant had failed to perform its obligation under said agreement and had consequently incurred damages in an amount of not less than \$3,000,000.00 for mental anguish, losses and damages sustained as a result of

appellee's breach. Appellee answered denying any breach of its obligation under said assignment of lease agreement, claiming further that the amount of damages which appellants prayed for is speculative. On January 2, 1990, Judge Pearson ruled the damage suit to trial on the facts. However, the judge set up a board of arbitration to locate the total acreage assigned by the subject agreement, because the defendant contended in its answer that up to the time of the filing of the damage suit, it had only been able to locate 36, 000 of the 254, 545 acres assigned under the assignment of lease. Appellee/defendant was also ordered by the court to desist operating on the assigned forest land pending the report of the board of arbitrators set up by the court to locate the entire 254,545. Neither appellants nor appellee excepted to the ruling.

On January 30, 1990, appellants filed information to the circuit court that appellee was operating on the assigned premises in disobedience to the judge's ruling. Appellants therefore prayed for a preliminary injunction against the defendant. Appellee/defendant filed an answer and denied disobeying the court's order, claiming that it was operating on a different locality obtained from the chiefs of Bopolu Chiefdom.

On February 9, 1990, the chiefs and elders of Bopolu Chiefdom moved the court to intervene in the action of damages and at the same time filed an answer to appellants' complaint and a motion to dismiss the damages action. On this same dated February 9, 1990, the court granted a temporary stay order on the injunction. None of the parties excepted to the court's ruling.

On February 19, 1990, appellants filed a resistance to the chiefs and elders' motion to intervene in the matter. Appellants also filed their reply to intervenor's answer. On February 22, 1990, the court heard argument on the motion to intervene and reserved its ruling.

Subsequently, on February 21, 1990, appellee filed a motion to dismiss plaintiffs' action of damages for lack of jurisdiction. On February 27, 1990, the court dismissed plaintiffs' action alleging that the court lacks territorial jurisdiction to hear said action. The parties to this action are two compa-

nies engaged in the business of logging in Bopolu Chiefdom, Lower Lofa County. Both of these companies have their head offices in the City of Monrovia, Montserrado County; the assignment of lease and addendum were executed between the parties in Monrovia, Montserrado County; and both parties have their head offices and residence in the city of Monrovia, Montserrado County.

Under said agreement of assignment of lease and addendum, the appellee was granted certain logging rights and, in consideration therefor, agreed to perform certain obligations among which were, to register acres of land assigned with the Forestry Development Authority (FDA). According to appellants, the appellee's failure to perform this particular obligation resulted in the repossessing of this parcel of land by the FDA and assigning it to another logging company. The appellee agreed to compensate appellants in the amount of L\$1,000.00 per month should appellee fail to operate the leased forest for any period during the harvest season (the period of July to December each year). The appellee also agreed to pay appellants \$2.50 for logs falling below the selling price of US\$100.00 etc. These are the obligations which appellants claimed the appellee failed to perform and for such breach appellants demanded at least \$3,000,000.00 in damages.

Appellee, by motion, challenged the power of the Sixth Judicial Circuit Court of Montserrado County to try this damage suit for breach of contract on the grounds that the action brought before it is to establish rights growing out of an interest in real property situated in Lofa County. Hence the court lacks territorial jurisdiction.

The trial judge dismissed the action relying on the Civil Procedure Law, Rev. Code 1:4.2, which law was also cited by appellee in support of his motion filed to dismiss said action. In his ruling dismissing the action the judge ruled that Montserrado County is not the proper place to try this suit. We are now called upon to review the trial judge's ruling but in so doing, we must also carefully examine the facts of this action now under review to ascertain whether these facts which form the basis for bringing this suit fall within any of the perimeters

of real property actions as defined under section 4.2 of our Civil Procedure Code, Rev. Code 1.

It is our opinion that from the briefs filed by both appellants and appellee as well as from their arguments before us, the issue which is clearly presented here for the determination of this matter may best be stated in the following words:

"Whether or not an action of damages for breach of assignment of lease contract for the failure to satisfy the consideration for the assignment of the leasehold is a real property action and therefore must be tried in the county where the realty assigned is located?"

Other issues raised by appellee in brief filed in this matter are whether or not this Court may entertain issues raised in appellant's bill of exceptions not excepted to in the court below? and, whether a motion to dismiss an action for lack of jurisdiction over the subject matter can be made before the court at any time before final judgment? These issues have been passed upon by this Court in many previous opinions and their answers are well known to all lawyers. We agree with appellee that as a general rule, this Court may not consider any ruling made by the trial judge that is not excepted to on the trial records. By such failure to take exceptions, counsel waives his right to have this court pass upon said ruling. We also agree with the appellee that jurisdiction over the subject matter may be raised at any time before final judgment. Civil Procedure Law, Rev. Code 1:11.2(b); *Liberty et al. v. Republic*, 9 LLR 437 (1947).

We believe that the issue which we have culled from the brief filed by appellants and appellee, the arguments before us and the records in this appeal case as stated above will, when answered, adequately determine this matter, and will also decide the issue raised by appellants, whether or not this action is one in rem or in personam.

But before deciding this issue, we deem it necessary to quote in this opinion the relevant law, which is found in chapter 4 of the Civil Procedure Law, entitled *Venue and Removal of Causes*, section 4.2. of which relates to Real Property Actions.

"Every action to recover or procure a judgment establishing, determining, defining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien, or other interest in real property shall be tried in the county in which all or part of the subject of the action is situated. If such an action is before the court of a stipendiary magistrate or justice of the peace, the action shall be brought before the magisterial or justice of the peace of the magisterial area, town, or city in which all or part of the subject of the action is situated."

Every court of general jurisdiction has power to determine whether the conditions essential to its exercise exists. In fact, it must of its own motion always consider the question of its jurisdiction over any matter brought before it even if not raised by the parties, since it is bound to take notice of its authority. In the absence of jurisdiction, the court cannot proceed at all but must announce the fact and dismiss the cause.

"The test of jurisdiction is whether or not the tribunal has power to enter upon the enquiry, not whether its conclusion is right or wrong". 14 AM. JUR., *Courts*, § 168.

We are of the opinion that the statute quoted above concerns the venue of real property actions, the territory where the suit should be heard and decided.

In their brief, appellants contend that an action for damages for breach of contract is an action in personam and not an action in rem; that this action is not a possessory action and was not brought to dispossess defendant corporation of the real property in Lofa County; it is an action for recovery of money judgment for the defendant's failure to perform its obligations under an agreement of assignment of lease. This being so, according to appellants, the action is properly brought in any county where either plaintiff or defendant has its regular place of business or resides. Appellants contend further that Montserrado County is where both defendant and plaintiffs have their regular place of business and where the contract of the sub-lease agreement was executed.

Appellee made the following contentions which are so clearly stated, and were so forcefully argued, that we deem it

expedient to quote same, herein below verbatim:

“While appellee submits that the action of damages for breach of contract filed in Montserrado County by appellants seeks to recover money judgment and not the repossession of the timber forest in Lofa County, appellants’ apparent right to seek money damages grows out of their interest in real property situated in Lofa County, and the purpose of appellants’ action is to establish their rights and interest in real property under the control of appellee situated in Lofa County, that they envisioned entitled them to money judgment.”.

Appellee further goes on to say in his argument and brief, and we quote:

“It is clear that appellants’ action seeks to recover money damages basically alleging that appellee failed to satisfy the money consideration that cause the appellants to assign their acquired leasehold to the appellee. In other words, appellants are basically seeking rent from appellee growing out a leasehold arrangement situated in Lofa County”.

The Civil Procedure Law, Rev. Code 1:4.2 pertains to actions “to recover or to procure a judgment establishing, determining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien or other interest in real property”. This action is one claiming money damages against the logging corporation for breach of its obligation payment of the consideration for an assignment of lease for realty. The action is not one that seeks to determine who has right to the realty, or to annul any right of ownership of said realty. This action does not affect the estate, nor the right or title to the forest land in Lofa County. As a matter of fact none of these rights appear to be in dispute between the parties to the action. The agreement, the breach for which appellants seek damages, has to do with logs which are to be extracted from the forest land in Lofa County. These logs, even though part of the realty, are removable and, when removed, become personal property. Further, the consideration which is to be paid by appellee to appellants, to all intents and purposes, must be considered as rent for appellee’s use of the

forest area assigned to appellee for the purpose to carry on its business of logging. The appellee in its brief admitted that "appellants are basically seeking to recover rent from appellee growing out of a leasehold arrangement situated in Lofa County".

According to law writers, leasehold estates ordinarily do not constitute real property, or an interest in real property within the meaning of venue statutes, and a controversy pertaining only to the interpretation of a leasehold does not, for venue purposes, involve the recovery of an interest in real property. It is the generally accepted rule that an action by a lessor against a lessee for rent, being founded on privity of contract, is a transitory action, and therefore the venue need not be laid in the county where the land is situated." 77 AM JUR. 2d, § 14, pages 851-852.

The transitory nature of a cause of action based on contract is not affected by the fact that real property is incidentally involved. Thus, an action to recover rent is transitory and not local, although the subject of the lease is real property. 20 AM. JUR 2d. § 127, page 480.

A statutory provision to the effect that action to recover realty or actions affecting title to realty must be brought in the county where the land is situated has been held inapplicable to actions to recover damages for breach of contract of a real estate sales contract, on the grounds that such an action is merely one to recover money damages; and although the question of title may be incidentally involved, it is not an action affecting title to real property, or to recover real property within the meaning of such a statute.

The Civil Procedure Law, Rev. Code 1: 4.2 governs actions which seek judgment that will act upon the realty. Enforcement of the judgment sought must directly affect the property rather than the person. In this case, enforcement of the judgment sought in this action of damages for breach of contract will have an impact upon the defendant, even though the action does grow out of a leasehold arrangement concerning real property. The realty located in Lofa County will not be affected at all should appellants obtain a judgment in the Circuit Court



for the Sixth Judicial Circuit, Montserrado County, for breach of the contract of assignment. For consideration, the agreement gave the assignee the right to extract logs from real property in Lofa County. This action is therefore in personam.

We are not persuaded by counsel's argument that the facts of this suit fall within the realm of real property actions or within any of the perimeters of real property actions as are defined by section 4.2 of our Civil Procedure Law. This is not an action brought to determine or establish any right or interest to the real property situated in Lofa County as appellee contends. There is no question whatsoever in respect to appellants' right or interest in said realty. Appellants, by instituting this action in the Sixth Judicial Circuit in Montserrado County are merely seeking money damages for breach of an assignment of lease contract for realty situated in Lofa County.

In view of the foregoing facts and the law cited, it is the holding of this Court that the action, which is now under review, was properly brought in the Sixth Judicial Circuit Court. That the judge's interpretation of Section 4.2 of the Civil Procedure Law is erroneous, therefore the ruling dismissing appellants' action for lack of territorial jurisdiction is hereby reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding to resume jurisdiction and hear the case as the same has been ruled to trial on the issues of law. Costs to abide final determination of this case. And it is hereby so ordered.

*Judgment reversed.*